

(1971) 11 MAD CK 0007

In the Madras High Court

Case No : Writ Petition No. 2544 of 1970

Chinnathambi Gounder and another

APPELLANT

Vs

The Special Tahsildar (Land Acquisition) Harijan Welfare,
Erode and others

RESPONDENT

Date of Decision : 03-11-1971

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 45, 45(3), 5A, 6

Citation : (1971) 11 MAD CK 0007

Hon'ble Judges : Palaniswamy, J

Bench : Single Bench

Advocate : C. Hari Krishnan, for the Appellant; S. Ramalingam, Assistant Government Pleader, for the Respondent

Judgement

Palaniswamy, J.—An extent of 1.17 acres comprised in S. No. 48 in Nanjannapuram, Erode Taluk, belonging to the petitioners, was

notified under S. 4(1) of the Land Acquisition Act on 25th June 1969 as being required for a Harijan Colony. The notice under S. 5-A was sent to

these two petitioners and thirty four other persons, who were presumably interested in the remaining extent of the land comprised in the said survey

number. That notice was returned by the Village Munsif with the endorsement that all those persons refused to receive the notice and that the

notice was affixed on the outer door of these persons. The enquiry under S. 5-A was held on 10th February 1970 and it was followed by a

declaration under S. 6 on 27th May 1970. The petitioners have filed this written petition on 4th August 1970 praying for the issue of a writ of

mandamus to direct the respondents to forbear from proceeding further with the acquisition proceedings. It is alleged that for the same purpose

another piece of land comprised in the same survey number and belonging to one Kuppannaswami Gounder was previously notified in the year

1965 that the proceeding was dropped that the said dropping of the acquisition and the starting of fresh acquisition proceedings in respect of the

petitioners land are mala fide and that therefore the acquisition proceedings so far as the petitioners' land is concerned are vitiated. It is also

contended that there was no notice of the enquiry under S. 5-A and as the petitioners did not receive any notice the alleged enquiry under S. 5-A

is vitiated.

2. So far as the first contention is concerned, it appears that as a matter of fact, the acquisition proceeding was started in the year 1965 to acquire

the land of one Kuppannasami Gounder. But it is seen from the counter-affidavit that after coming to know about the notification, the said

Kuppannasami Gounder further lowered the land and made it unfit for housing purposes and that therefore the acquisition proceedings were

dropped. I do not find anything to suspect the bona fides of this contention. The petitioners' contention that the starting of acquisition proceedings

as against their land is actuated by mala fides cannot be accepted. The contention of the petitioners that there was no valid service of the notice of

the enquiry under S. 5-A is well founded. The allegation made in the counter-affidavit is that notice was served by affixture on 24th January 1970

because the petitioners refused to receive the notice. To find out whether there was such refusal. I called upon the learned Assistant Government

Pleader to produce the file. On a perusal of the file, I found that the Village Munsif had made a single endorsement with regard to all the 36

persons mentioned in the notice as having refused to receive the notice. It is not stated that notice was affixed on any particular house of any

individual. The endorsement reads as if only one affixture was made with regard to all the 36 persons. Such a procedure is illegal. The affixture

should have been made on the outer door of the house of each individual, who is said to have refused to receive the notice. Further it is not clear

whether the affixture was made on a conspicuous part of the land also, as required by S. 45 (3) of the Act. The file does not show that such a

procedure was followed. It is contended by the Assistant Government Pleader that in as much as the petitioners refused to receive the notice, such

a procedure is not contemplated under S. 45. No doubt, S. 45 contemplates personal service in the first instance. It contemplates that if personal

service cannot be effected the named person being not found the service may be effected on any adult male member of his family residing with him.

The third alternative is that if no such male member can be found, notice may be served by affixing a copy on the outer door of the house in which

the person therein named ordinarily dwells or carries on business, or by affixing a copy thereof in some conspicuous place in the office of the

officer aforesaid or of the collector or the court-house. The section as such does not prescribe this procedure to be followed if the person

concerned refuses to receive the notice. But to act upon the alleged refusal, the return made by the person entrusted with the charge of service

should show that the contents of the notice were read out to the person named in the notice and that even after the contents were read out, the

person refused to receive the notice. Only if such an endorsement is found, it can be taken that the person even after having been apprised of the

contents thereof, refused to receive the notice, in order to fix him with knowledge of the contents thereof. This not having been done, it is necessary

on the part of the serving officer to comply strictly with S. 45 (3), that is by affixing a copy on the outer door of the house of the person concerned,

or on any of the premises mentioned therein and also by affixing on some conspicuous part of the land concerned. As this has not been done in the

instant case, the enquiry under S. 5-A is vitiated. Consequently, the declaration under S. 6 that followed is also vitiated. In this view, the enquiry

proceedings and the declaration under S. 6 are hereby quashed without prejudice to the respondent to continue the proceedings in accordance

with law, if so advised. There will be no order as to costs.