

(2002) 02 MAD CK 0195

In the Madras High Court

Case No : Writ Petition No's. 12155, 18362 and 27897 of 1994 and 5997 of 1995

C.K. Namasivayam

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 10, 16, 17, 17(1), 17(2)

Citation : (2002) 02 MAD CK 0195

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : Masilamani, for Surendra Nath, for the Appellant; V.T. Gopalan, Addl. Solicitor General for M.T. Arunan and M. Liyagat Ali, G.A., for the Respondent

Judgement

A.K. Rajan, J.—This writ petition is for writ of certiorari calling for the records of the first respondent and quash the same.

2. The Government by G.O.Ms.No.336, dated 22.3.1983 issued a Gazette Notification u/s 4(1) of the Land Acquisition Act. The proposed land of one acre and 9.25 cents in Vadaseri village, Kanyakumari District belong to the petitioner's father P.C. Kanniah Chettiar and four of his daughters. It was purchased by him on 7.1.1980. Notice was not issued to the real owners of the property and the Government proceeded to hold enquiry u/s 5A of the Act. The petitioner's father and four sisters filed W.P.7096 of 1984 challenging the Notification u/s 4(1) of the Land Acquisition Act. This Court on 4.2.1992 directed the second respondent to issue notice to all the land owners and to hold enquiry, u/s 5A of the Act, afresh. Therefore, notice u/s 5A was issued to the petitioner's father and four sisters. Objections were filed. Petitioner's father attended the enquiry on 7.4.1992. Petitioner's father received a communication dated 3.7.1992 whereby he was informed that an enquiry u/s 3(b) would be held on 20.7.1992; on that day, he represented that there were alternate sites available and the purpose of which the land was to be acquired did not exist; further, 3.8

acres of land belongs to TANSI was also available and that can be acquired instead of his land. The second respondent did not communicate this to the requisitioning authority, viz., Telecommunication Department, but instead passed the order, on 28.7.1992, rejecting the objection. Therefore, the action of the second respondent in not referring the objection to the requisitioning authority is contrary to law. The petitioner's father passed away on 9.12.1993. Before the death of the petitioner's father, the petitioner's four sisters left India and they are residing abroad. Notice u/s 9(3), dated, 24.5.1994 was issued by the second respondent in the name of the petitioner's father(deceased) and also his four sisters. Coming to know of this fact, the petitioner presented the objection on 27.6.1994 to the second respondent stating that his father had expired and the petitioner's sisters were in abroad, the addresses where his sisters resided were also furnished by the petitioner. The petitioner's father was the owner of 7 cents; as per the last Will, the property devolved on the petitioner's mother, his five sisters, the petitioner himself and three other sisters. The petitioner sent a letter to the second respondent to send legal notice to all the legal heirs as they are all the persons interested in the land. The second respondent has neither taken any action, nor sent notices to all the legal heirs. The petitioner apprehends that the second respondent proceeds to hold enquiry, u/s 9(2)(3) of the Act. In the circumstances, the petitioner filed this writ petition.

3. In the counter filed by the first and second respondents, it is stated that the Divisional Engineer, Telegraph, Nagercoil applied for acquisition of 0.43.70.622 hectares of land in T.S.No.G3/12-8 of Vadasery village for construction of staff quarters to the Post and Telegraph Department, Nagercoil. Notification u/s 4(1) was issued on 20.4.1983. Enquiry u/s 5A was conducted on 7.7.1983 at Vadasery village after giving notice to the land owners and the persons interested as per the rules. The land owners objected to the acquisition. Objections were referred to the requisitioning body and remarks were obtained and the same was also served on the land owners. After considering the objections, Draft Declaration under Section-6 of the Act was submitted to the Government. Then the land owner filed W.P.7096 of 1984 and obtained orders staying the further proceeding. The High Court passed final orders on 4.2.1992 directing the Land Acquisition Officer to issue notice to all the petitioners and to hold fresh enquiry u/s 5A. Accordingly, notices were issued and enquiry was conducted on 7.4.1992. P.C. Kanniah Chettiar, one of the land owners attended the enquiry and gave statement on his behalf and on behalf of his four daughters objecting the acquisition. The statement was sent to the requisitioning authority. They also furnished the remarks and that was sent to Kanniah Chettiar and he was informed that enquiry will be conducted on 20.7.1992. He attended the enquiry on that date and filed another objection. The land was purchased by Kanniah Chettiar and his daughters in 1980. They did not take any steps for construction of houses or sub-division and even for transfer of registry; they are settled in Trivandrum; the objections were rejected. He also stated that there are other lands available for acquisition and they were also rejected. Ultimately, the

Government prepared Draft Declaration on 8.2.1993. It was published in the Gazette on 8.2.1993 and also in two local dailies on 15.2.1993 and the substance of the Notification was published in the locality on 22.2.1993. The Draft Declaration u/s 6 was approved by the Government on 29.3.1993 and it was gazetted on 28.10.1993. Notices u/s 9(1) and 10 were published in the locality on 26.5.1994 and they were served on the land owners on 2.6.1994. The Award enquiry was conducted on 27.6.1994 and 8.7.1994 and ultimately the Award was passed on 14.7.1994. The site was handed over to the requisitioning body on 28.7.1994. Interim stay of dispossession granted by this Court was communicated to the office of Revenue Divisional Officer on 1.8.1994, i.e., after handing over the land to the requisitioning authority.

4. In the counter-affidavit filed by the third respondent, it is stated that the land was acquired in the public interest after duly observing statutory formalities. Pursuant to the Award, the Department deposited a sum of Rs.2,76,800/- on 9.2.1994 and Rs.49,159/- on 16.11.1999. The possession of the land in question was handed over to the Department on 28.7.1994 by the Tahsildar, Agastheeswaram. This respondent came to know of the stay order passed by this Court only on 1.8.1994. Once the possession has been taken, there is no provision under the Land Acquisition Act to divest the possession already taken and therefore, there can be no question of any challenge to the proceedings under the Land Acquisition Act being countenanced after possession had been taken. In view of the interim stay granted, the petitioner and his agent are obstructing the construction of quarters, with the result that the financial sanction in this behalf need to be renewed from time to time. Petitioner has not made out any to have Section 6 Declaration to be quashed by this Court.

5. Mr.Masilamani, senior counsel for the petitioner submitted that the land owner died on 9.12.1993 and the notice of Award was received by his son C.K.Namasivayam, the petitioner herein. Immediately he informed department about the demise of his father and also gave the addresses of the other land owners. But notice was not sent to them, neither to his sisters, nor even to the persons who became owners by succession. Further, the Award was not communicated to the land owners. Further, this Writ Petition was filed and stay of dispossession was granted on 15.7.1994, but possession was taken on 28.7.1994, i.e., only after this Court passed the order of stay of dispossession. Therefore, transfer of possession is not legal as it was stayed by the High Court. Only in cases where possession was taken lawfully, it is binding on the land owners. Inasmuch as the Award was passed only on 14.7.1994--against the dead person, the Award itself is invalid. Therefore, there is no Award in law and since the land cannot be taken without passing any Award, the entire proceedings are vitiated. It is not open to the Land Acquisition Officers to violate the provisions of law. For the act of the department, the owners should not suffer. Therefore, the entire proceedings are vitiated. In support of his contention, the learned counsel relied upon a decision in Balwant Narayan Bhagde Vs. M.D. Bhagwat and Others, . The Supreme Court in this case has stated, how possession is taken

under the Land Acquisition Act. The Supreme Court held that, "on publication of the notice u/s 9(1) claims to compensation for all interested person in the land has to be made; be it the interest of the owner or a person entitled to occupation of the land and the taking possession of the land under Sections 16 or 17, it vests absolutely in the Government free from all encumbrances. It is therefore, clear that taking of possession within the meaning of Section 16 or 17(1) means taking of possession on the spot. It is neither actual nor symbolical possession as generally understood in the civil law. Therefore, the counsel contended that unless all the land owners are issued notices, the Award passed u/s 9 is not valid. He relied upon another decision in N. Krishnamachari Vs. Managing Director, APSRTC, Hyderabad and Others, , where it was held that publication of declaration, after the proceedings were stayed by the High Court, is illegal. In this case, actions were taken after the death of the father of the petitioner and hence, the proceedings are vitiated. The counsel also relied upon a decision in P.C. Thanikavelu v. The Special Deputy Collector for Land Acquisition 1989 I L.W.232, where a Full Bench of this Court held,

" The enquiry contemplated under S.5A of the Act would be full and complete only when the person who is really interested in the land is put on notice."

He also relied upon a decision in The Revenue Divisional Officer, Chidambaram Vs. A.N. Damodara Mudaliar and Others, , where it was held, that the date of public notice u/s 9(2) and 9(3) is the date of such notice on the person. He also relied upon the decision of a Division Bench of this Court in the case Jameela Beevi v. State of Tamil Nadu reported in All India Land Acquisition and Compensation Cases 2000 (2) 200, wherein this Court held,

"...the authorities cannot treat the statutory requirements as empty formality. "

6. Learned senior counsel contended that in view of the fact that the Award passed u/s 9(3) is not legal, the entire proceedings are vitiated. He relied upon the judgment in N. Krishnamachari Vs. Managing Director, APSRTC, Hyderabad and Others, , wherein it was held that u/s 3(b), the word, "person interested" includes the "beneficiary." Therefore, such person is entitled to challenge the Award when it was made without notice to him. Therefore, when the Award is made without notice to the person interested, such person can maintain an action under Article 226 of the Constitution.

7. Learned counsel for the petitioner therefore argued that since the Award was passed after the death of the person and without notice to all the land owners, Section 6 declaration is to be quashed. Further the counsel argued that the Award has not been communicated at all and therefore, there was no necessity to challenge the Award. No Award has been produced before the Court also. Writ petitioner has also taken into account the subsequent developments.

8. The Government Pleader submitted that the Award was passed on 14.7.1994. This Writ Petition has been filed after one year and five months. There is enormous delay in filing the petition. Therefore, there is no challenge to the

Award. Therefore, the Award cannot be quashed. The Award amount was also deposited. Once the Award was made, the only remedy is u/s 18 of the Act. In support of his argument, the counsel relied upon a decision in *State of Haryana and others Vs. Dewan Singh and others*, . In that case, the Supreme Court held that an Award passed on 13.4.1984 was not challenged till 13.5.1985; the Court would not be justified to quash the notification and declaration. He also relied upon another decision in *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, . The Supreme Court in that case held, that, after the possession of the land was taken either u/s 17(2) or Section 16, the land stands vested in the State free from all encumbrances. Thereafter, only compensation could be determined. Once the land was vested with the Government, notification and declaration cannot be quashed. Further, the counsel relied upon a decision in *Ramniklal N. Bhutta and another Vs. State of Maharashtra and others*, , wherein, the Supreme Court held that,

"the Court have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226. ...It may even be open the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests."

Therefore, the Government Advocate submitted that even assuming without admitting that there was some irregularity in passing the Award, still the entire Award cannot be quashed.

9. Admittedly, this land was purchased by different sale deeds. Four sale deeds stand in the name of four sisters of the petitioner. One sale deed with respect to 7 cents alone stand in the name of the father of the petitioner, viz., Kanniah Chettiar. Admittedly, notices for the enquiry u/s 5A and 6 were served on all of them and Kanniah Chettiar appeared for the enquiry on behalf of himself as well as his four daughters. Therefore, there was no illegality till Section 6 declaration was made. The father of the petitioner died only on 9.12.1993, after proceedings were taken u/s 6. The authorities conducted enquiry u/s 9 on 27.6.1994. The contention of the petitioner is that notices were not properly served on all the land owners or the persons interested in the land and therefore, the proceedings are vitiated. The Full Bench of this Court in the decision cited above has held individual notices are mandatory only to those persons whose names are found in the revenue records or who are found by the Collector as persons interested on information received from reliable sources. Though notices have been served on all the persons individually in whom the revenue records stand, yet when Section 9 enquiry was conducted, the writ petitioner before this Court has sent a communication stating that his father was dead and there are number of other

persons who succeeded to the property of the father and therefore, notice must go to all of them.

10. Therefore, in the circumstances of the case, notices were served on all the land owners whose names are found in the official revenue record. In so far as the four sisters of the petitioner's are concerned, they have been served with the notice, in accordance with law and were represented by the father in all enquiry. When the father died, it is for the four sisters to make alternative arrangements to participate in the enquiry. That apart, it is seen from the records that the father was representing his four daughters as Power of Attorney. Even then, Section 9(4) provides that notice shall be given to the person interested, which reads as follows:

"(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business..."

Therefore, notice should have been given to the persons individually and also to the persons where he is last known to be resided. In view of the fact that the writ petitioner sent communication to the Collector that his father had died and his four sisters were also not living in India and further, he had given their place of residences, the authorities are bound to send notice u/s 9(4) to the addresses given by them. In view of the fact that no such notices were sent to any of them, the procedure followed is not in accordance with law.

11. Nevertheless, as per the decision in State of Rajasthan and Others Vs. D.R. Laxmi and Others, , even in cases where the entire land acquisition proceedings had been completed without notice to the land owner, still the Supreme Court has held that the land owners are entitled only for compensation; Already completed proceedings cannot be re-opened. Therefore, the petitioner is entitled only to apply for reference to be made, in accordance with Section 18, notwithstanding the limitation prescribed u/s 10 of the Act.

12. Therefore, the writ petition is ordered accordingly permitting the petitioner and other owners of the land to apply for reference to the Collector within the period of two months from the date of receipt of this order and the Collector shall refer the matter to the Court without any delay at any rate not later than one month from the date of such representation. No costs. Consequently, W.M.P.Nos. 18362, 27897 of 1994 and 5997 of 1995 are closed.