
(1997) 04 MAD CK 0035
In the Madras High Court

D. Nandakrishnan and Another	Vs	APPELLANT
State of Tamil Nadu and Others		RESPONDENT

Date of Decision : 17-04-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1997) 2 MLJ 397

Hon'ble Judges : E. Padmanabhan, J

Bench : Division Bench

Judgement

E. Padmanabhan, J.—The petitioners, who are brothers, owners of land comprised in Survey Nos. 159/3 and 159/4, Koyambedu Village,

measuring Order 48 acres, who have joined together and filed the present Writ Petition praying for the issue of writ of certiorari to call for G.O.R.

No. 221, Housing Department, dated 29.8.1975 and published in Government Gazette, dated 1.10.1975 and quash the same.

2. According to the petitioners, the lands were purchased by their father Late Deivasigamnai Naicker under deed of purchase dated 7.5.1951 and

12.1.1955, which was partitioned among the petitioners under a deed of partition dated 25.7.1980.

3. A Notification u/s 4(1) of the Land Acquisition Act, 1894 was made in G.O.R. No. 221, Housing Department, dated 29.8.1975 for acquisition

of an extent of 217.30 acres of land in Koyambedu Village for the creation of new neighbourhood, known as Kalaignar Karunanidhi Nagar Part II

Scheme. The said G.O. was published in Government Gazette dated 1.10.1975. Thereafter, a Declaration u/s 6 was also issued in G.O.Ms. No.

1381 to 1385, Housing and Urban Development, dated 28.9.1978 and published in the Government Gazette Extraordinary dated 29.9.1978 in

respect of 162.06 acres out of 217.30 acres.

4. The petitioners herein have filed W.P. No. 1739 of 1983 to quash the declaration issued u/s 6 of the Act in terms of W.P. No. 10351 of 1982.

5. Subsequently, the 2nd respondent had issued a notice calling upon the petitioners to appear for an enquiry on 10.11.1989 u/s 5-A. On

10.11.1989 the petitioners appeared before the 2nd respondent along with their counsel. The petitioners submitted their objections on

26.12.1989, as prescribed under Rule 3(b) of the Rules. The petitioners also state that no detailed enquiry was conducted and there has been

violation of Rule 3(b), as the remarks of the requisitioning authority had not been communicated. The petitioners further state that the further

proceeding under Land Acquisition Act were not proceeded by the 2nd respondent and no Declaration u/s 6 of the Act had been issued uptill the

date of filing of writ petition.

6. The petitioners contend that there cannot be a declaration u/s 6 on the facts of the present case as Section 4(1) Notification was published on

1.10.1975 and the respondents have not issued a Declaration u/s 6, even after a lapse of three years from 21.1.1988 as contemplated under the

Land Acquisition Act 1894. It is also contended that the 2nd respondent ought to have completed the proceedings u/s 5-A and a declaration

showed have been issued on or before 20.1.1991, and this failure is fatal to the proceedings and consequently, Section 4(1) Notification has to be

quashed. The petitioners relied upon the pronouncements of this Court reported in P. Devendran Vs. The State of Tamil Nadu and Another, , A.S.

Naidu v. State of Tamil Nadu 1992 L.A.C.C. 414 and 1992 L.A.C.C. 373. As Section 6 Declaration had not been issued, the petitioners has

filed the present writ petition to quash the Notification issued u/s 4(1) of the Land Acquisition Act.

7. The writ petition has been admitted on 26.2.1993 and interim stay of taking possession has been ordered on 26.2.1993.

8. On behalf of the respondents, W.M.P. No. 23574 of 1995 have been taken out to vacate the order of interim stay granted in W.M.P. No.

5650 of 1993 on 26.2.1993.

9. The respondents, while admitting the delay as to issue of Section 4(1) Notification, publication of Section 4(1) Notification and the earlier orders

passed by this Court in W.P. No. 1739 of 1983 have stated that a fresh 5-A enquiry notice was served and Section 5-A enquiry was conducted

on 10.11.1989. The respondents, further state that on receipt of remarks and petitioners objections, the enquiry under Rule 3(b) of the Rules has

also been conducted. After conducting an enquiry, the 2nd Respondent, Special Deputy Collector (Land Acquisition), while overruling the

objections in and by his proceedings dated 15.3.1990 submitted proposals for issue of Declaration u/s 6 to the 1st respondent. In the proceedings

of the 2nd respondent dated 15.3.1990, the details of enquiry conducted u/s 5-A of the Act, consequent to the earlier orders of this Court in W.P.

No. 1739 of 1993 had been set out in detail.

10. No declaration u/s 6 has been published till the date of filing of writ petition and also till 18.9.1995 on which, the counter has been filed. Till

12.10.1995 and for that matter, till the hearing of the writ petition, it is admitted that no Declaration u/s 6 had been published in respect of the lands

in question.

11. The respondents contend that a batch of Writ Petitions Nos. 10474 of 1982, etc., were allowed by the Division Bench of this Court on

22.4.1991 quashing the Section 4(1) Notification in respect of Koyambedu, etc., villages and the Government has already preferred SLP before

the Supreme Court on 5.3.1992 and the SLP Nos. 1855, 1870 of 1992 are still pending before the Supreme Court. It is not the case of the

respondents that as against the order passed by the Division Bench in W.P. No. 1739 of 1983, any SLP been preferred or is pending.

12. The learned Counsel for the petitioners contend that there cannot be any fresh Declaration u/s 6 in the present case in terms of Section 6(1) of

Land Acquisition Act and hence the Section 4(1) Notification issued in respect of the petitioners' land has to be quashed. Section 4(1) Notification

in the present case was issued on 29.8.1975 and the same was published in the Government Gazette dated 1.10.1975. Section 6 Declaration

issued on 28.9.1975 and published in the Government Gazette on 29.9.1975 has been quashed by this Court in W.P. No. 1739 of 1983 on

21.1.1980. The Order of this Court in W.P. No. 1739 of 1983 was communicated to the 2nd respondent on 3.2.1989. A fresh enquiry u/s 5-A

of the Land Acquisition Act was conducted on 10.11.1989 in terms of notice

dated 12.10.1989. The 2nd respondent after communicating the remarks of the acquisition body and after holding Section 5-A enquiry, by proceedings dated 15.3.1990 overruled the objections and forwarded the papers to the 1st respondent for issue of Section 6(1) declaration. Admittedly, on or after 15.3.1990, there has been no further proceedings at all by the respondent and no declaration u/s 6 of the Act had been issued by the respondents uptill now.

13. In this case, admittedly, Section 6(1) declaration had also been quashed by this Court on 21.1.1988. It is also admitted that till date no

declaration u/s 6 of the Act had been issued by the 1st respondent, even though Section 5-A enquiry had been concluded and proposal has been

submitted as early as 15.3.1990 to the 2nd respondent. The question that has to be decided is as to whether there can be a continuation of land

acquisition proceedings based upon the Section 4(1) Notification dated 29.8.1975 published in Government Gazette dated 1.10.1975.

14. The learned Counsel for the respondent relied upon the Judgment of the Apex Court reported in A.S. Naidu v. State of Tamil Nadu 1992

L.A.C.C. 414 as well as Judgment of Baktavatchalam, J. reported in P. Devendran v. State of Tamil Nadu and Anr. 1994 W.L.R. 133.

15. The learned Counsel for the petitioners have also relied upon the Division Bench Judgment of this Court in Thiruvaleeswarar Temple Vs. The

State of Tamil Nadu and Another, .

16. However, the point that arises on the facts of the case had been decided by the Full Bench Judgment of Supreme Court reported in N.

Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, . The Full Bench of the Supreme Court, after

referring to Oxford English School Vs. Government of T.N. and Others, ; P. Chinnanna and Others Vs. State of A.P. and Others, and K.

Chinnathambi Gounder v. Government of Tamil Nadu AIR 1980 Mad. 251 has held thus:

16. We are of the opinion that running of the limitation should be counted from the date of the order of the Court received by the Land Acquisition

Officer and declaration is published within one year from that date. It would be consistent with the scheme of the Act and it would subserve the

public purpose. Parliament amended the Act and prescribed limitation since the

acquisition proceedings were unduly delayed for years and the owners of the lands were put to hardship. If operation of limitation under Clause (ii) of first proviso to Section 6(1) is not applied, we would come back to square one and defeat the legislative purpose of limitation prescribed under the Act. The Government is bound under the order of the Court to hold an enquiry u/s 5-A. Thereafter, if the Government still opines that the land is needed for public purpose, declaration u/s 6 should be published within one year as indicated above. This interpretation would render judicial review efficacious and meaningful and public purpose subserved and the aggrieved owner would get an opportunity to vindicate his grievance. Thus, we hold that the limitation prescribed in Clause (ii) of the first proviso to Sub-section (1) of Section 6 would apply to publication of declaration u/s 6(1) afresh. If it is published within one year from the date of the receipt of the order of the court by Land Acquisition Officer, declaration published u/s 6(1) would be valid.

17. The second contention that there would be two dates of notification u/s 4(1) as initially published and the one deemed to be published consequent to upholding of second declaration u/s 6(1) and that the compensation u/s 23(1) is required to be determined with reference to second date, is untenable. The declaration u/s 6(1) gives only conclusiveness to the public purpose specified in Section 4(1) and the notification u/s 4(1) still remains valid which is relevant for the purpose of computation of market value as envisaged u/s 23(1) of the Act. When the court upholds the declaration it would relate back to the date of publication u/s 4(1). Therefore, there are no two dates for the purpose of computation of the market value as contended for. The purpose of enquiry u/s 5-A is to determine whether the land is needed for the public purpose and the affected owner or interested person gets a right to show that the public purpose mentioned in Section 4(1) is not the public purpose or some other land is more suitable or is available for the public purpose or his lands need to be excluded from public purpose as the proposed land may be in excess of requirement. Once the Government, after holding the enquiry, has considered the objections and decided that the land is needed for public purpose, declaration published u/s 6 would become conclusive of the public purpose. Nonetheless, relevant date for Section 23(1) is the date of

the publication of the notification u/s 4(1). 18. Admittedly, in this case the second declaration was published within one year even from the date of

the order passed by the High Court and, therefore, the view of the Division Bench is required to be upheld. Thus, we hold that the declaration

published u/s 6(1) on 13.5.1989 is valued and the notification dated 22.1.1989 u/s 4(1) does not become invalid. The Land Acquisition Officer

should conduct and complete award enquiry within one year from the date of the receipt of the order of this Court.

17. The Full Bench pronouncement of the Supreme Court squarely applies to the facts of the present case. The Division Bench had allowed the

writ petition and quashed the Section 6 Declaration by order dated 21.1.1988 and the same has been communicated to the Land Acquisition

Officer and the certified copy of the said judgment was received by the Land Acquisition Officer, the second respondent on 3.2.1989. Thus either

reckoned from 21.1.1988 or for that matter from 3.2.1989, till now no declaration u/s 6 of the Act has been issued by the 1st respondent. Hence

the Respondents cannot issue a fresh declaration u/s 6 as number of years have rolled by now. Even assuming that a period of three years would

not apply which contention is not correct, even then more than three years have elapsed since 3.2.1983. Reckoned from 3.2.1989 and till date of

filing of writ petition on 19.2.1993 more than three years have elapsed. In the circumstances, on the facts of the case, the declaration u/s 6 could be

issued as held by the Apex Court in N. Narasimhaiah and Others Vs. State of Karnataka and Others and Union of India (UOI) and Others, .

18. As no declaration could be issued, no purpose will be served in allowing the Section 4(1) Notification alone to be kept pending. In the

circumstances, it would be no more available to the State Government to make a Declaration u/s 6 of the Act based upon the Section 4(1)

notification dated 29.8.1978 and published in Government Gazette, dated 1.10.1975. Hence, Section 4(1) Notification is quashed and the writ

petition is allowed, as prayed for with a cost of Rs. 2,000 (Rupees two thousand only).

19. It is made clear that it is well open to the respondent in case it is satisfied the acquisition is necessary in public interest, it is free to exercise its

power of eminent domain and make a fresh Section 4(1) notification and proceed further and complete acquisition in terms of Land Acquisition

Act, 1894.