
(2008) 04 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No's. 9432 and 9433 of 1997

Dhandapani and Karunaiammal

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 30-04-2008

Acts Referred:

Land Acquisition (Tamil Nadu) Rules — Rule 2, 4

Land Acquisition Act, 1894 — Section 10, 11, 4(1), 55(1), 55(2)

Citation : (2008) 5 MLJ 1416

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : C.V. Vijayakumar, for T.R. Rajaraman, for the Appellant; D. Geetha, Addl. Govt. Pleader for R. 1 and 2 and R. Girijaran, for R. 3, for the Respondent

Final Decision : Allowed

Judgement

P. Jyothimani, J.—In these writ petitions notifications issued u/s 4(1) of the Land Acquisition Act, 1894 (Central Act) (in short, "the Act") in

G.O.Ms. No. 638 Housing and Urban Development [L.A.3(2)] Department dated 18.07.1995 is challenged by the petitioners in respect of their

lands to an extent of 1.72 and 2.58 acres comprised in Survey Nos. 295/1, 296/2 and 296/5 and 296/2B, 296/5B, 295/1 and 296/5 in Kalapatti

village, Coimbatore District.

2. The petitioners in these writ petitions are the owners of the above said extent of lands and after purchase, they have been in possession of the

said lands. Land acquisition proceedings under the Act has been initiated by the respondents to acquire lands to an extent of 14.00.5 hectares in

Kalapatti Village for the purpose of construction of houses under Neighbourhood Scheme. Notification u/s 4(1) of the Act was issued in G.O.Ms.

No. 190 dated 25.02.1994, however, it was published after four months in the Tamil Nadu Government gazette on 15.06.1994.

2(a). The second respondent was appointed by the Governor to discharge the functions of the Collector u/s 5A of the Act. The second respondent

has also conducted enquiry under the said provision in September, 1994. The petitioners were present on the date of enquiry and have made their

objections orally as well as in writing that the acquired lands are the only livelihood for them and they are small farmers.

2(b). According to the petitioners, the second respondent has not forwarded the remarks of the requisitioning authority, viz., the third respondent,

Housing Board on the objections made orally as well as in writing, recorded by the second respondent as per the procedure. The second

respondent, after obtaining remarks from the requisitioning authority, should have forwarded the same to the land owners/interested parties and

conducted another enquiry if necessary. By not forwarding the remarks of the requisitioning authority, the petitioners valuable right in giving

objections properly has been affected.

2(c). According to the petitioners, they were not aware of the subsequent declaration passed u/s 6 of the Act during the year 1995. Fresh

applications were invited for issuance of patta to landowners and the petitioners were issued patta in respect of the above said lands on

01.12.1995. Therefore, the petitioners were under the bona fide impression that the land acquisition proceedings were dropped. It was only after

the notice was received in award proceedings during the first week of June, 1997 for enquiry dated 18.06.1997, called by the second respondent,

the petitioners came to know about Section 6 declaration passed by the respondents on 18.07.1995 in G.O.Ms. No. 638.

3. The land acquisition proceedings are challenged on various grounds including,

(i) Between 4(1) notification and 6 declaration, there has been a gap of one year and five months and therefore, the declaration issued u/s 6 of the

Act is vitiated; and according to the petitioners, the delay in approaching the Court is due to the reason that they were issued patta by the Revenue

Department in the year 1995;

(ii) The second respondent has not followed the procedure for conducting enquiry u/s 5A of the Act by forwarding the remarks of the

requisitioning authority, viz., the third respondent on the objections made by the petitioners for further enquiry;

(iii) While notification u/s 4(1) was issued in G.O.Ms. No. 190 dated 25.02.1994, the same was published in the gazette after four months, viz., on

15.06.1995; and

(iv) After the date of declaration u/s 6 viz., 18.07.1995, pattas were issued to the petitioners by the Revenue Department in respect of same

properties on 01.12.1995.

4. The third respondent, requisitioning authority, viz., Coimbatore Housing Unit of Tamil Nadu Housing Board in its counter affidavit has stated that

the Executive Engineer and Administrative Officer of the Coimbatore Housing Unit has requested for acquisition of lands in Kalapatti village for the

construction of houses under Kalapatti Neighbourhood Scheme. It is also admitted that notification u/s 4(1) of the Act was approved in G.O.Ms.

No. 190 dated 25.02.1994 and the same was published on 15.06.1994.

4(a). It is the case of the third respondent that the substance of the said 4(1) notification was also published in two Tamil dailies, viz., ""Dhinamalar

on 17.06.1994 and ""Vetrimalai"" on 18.06.1994 and the locality publication was effected on 20.07.1994; enquiry u/s 5A of the Act was conducted

in the Office of the second respondent on 12.09.1994, after observing all legal formalities and service of notice u/s 55(1) of the Act. The

objections filed by the interested persons were forwarded to the Executive Engineer and Administrative Officer, viz., the requisitioning authority

and the remarks received from the Executive Engineer and Administrative Officer were communicated to the interested parties.

4(b). Thereafter, draft declaration u/s 6 of the Act was approved in G.O.Ms. No. 638 Housing and Urban Development Department dated

18.07.1995 and published in the gazette notification on 19.07.1995; the substance of the 6 declaration was published in two Tamil dailies, viz.,

Makkal Kural"" and ""Vetrimalai"" on 20.07.1995 and the locality publication was effected on 16.08.1995. Notices under Sections 9(3) and 10 of

the Act were served on the persons interested and notice u/s 9(1) was published on 18.05.1997 in the prescribed manner. The award enquiry u/s

11 of the Act was conducted by the second respondent and award has been passed on 17.07.1997 in Award No. 9 of 1997. It was at that stage,

the above writ petitions came to be filed.

4(c). It is the case of the third respondent that as per the award, the notified persons are, Arumuga Gounder, S/o.Palani Gounder, Kasthuri Naidu

S/o.Rama Naicker and Tmt.Saraswathi W/o.Nanjappa Konar. It is the case of the third respondent that the petitioners have purchased the lands

without verifying the land acquisition proceedings and according to the said respondent, the lands are not useful for agricultural operations. It is the

case of the third respondent that the objections raised by the petitioners during the time of enquiry u/s 5A of the Act, were only general in nature

and the requisitioning authority, viz., the Tamil Nadu Housing Board has rejected the objections of the petitioners and the said opinion of the

requisitioning authority has already been communicated to all land owners.

4(d). The contention of the petitioner that between 4(1) notification and 6 declaration, time taken by the respondents is more than one year is also

denied. In this regard, it is stated that the locality publication of notification u/s 4(1) of the Act was made on 20.07.1994 and the declaration u/s 6

was made on 18.07.1995 and published in the gazette on 19.07.1995 and therefore the same is within the period of one year. The award has been

pronounced on 17.07.1997 and the writ petition is filed only to drag on the proceedings.

5. Mr.C.V.Vijayakumar, learned Counsel appearing of the petitioners would submit that the locality publication of notification u/s 4(1) of the Act

stated to be made on 20.07.1994, is not correct. According to him, even by taking the publication of notification u/s 4(1) in two Tamil dailies, viz.,

Dhinamalar"" and ""Vetrimalai"" on 17.06.1994 and 18.06.1994 respectively, in the absence of any proof to show that the locality publication was

made more than one month thereafter, viz., on 20.07.1994, the declaration u/s 6 of the Act passed on 18.07.1995 is clearly beyond one year

period and therefore, the acquisition proceedings are liable to be set aside.

5(a). It is his further contention that enquiry u/s 5A of the Act was conducted on 12.09.1994 and it was only thereafter, the objections of the

petitioners were referred to the requisitioning authority, viz., third respondent, who has given its remarks on 13.12.1994, and after such remarks of

the requisitioning authority only enquiry u/s 5A should have been conducted in which case, the petitioners would have an opportunity of raising oral

objection about the remarks of the requisitioning authority, whereas in this case, the second respondent has not conducted any enquiry u/s 5A of

the Act after the requisitioning authority submitted its remarks on the objections of the petitioners. Therefore, according to him, the enquiry is

vitiated. He would also submit that the award was passed on 17.07.1997 within one month from the date of filing of the writ petitions viz.,

26.06.1997 and according to the learned Counsel for the petitioners, there was an interim order of dispossession and therefore, the award passed

subsequent to filing of the writ petitions will not validate the enquiry, which has been conducted against the provisions of the Act.

6. On the other hand, Mrs.D.Geetha, learned Additional Government Pleader appearing for respondents 1 and 2 and Mr.Girirajan, learned

standing counsel for the third respondent Housing Board would submit that the locality publication u/s 4(1) of the Act was effected on 20.07.1994

and 6 declaration was approved on 18.07.1995 and within one year the declaration was made and therefore, the notification is perfectly valid. It is

also their submission that notice dated 18.08.1994 for enquiry u/s 5A of the Act was served on the petitioners on 18.08.1994 itself and the

petitioners have submitted objections on 12.09.1994 and the same were considered in the enquiry conducted on the same day.

6(a). According to them, the remarks obtained from the third respondent, requisitioning authority on 13.12.1994 on the objections of the

landowners, viz., the petitioners were only for the purpose of enabling the second respondent, Special Tahsildar to prepare his proceedings in

order to finalise the 6 declaration process and the remarks obtained from the requisitioning authority need not be communicated to the petitioners.

According to them, after the enquiry was conducted u/s 5A of the Act on 12.09.1994, the objections of the petitioners were sent to the third

respondent Housing Board, which in its turn has sent its remarks on 13.12.1994, which were in fact communicated to the petitioners on

22.12.1994 and thereafter, the second respondent has submitted his proceedings dated 20.01.1995 to the Collector and therefore, according to

her the entire proceedings are perfectly in order. The learned Additional Government Pleader has also produced files relating to land acquisition

proceedings for perusal by this Court.

7. In respect of the first point raised by the petitioners is that between 4(1) notification and 6 declaration, the period taken by the acquisition

authorities is more than one year and therefore, the declaration becomes invalid u/s 6(1)(ii) of the Act. The said section states that no declaration in

respect of land covered in the notification u/s 4(1) published after the commencement of the Land Acquisition (Amendment) Act, 1894 shall be

made after the expiry of one year from the date of publication of 4(1) notification. For the purpose of computing the period of one year, the date of

last mode of publication of 4(1) notification has to be taken into consideration.

8. It is the admitted case of the petitioners and respondents that in respect of these cases, 4(1) notification has been approved in the gazette on

25.02.1994 while the gazette publication was made on 15.06.1994. Before considering the point raised, it is better to refer Section 4(1) of the Act

which prescribes that a notification to the effect that it appears to the appropriate Government that the land in a locality is likely to be needed for

public purpose, should be published in the official gazette. There is no distinction between approval of 4(1) notification in the gazette and the

gazette notification. What is required is date of gazette notification published in the official gazette, which is the starting point of 4(1) notification.

Therefore, the contention of the learned Counsel for the petitioners that the Government has approved the 4(1) notification on 25.02.1994 in

G.O.Ms. No. 190 and the gazette notification was issued on 15.06.1994, and hence, there is a gap of four months, which would vitiate the

notification issued u/s 4(1) of the Act, is unsustainable. In this case, the date of the gazette publication of 4(1) notification which is 15.06.1994

which has to be taken as starting point of the acquisition proceedings.

9. It is not in dispute that 4(1) notification has been published in two Tamil dailies circulated in the locality, viz., ""Dhinamalar"" dated 17.06.1994

and ""Vetrimalai"" dated 18.06.1994, and the same is only after the gazette publication dated 15.06.1994. The learned Counsel appearing for the

petitioners has questioned that there is no locality publication, which is also a necessary ingredient u/s 4(1) of the Act, which states that after the

official gazette notification, the same should be published in two newspapers circulated in the locality and it is the duty of the Collector to cause

public notice of the substance of such notification to be made at convenient

places in the locality. Therefore, in addition to the said two modes, the locality publication is also a necessary ingredient.

10. Rule 2 of the Land Acquisition (Tamil Nadu) Rules framed by virtue of the powers u/s 55(2) of the Act is as follows:

Rule 2.- The Collector shall cause public notice of the substance of the notification under Sub-section (1) of Section 4 in Form "A". The notice shall be published at convenient places in the locality and copies thereof fixed up in the offices of the Collector and the Tahsildar.

A reference to the file produced by the learned Counsel for the respondents in fact shows that such local publication has been effected on

20.07.1994, which is evident by the certificate of the Village Administrative Officer, Revenue Inspector, Zonal Deputy Tahsildar and Revenue

Divisional Officer and also Form "A" affixed in the office of Tahsildar with the signatures of many of the local residents dated 20.07.1994 and on

the factual situation, the 6 declaration itself was notified in the gazette notification on 19.07.1995 and therefore, the period between these two

within one year and on that ground the acquisition proceedings cannot be held invalid.

11. About the next facet of the contentions raised by the learned Counsel for the petitioners that enquiry u/s 5A of the Act was not conducted by

the second respondent Tahsildar in accordance with law, before going into the legal aspect, some of the factual aspects are to be ascertained from

the records available. It is not in dispute that notice dated 18.08.1994 in Form No. B for enquiry has been issued by the second respondent u/s

5A of the Act, fixing the date of enquiry as 12.09.1994. It is seen that on 12.09.1994, both the petitioners in these writ petitions have given their

statements before the second respondent, raising objections. The main objection given by the petitioners is that the subject matter of the lands

under acquisition are their only source of livelihood, since the petitioners are small farmers living in the said lands by putting up houses.

12. It is also seen that based on the letter of second respondent dated 12.10.1994 addressed to the third respondent, requisitioning authority,

which is the Tamil Nadu Housing Board, the third respondent has submitted a statement by way of answer to the objections raised by the

petitioners in his letter dated 13.12.1994. The said answer of the requisitioning

authority to the objections as it is seen in the file is as follows:

COIMBATORE HOUSING UNIT

FROM TO

C.P.SUBBANNAN,B.E.,M.I.E.,

The Exe.Engr. & Admn. Officer

Housing Scheme No.

Coimbatore Housing unit

Coimbatore 18.

Tatabad, HUDCO Colony

COIMBATORE 12.

The Special Tahsildar (LA)

Lr. No. LI/8297/91 Dt.13.12.94

Sub:Housing - Coimbatore Housing Unit - Kalapatty Village S.F. No. 295/1, 296/2B, 296/5, 296 5A Enquiry - Objection petition of

Tvl.Karuniammal,

2. Dhandapani,3. A. Mani, 4. R. Sundaram, 5. Narayanasamy.

Ref:Your Lr. No. 929/88 dt.12.10.94.

The objection raised by the petitioners are common nature. The lands are situated at vantage point and required for the proposed Neighbourhood

Scheme. The lands are absolutely necessary for the formation of the (Kalapatty N.H.Scheme). Hence the exclusion of these lands will adversely

affect the comprehensive nature of the layout.

If the petitioner desires to have an allotment he may apply in the prescribed application form at the appropriate time and allotment will be

considered as per the allotment rules of the Tamil Nadu Housing Board. Necessary compensation will be paid for the lands and structures. Hence

the land owners objection may be over ruled and the lands may please be acquired and handed over to Tamil Nadu Housing Board for the early

implementation of the proposed Neighbourhood schemes.

13. It is also seen in the file that the second respondent along with his letter dated 22.12.1994 addressed to the petitioners has enclosed the

answer given by the third respondent dated 13.12.1994. The relevant portion of

the letter of the second respondent dated 22.12.1994, enclosing

the answer by the requisitioning authority is as follows:

14. It was thereafter, the second respondent has prepared his proceedings dated 20.01.1995 in reference No. 929/88 and considering the

objections of the petitioners, including the statement recorded on the date of enquiry, viz., 12.09.1994 apart from the requisitioning authority's

reply dated 13.12.1994, the second respondent, ultimately in his report submitted to the Collector, has stated as follows:

The objections are general in nature. Hence the above objections needs no consideration and are rejection. As regards the higher value demanded

by some of the land owners they will be awarded value according to the prevailing market value based on the sale deeds.

Hence the objections are over-ruled in keeping in view of the circumstances explained above and the lands may be acquired.

The publication of draft declaration is recommended.

It is thereafter, the publication of 6 declaration was made in the gazette notification on 19.07.1995.

15. Therefore, on facts elicited above, based on the perusal of the file, it is clear that after 12.09.1994, the date on which he has obtained

statements in the form of objections from the petitioners, there is no record to show that the second respondent has conducted any enquiry. It is

also not the case of the second respondent that after 12.09.1994, he has conducted any enquiry. Therefore, only after completion of the enquiry

u/s 5A of the Act, the second respondent has sent the objections of the petitioners to the third respondent by his letter dated 12.10.1994.

Thereafter, the third respondent has submitted his answer to the objections of the petitioners to the second respondent on 13.12.1994 and

considering the objections of the petitioners and the answer given by the third respondent, the second respondent has prepared his proceedings

dated 20.01.1995 and sent it to the District Collector for recommending 6 declaration.

16. The contention of the learned Counsel for the petitioners is that the second respondent ought to have conducted enquiry u/s 5A of the Act after

the third respondent has submitted his answer to the objections of the petitioners, in which case, the petitioners also would have got opportunity to

object about the answer given by the requisitioning authority and in the absence of such opportunity given to the petitioners, the enquiry stated to

have been conducted by the second respondent u/s 5A of the Act is not valid in law.

17. The provisions regarding hearing of objections u/s 5A of the Act are as follows:

5-A. Hearing of objections.-(1) Any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be

needed for a public purpose or for a company may, [within thirty days from the date of the publication of the notification], object to the acquisition

of the land or of any land in the locality, as the case may be.

(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of

being heard [in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making

such further enquiry, if any, as he thinks necessary, [either make a report in respect of the land which has been notified u/s 4, Sub-section (1), or

make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the

objections, together with the record of the proceedings held by him, for the decision of that Government.] The decision of the [appropriate

Government] on the objections shall be final.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if

the land were acquired under this Act.]

18. A reading of the said section makes it clear that it is the duty of the Collector to give objectors an opportunity of being heard. In cases where

the owners or persons interested have submitted their objections within 30 days from the date of publication of notice u/s 4(1) of the Act, while

considering the scope of the enquiry contemplated under Sections 5A of the Act and also the scope of Rule 4(b) of the Land Acquisition (Tamil

Nadu) Rules, a Full Bench of this Court presided over by P.Sathasivam, J.(as he then was) in *Sharp Tools, Kalapatty Village, Coimbatore rep. By*

Managing Partner K.K. Ramasamy and Ors. v. State of Tamil Nadu 2006 (4) MLJ 1460, laid down the following principles, after elaborately

considering the relevant provisions of the Act and case laws on the subject:

12. As could be seen, we have elaborately considered the relevant provisions and the case laws, and dealt with various aspects very broadly in

view of the complexity involved in the issue. Now, let us sum up the principles standing as answer to the question referred,

(I) Objections to the acquisition are to be submitted by the persons interested in the lands within 30 days from the date of publication of the

notification as provided by Sub-section (1) of Section 5A of the Act.

(II) The 30 days" period is to be reckoned from the last mode of publication as contemplated u/s 4(1) of the Act.

(III) In all cases where objections are filed within 30 days as provided u/s 5A(1); hearing the objectors and Department/Company and further

enquiry are mandatory.

(IV) The Collector shall have to fix the date of hearing the objections. He has to give notice in Form "B" to the objector as well as to the

Department. The Department or company may file a statement by way of answer to the objections before the date fixed by the Collector. The

Department may also depute their representative to attend the enquiry.

(V) If objections are not filed within the time, but the person interested/land owners appears before the Collector pursuant to the notice in Form

"B" and makes any objection orally, it is incumbent on the part of the Collector to hear the objector, however, conducting further enquiry is not

obligatory but it is only a discretion of the Collector. To put it clear, "personal hearing" is mandatory and "further enquiry" is discretionary

depending upon the submission of objections within 30 days of the last mode of publication.

(VI) Rule 4(b) is mandatory and to be followed essentially. In terms of Rule 4(b), Form "B" is only a notice to the objectors and the Department

to appear for the hearing and it is not a notice for filing the objections.

As observed earlier, since the present Form "B" is neither in conformity with Rule 4(b) nor Section 5A(1) of the Act, the State Government is

directed to take immediate steps to amend Form "B" so as to bring it in conformity with Rule 4(b) of the Rules to avoid misunderstanding on the

part of the persons interested in the lands proposed to be acquired.

19. Therefore, it is clear that,

(i) in cases where within 30 days from the date of notification u/s 4(1), objections are made by the landowners, hearing the objectors and

Department and further enquiry are mandatory;

(ii) In such circumstances, the Collector has a duty to give notice in Form "B" to the objectors as well as to the Department, which means, the

requisitioning authority and the Department will have a right to file statement by way of answer before the date fixed by the Collector;

(iii) The term 15 days notice found in Form "B" is a misnomer, since the Rule does not contemplate such time for the objectors/owners to make

further representation;

(iv) Rule 4(b) has to be mandatorily followed.

20. In this regard, it is also relevant to elicit Rule 4(b) of Land Acquisition (Tamil Nadu) Rules, for better appreciation of the entire legal aspects.

Rule 4.- (a) ...

(b) If any objections are received from a person interested in the land and within time prescribed in Sub-section (1) of Section 5A, the Collector

shall fix a date for hearing the objections and give notice thereof in Form "B" to the objector as well as to the department or company requiring the

land. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date

fixed by the Collector, a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

21. As laid down by the Full Bench stated supra, a combined reading of Sections 4(1), 5-A and Rule 4(b) makes it clear that when Form "B"

notice is given, the same has to be given not only to the land owner/objector, but also to the requisitioning authority/Department, by enclosing the

objections by the land owner and the Department is not only having a right to file statement by way of answer to the objections, but can also

depute a representative to attend the enquiry. The said provision makes abundantly clear that the duty of the officer conducting enquiry u/s 5A of

the Act is only to fix a date for enquiry after service of Form "B" notice to the objector and to the Department and after receiving answer from the

Department he may fix a date for enquiry. Therefore, the enquiry contemplated under the provision is not merely for the purpose of obtaining

statement from the objectors, but also to enable the objectors to be equipped with answer given by the requisitioning authority, so as to raise the

points during enquiry apart from their objections. That is the nature of enquiry which is contemplated u/s 5A of the Act.

22. It is no doubt true that as per the judgment of the Full Bench cited supra, in cases of objections given by the landowners within 30 days from

the date of 4(1) notification, the enquiry u/s 5A is mandatory and in other cases, to conduct further enquiry is discretionary. However, whether the

authority conducts an enquiry as mandated under the provisions of the Act or the authority chooses to conduct further enquiry by exercising the

discretion, such enquiry must be proper as contemplated u/s 5A of the Act read with Rule 4(b) of the Land Acquisition (Tamil Nadu) Rules. In

fact, Rule 4(c) also enables the District Collector to adjourn the enquiry to subsequent dates to enable the parties, including the Department to be

represented either themselves or through their counsel.

23. However, on the facts of the case which I have enumerated above, the second respondent has chosen to conduct enquiry on 12.09.1994 by

simply recording the statements of the petitioners and thereafter, has chosen to send copy of objection to the third respondent/requisitioning

authority in October, 1994 and after receiving the objections from the requisitioning authority on 13.12.1994, without any enquiry, prepared his

proceedings on 20.01.1995 and forwarded the same to the Collector to enable him to proceed further to refer it to the Government for issuance of

6 declaration. On the date of the so called enquiry conducted by the second respondent, viz., on 12.09.1994, the petitioners had no opportunity of

having the copy of answers given by the third respondent to the objections raised by the landowners. The second respondent appears to have

presumed that the enquiry contemplated u/s 5A is only to record the statement of the petitioners and he himself can consider the answer given by

the requisitioning authority based on the statement and prepare a report. This procedure is totally against Section 5A read with Rule 4(b) of the

Act and Rules stated above and also against the basic principles of natural justice.

24. The term ""hearing"" means conducting enquiry as enunciated in Rule 4(b) of the Act read with Section 5A of the Act, which means giving

proper opportunity. In the absence of having the answer given by the

requisitioning authority to the objections, certainly the petitioners are deprived of their right of participation in a proper enquiry. In fact, a reading of the answer given by the requisitioning authority as elicited above shows that requisitioning authority were prepared to consider the allotment of sites to the petitioners even though an opportunity to the petitioners to explain about such suggestion has not been given by the second respondent and therefore, it can never be treated as an enquiry conducted in accordance with law.

25. It is true, as stated by the learned Counsel for the third respondent, that the Supreme Court has held that the sort of enquiry contemplated under the Land Acquisition Act by the authority concerned is not to enable the authority to make a roving enquiry about various aspects [vide:

W.B. Housing Board and Others Vs. Brijendra Prasad Gupta and Others,]. It does not mean that the authority contemplated to

TN080711.bgm.htmconduct enquiry u/s 5A should arbitrarily decide without following the basic principles of natural justice.

26. In fact, while dealing with the same Kalapatti Neighbourhood Scheme, a Division Bench presided over by P.Sathasivam, J.(as he then was)

and N.Paul Vasanthakumar, J. in M. Duraisamy v. State of Tamil Nadu 2007 (3) MLJ 288] has observed that it is not in dispute that the entire

Kalapatti Neighbourhood Scheme has been dropped in view of several orders passed by the High Court in setting aside the acquisition

proceedings. The relevant portion is as follows:

6. Apart from the above information, it is not in dispute that the entire Scheme, viz., "Kalapatty Neighbourhood Scheme" has been dropped in view

of several orders passed by this Court.

27. Even though the learned Counsel appearing for the third respondent would insist that the Scheme is still in operation, considering the above

said legal infirmity in conducting enquiry, the necessary consequence is to set aside the acquisition proceedings which are impugned in the present

writ petitions. Though it is stated that the award was passed on 17.07.1997, it is seen that while admitting these writ petitions, this Court by order

dated 26.06.1997 has passed an order of interim stay of dispossession. However, the argument on the side of the respondents that the interim stay

is in respect of dispossession only and the award need not be set aside cannot be

countenanced, because while admitting the writ petitions this

Court has granted stay of the entire proceedings by order dated 27.06.1997 and by subsequent order dated 25.08.2003, the said interim order of

stay was restricted in respect of dispossession alone stating that other proceedings shall go on.

28. It is also relevant to point out that during the pendency of stay which was granted on 27.06.1996, and modified by this Court on 25.08.2003,

the respondents have stated to have passed the award on 17.07.1997, which cannot be treated as a valid award in the eye of law, especially in the

circumstances that it is stated that the respondents have received notice of stay on 17.07.1997 itself. In such circumstances, even after the specific

direction given by this Court on 25.08.2003, permitting the respondents to proceed with the enquiry stating that other proceedings shall go on, in

the absence of any award passed within two years thereafter, the same is hit by Section 11A of the Act, which contemplates that no award shall be

passed beyond the period of two years from the date of publication of Section 6 declaration. In the present cases, the locality publication of 6

declaration was made on 16.08.1995 and in the absence of any award passed immediately after 25.08.2003, within the period of two years as

stipulated u/s 11A of the Act, it is not possible to permit the respondents to proceed with enquiry u/s 5A of the Act afresh by retaining 4(1)

notification.

In view of the same, 4(1) notification, 6 declaration and all other subsequent proceedings are set aside and the writ petitions stand allowed. No

costs. Connected miscellaneous petitions are closed.