

(1995) 07 MAD CK 0054

In the Madras High Court

Case No : Writ Petition No. 13397 of 1993

D. Balaraman

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 26-07-1995

Acts Referred:

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

Citation : (1995) 07 MAD CK 0054

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Advocate : N.R. Chandran, for the Appellant; P. Sathasivam, Special Government Pleader assisted by P. Chandrasekarn, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Shivaraj Patil, J.—Heard the Learned Counsel for the parties. The Petitioner in this writ petition has sought for quashing the letter No.

411/M/JDO/02/90 dated 7.7.1993 on the file of the second Respondent, and further sought for a direction to implement the letter L.R. No.

375M/JDO/90 dt. 16.6.93.

2. The facts which are considered relevant and necessary for the purpose of disposal of this writ petition are the following:

The Petitioner was the owner of the lands comprised is Survey Nos. 67/2B, 66/3B, 72/2B, 148/4B and a brick chamber in S.P. No. 67/2B and

66/3B and borewell in S.F. No. 168/4B. These lands along with some other lands were acquired for the purpose of feeder canal under the

Krishan Water Supply Project Notification in that regard u/s 4(1) of the Land Acquisition Act was published in the Tamil Nadu Government

Gazette on 27.2.1991. Enquiry u/s 5-A of the Act was held and thereafter the acquisition proceedings were completed and even the award also is

pained According to the Respondents possession of the land also was taken although there is some dispute with regard to taking of possession by

the Petitioner.

3. The acquisition proceedings as such were not challenged by the Petitioner. He filed a writ petition in this Court on an earlier occasion in W.P.

No. 12036 of 1991 seeking a writ of Mandamus forbearing the Respondents from disturbing the Petitioner's possession of the said lands in

Survey Nos. 6673, 67/2, 72/1, 72/2, 74/1, 162/2, 168/3, 168/4, 171/2, 168/5, 171/1, 188/5 and 188/8 in Pakkam village, Trivellore Taluk. this

Court dismissed the said writ petition by order dated 12.4.1993. Paragraph 4 of the said order reads thus:

In the counter affidavit filed by the Respondents, it is stated that a total extent of 6.41.0 Hectares of land is sought to be acquired for the purpose

of excavating the feeder canal to join the Link canal in Sirukadal in Tirivallur Taluk with the Red Hills Tank. This is part of the scheme approved as

early as in G.O. Ms. No. 1428 Public Works Department, dated 2.7.1983, for the purpose of bringing the Krishna Water to the Poondi

Reservoir and thus augment the water supply to the Madras City. The Notification u/s 4(1) of the Act was published in the Gazette on 27.2.1991,

in the news papers of 2.3.1991 and in the locality on 19.3.1991. An enquiry u/s 5-A of the Act was conducted on 6.5.1991. The Petitioner raised

two objections, one regarding his bore-well in S. No. 168/4 and the other regarding his brick chamber which has been put up in the lands in

question. These objections were sent to the department in question and their remarks were in turn communicated to the Petitioner. The objections

were found to be untenable because the shifting of the alignment of the canal would affect the upstream and downstream stretches of the canal.

Thereafter the Petitioner again filed objection and these objections were again enquired into, in a second enquiry on 21.8.1991. The Petitioner

appeared in this enquiry also and submitted his objections. Two more objections were raised at this stage, one stating that the lands left un-

acquired had no chance of getting, rain water and the second seeking for payment of adequate compensation for the brick chamber business. All

the objections were considered and a report was submitted to the government and the Government overruled the objections and issued the

Declaration u/s 6 of the Act on 10.3.1992. In the counter affidavit it is categorically stated that the Respondents are not in any way, disturbing the

possession of the Petitioner and that the question of taking possession will arise only after the passing of the award. It is also pointed out that the

canal runs through many villages and if the scheme is prevented to be given effect to at the Pakkam village, have a chain reaction and hamper the

whole progress of the scheme.

4. The second Respondent issued a letter dated 16.6.1993 to the Petitioner. In paragraph 2 of the said letter it is stated that while scrutinising the

application of the Petitioner sent along with the District Collector's letter dated 26.4.1993 it had been decided to comply with the request of the

Petitioner on compassionate grounds to save the interest of about 100 families which depend solely in the Petitioner's brick chamber for their

livelihood, and that a decision was taken to delete the brick chamber, borewell and portion of lands acquired and to return back the same to the

Petitioner. He was also directed to remit the amount of Rs. 77,829.25, the amount of compensation received by the Petitioner on account of the

land sought to be deleted.

5. Thereafter the impugned letter was issued by the second Respondent on 7.7.1993 cancelling the letter dated 16.6.1993 referred to above.

Aggrieved by this letter the present writ petition is filed.

6. The Respondents have filed a detailed counter affidavit stating about the acquisition proceedings and the earlier proceedings in the writ petition

and the circumstances under which the letter dated 16.6.1993 and 7.7.1993 were issued.

7. At the hearing Shri N.R. Chandran, learned senior Counsel appearing for the Petitioner submitted that Respondent No. 2 having issued the letter

dated 16.6.1993 could not have issued the impugned letter dated 7.7.1993 without affording an opportunity to the Petitioner to have his say in the

matter. In short, according to him, the impugned letter was one issued in clear violation of the principles of natural justice. He submitted, that the

second Respondent has issued the letter dated 16.6.1993 on which letter the Petitioner acted, it gave right to the Petitioner to ask for the

delectation of the said lands basins his claim on the principles of promissory estoppel.

8. Per contra, Shri. P. Sadhasivam, the learned Special Government Pleader submitted that the submissions made by the learned senior counsel do

not merit acceptance for various reasons viz.,

(i) the Petitioner has not challenged the acquisition proceedings as such in respect of the lands in question;

(ii) The Writ Petition No. 12036 of 1991 filed by the Petitioner was dismissed on 12.4.1993 after considering the claim of the Petitioner with

regard to the brick chamber, bore well etc. as can be seen from paragraph 4 of the order of this Court which is already extracted above;

(iii) The second Respondent being an Executive Engineer had no place or authority in the matter of either acquiring the land or deleting the lands

from acquisition; the letter dated 6.6.1993 addressed to the Petitioner by the, second Respondent was clearly without any authority in law; and

such a letter did not confer any right whatsoever, on the Petitioner; and

(iv) If the letter dated 16.6.1993 itself was one issued without the authority of law and when no rights were conferred by that letter on the

Petitioner, issuing of the second letter to rectify the error committed earlier or even otherwise issuing of that letter in no way violated the principles

of natural justice to take away any right or interest of the Petitioner.

The learned Special Government Pleader finally submitted that the lands in question were acquired for the purpose of feeder canal so as to bring

water from Krishna river to Madras city. He submitted that the work of the project is substantially completed and the feeder canal almost to a

length of 25 K.M. is already over. He put forward this submission on the basis of the records and plan produced for my perusal.

9. I have considered the above submissions of the Learned Counsel for the parties.

10. It is not disputed that the Petitioner has not challenged the acquisition proceedings as such. On an earlier he filed writ petition only seeking a

writ of mandamus not to take possession of the lands in question in W.P. No. 12036 of 1991 which was dismissed by this Court on 12.4.1993

even taking the objections of the Petitioner for consideration with regard to the existence of the brick chamber, borewell and other objections

raised. It cannot also be said that the second Respondent had any authority in law so as to issue the letter dated 16.6.93 and in fact no source of power or authority was pointed to the in the course of argument. The second Respondent, may be, out of sympathy, has issued such a letter, but the Petitioner cannot take advantage of the same. I have no hesitation to say that the letter dated 16.6.1993 issued by an authority not competent to do so under law did not confer any right or did not create any interest on the Petitioner over the lands in question.

11. This being the position, the letter dated 7.7.1993 impugned in this writ petition is of no consequence, even if hearing was not give to the

Petitioner. In my view the principles of natural justice are not violated when the Petitioner had not got any right under the letter dated 16.6.1993. It

is also settled in law that every promise made by every person is not enforceable on the principle of promissory estoppel. It is only such of the

promises made by competent officers exercising jurisdiction over the matter which can be pressed into service oh the basis of promissory estoppel.

Added to this, when the work of feeder canal is substantially completed to bring water to Madras City from Krishna river, in that nearly the feeder

canal is completed to the extent of 25 K.M., I do not think there should be any interference at this stage.

12. Thus having regard to all aspects of the matter, on an overall consideration, I do not think, the writ petition has any merits, and in my opinion, it

is liable to be dismissed and accordingly it is dismissed. No costs.