

**(2008) 11 MAD CK 0168**

**In the Madras High Court**

**Case No : W.A. No's. 1241 and 1242 of 2005**

Executive Engineer and Administrative Officer, Coimbatore  
Housing Unit, Tamil Nadu Housing Board

**APPELLANT**

**Vs**

Girija Janarthanan and Others

**RESPONDENT**

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**Date of Decision : 25-11-2008**

**Acts Referred:**

Constitution of India, 1950 — Article 19, 226, 300A  
Land Acquisition Act, 1894 — Section 11, 16, 18, 26, 3  
Tamil Nadu Land Acquisition (Amendment) Act, 1996 — Section 23(1A), 23(2), 48B

**Citation : (2009) 2 MLJ 918 : (2009) WritLR 477**

**Hon'ble Judges : V. Periya Karupiah, J;D. Murugesan, J**

**Bench : Division Bench**

**Advocate : P.S. Raman, A.A.G-I for K. Chelladurai, for the Appellant; R. Thirugnanam, Spl. Government Pleader and K. Doraisami for Muthumani Doraisami, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

D. Murugesan, J.—The core question to be decided in this matter is as to whether in exercise of the power under Article 226 of the Constitution of India, this Court is empowered to entertain a writ petition questioning the land acquisition proceedings after the award is passed and possession is taken. For deciding the said question, the scheme of the Land Acquisition Act, 1894 requires a mention.

2. The Government, entrusted with the solemn duty to provide facilities for the public, is empowered to acquire the land in order to promote the public welfare and the economic development, normally known as public purpose. The power to acquire the land owned by individuals hails from the right of eminent domain vesting in the State which is essentially an attribute of sovereign power of the State. Such exercise of power is for public purpose, the individual rights of an owner must yield place to the larger public interest. On the other hand, while the acquisition of land belonging to individuals is inevitable, it has to be balanced with the rights of the individual whose land is acquired and such individual

should be properly compensated. As the right to property initially declared to be a fundamental right under Article 19 of the Constitution of India, later on, it was made only a constitutional right under Article 300-A of the Constitution of India. Keeping the above right in mind, the right to acquire the land should be considered.

3. A strict procedure for the acquisition of land is contemplated under the Land Acquisition Act, 1894 ("the Act", for short). Therefore, the expression "land", as defined u/s 3(a) of the Act, includes the benefits that arise out of the land and things attached to the earth or permanently fastened to anything attached to the earth. Though the land is sought to be acquired from the owner, taking into note of the entitlement of compensation by the owner or the person interested in the land, Section 3(b) defines the expression "person interested" to include all persons claiming an interest for payment of compensation to be made on account of the acquisition of land and a person shall be deemed to be interested in land if he is interested in an easement affecting the land as well.

4. The expression "appropriate government" is defined u/s 3(ee) meaning to include the acquisition of land for the purpose of the Union, the Central Government and the acquisition of land for any other purpose, the State Government. The public purpose is also defined u/s 3(f) of the Act. Sub-section (1) of Section 4 of the Act reads thus:

4. Publication of preliminary notification and powers of officers thereupon.- (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

5. After the notification under Sub-section (1) of Section 4 is published, enquiry as to the objections received, if any, is conducted u/s 5-A of the Act and thereafter a power is vested in the Government for making declaration as to the requirement of the land for public purpose. Once the declaration is made, the Collector is empowered to take order for acquisition in terms of Section 7. In terms of Section 9, the Collector is empowered to issue notice to the person interested in the land to appear for an enquiry before an award is passed as to the quantum of compensation and ultimately the award is passed u/s 11. Once the award is passed, the land shall vest in the Government. In terms of Section 16 of the Act, when the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. Once the land vests in the Government, it is for the Government to utilise the land for the same purpose for which it was acquired and in case the land is not utilised for the said purpose, the Government may

utilise the land for any other public purpose. Such power of the Government is recognised by the Supreme Court in the judgment in Govt. of A.P. and Another Vs. Syed Akbar, . The meaning of the word "vest" came up for consideration before a Division Bench of this Court in the judgment in R. Shanmugam and Ors. v. State of Tamil Nadu represented by its Secretary, Housing and Urban Development Department, Chennai and Ors. 2006 (4) CTC 290, wherein it has been held that the words "vesting in Government" must mean that it is not in regard to title only, but also the possession free from all encumbrances. Once the land vests in the Government and the amount of compensation is determined subject to reconsideration as to the quantum of compensation by the competent civil Court u/s 18 of the Act, there is no other provision under the Act empowering the Government to divest the title which was validly vested in the State. The only exception carved out from the above provision is Section 48 of the Act empowering the Government to withdraw from the acquisition of any land only in cases where the possession has not been taken.

6. By virtue of the Land Acquisition (Tamil Nadu Amendment) Act, 1996, Section 48-B of the Act was inserted and the land can be reconveyed to the original owner who is willing to repay the amount paid to him under the Act. The said Section reads as under:

48-B. Transfer of land to original owner in certain cases.- Where the Government are satisfied that the land vest in the Government under this Act is not required for the purpose for which it was acquired, or for any other public, the Government may transfer such land to the original owner who is willing to repay the amount paid to him under this Act for the acquisition of such land inclusive of the amount referred to in Sub-section (1-A) and (2) of Section 23, if any, paid under this Act.

This Section also applies only in case the Government, in exercise of the power u/s 48, withdraws from the acquisition of land, of course, before possession is taken. In view of the above scheme of the Act, the passing of the award u/s 11 and the possession taken u/s 16 assume importance in deciding the power of this Court to entertain a writ petition questioning the acquisition proceedings after the award is passed and the possession is taken.

7. In Satendra Prasad Jain and Others Vs. State of U.P. and Others, , the Supreme Court considered the question as to whether the notification u/s 4(1) and the declaration u/s 6 get lapsed if the award is not made within two years. While answering the said question, the Supreme Court held that once the possession was taken and the land vested in the Government, title to the land so vested is subject only to determination of compensation and to pay the same to the owner, and divesting the title to the land statutorily vested in the Government and reverting the same to the owner is not contemplated under the Act, except the power u/s 48.

8. In the judgments in C. Padma and Others Vs. Dy. Secretary to the Govt. of

T.N. and Others, and in Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd., and others, , the Supreme Court has reiterated the same law and declared that after the award is passed and possession is taken, the challenge to the acquisition proceedings should not be entertained by the Court. In The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , the Supreme Court has observed as follows:

In any event, after the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder.

In Mohan Singh and Others Vs. International Airport Authority of India and Others, , the Supreme Court has held that once possession is taken, the land stands free from all encumbrances. The same view has been reiterated in the subsequent judgment in State of Punjab and Others Vs. Sadhu Ram, . Subsequently, in Tej Kaur and Others, etc. Vs. State of Punjab and Others, , the Supreme Court once again reiterated the same law by declaring that the challenge to the land acquisition proceedings should not be entertained after the award was passed and possession was taken.

9. Even if such a petition is entertained, the Courts have to weigh the public interest vis-a-vis the private interest, as the power under Article 226 being discretionary. Even in case the Court is of the view that the acquisition proceeding is unsustainable, it need not set aside, as the persons interested shall be entitled to a particular amount of damages to be awarded as lumpsum. In Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, , while considering such a situation, the Supreme Court has held in paragraph-10 as follows:

10. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to 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 person interested shall also be entitled to a particular amount of damages to be awarded as a 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. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts

while dealing with challenges to acquisition proceedings.

10. A survey of the above judgments of the Supreme Court would show that after the award is passed and the possession of the land is taken in terms of Sections 11 and 16, such land shall vest in the Government absolutely free from all encumbrances and there is no provision for divesting such land, except a power conferred on the State Government in terms of Section 48-B of the State amendment to reconvey the land, which also is not as a matter of right for the original owner to seek.

11. It is argued by Mr. K. Doraisami, learned senior Counsel that inasmuch as the 4(1) notification did not contain the name of the original owners from whom the land was purchased by the respondents, the very initiation of the acquisition proceedings is vitiated and therefore, merely because the award was passed and the possession having been taken, the statutory right conferred on the land owner to have a notice in the form of 4(1) notification in his name cannot be defeated. When the mandatory provisions of Section 4(1) are not complied with, the acquisition proceedings are illegal per se and such defect cannot be cured only on the ground that an award was passed and on the basis of such award, the possession was taken. The answer to the above submission is the judgment of the Supreme Court in *State of Rajasthan v. D.R. Laxmi and Ors.* 1997 MLJ 116 . In paragraph-7 of the judgment, the Supreme Court by placing reliance on the judgment in *Senjeevanagar Medical and Health Employees Co-operative Housing Society Vs. Mohd. Abdul Wahab and Others*, and in *Satendra Prasad Jain and Others Vs. State of U.P. and Others*, , has observed as follows:

10. The order or action, if ultra vires the power, becomes void and it does not confer any right. But the action need not necessarily be set at naught in all events. Though the order may be void, if the party does not approach the Court within reasonable time, which is always a question of fact and have the order invalidated or acquiesced or waived, the discretion of the Court has to be exercised in a reasonable manner. When the discretion has been conferred on the Court, the Court may in appropriate case decline to grant the relief, even if it holds that the order was void. The net result is that extraordinary jurisdiction of the Court may not be exercised in such circumstances. It is seen that the acquisition has become final and not only possession had already been taken but reference was also sought for, the award of the Court u/s 26 enhancing the compensation was also accepted. The order of the appellate court had also become final. Under those circumstances, the acquisition proceedings having become final and the compensation determined also having become final, the High Court was highly unjustified in interfering with and in quashing the notification u/s 4(1) and declaration u/s 6.

12. Recently in *Swaika Properties Pvt. Ltd. and Another Vs. State of Rajasthan and Others*, , while considering the very same question, the Supreme Court has held that "a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable." Therefore,

even if a defect had crept in the issuance of 4(1) notification, this Court shall not entertain the challenge to the land acquisition proceedings after the award is passed and possession is taken.

13. That apart, the contention of the learned Counsel for the respondents is that though they have purchased the land from one Gopal Naidu, the name of the said Gopal Naidu, who is the owner, is not mentioned in the 4(1) notification. In this context, it must be borne in mind that though the respondents had purchased the land from Gopal Naidu, the mutation has not been effected and their names do not find a place in the register maintained by the revenue officials evidencing the title and the ownership. While a notification is issued, of course, the authorities are duty bound to verify the records to find out the owner and to mention the name of the owner in the notification. Even if a mistake had crept in the 4(1) notification, in our opinion, the respondents being subsequent purchasers and their names had not been entered in the revenue records, cannot question the 4(1) notification on the ground that the name of their vendor has not been mentioned.

14. It was also argued that in respect of survey No. 411/1 of vilankurichi village, Coimbatore Taluk, 4(1) notification was published in the newspapers "Theekadhir" and "Pirpagal" and in respect of survey No. 405/1, 4(1) notification was published in the newspapers "Namadhu MGR" and "Pirpagal". Section 4(1) of the Act contemplates, among other things, a notification to be published in the Official Gazette and in two daily newspapers circulated in that locality of which at least one shall be in the regional language. The said Section contemplates only a publication of the gazette in the newspapers circulated in that locality. Even though Section 4(1) of the Act refers to the publication of the notification in two daily newspapers circulated in that locality, while interpreting the said section, the Courts have taken the view that circulation in that locality must also mean wider circulation. The object behind the said provision is to enable the owners of the land to know the acquisition proceedings. As to whether a newspaper has got wider circulation in the locality or not is a question of fact, the test that should be applied is as to whether the newspapers in question are approved by the Government. The Government in G.O.Ms. No. 288 Information and Tourism (Public-I) Department dated 1.8.85 on recognition of the newspapers namely, "Theekadhir" and "Pirpagal" had approved the revised rates for advertisements and it is also stated that these newspapers were approved by the Press Council. On the contrary, it is the contention of the respondents that the papers have no wider circulation. When such rival contentions are made, the stand taken by the State Government must be accepted vis-a-vis the stand taken by the land owners. This question came up for consideration before the Supreme Court in *Talson Real Estate (P) Ltd. v. State of Maharashtra and Ors.* (2007) 13 SCC 186 and the Supreme Court negatived such a plea raised by the land owners by holding that "the appellant-company has not brought on record any iota of evidence to show that the above named newspapers are not widely circulated in the locality where the land in question was situated."

15. A Division Bench of this Court in the judgment in W.A. Nos. 261, 262 319 and 320 of 2006 dated 24.3.2006 has also accepted the stand of the Government as to the fact that the newspaper, namely, "Kumari Murasu", "Makkal Kural" were approved newspapers and all the legal advertisements of the Government, Local Bodies and Cooperatives are published in the newspapers. In the wake of the specific stand taken by the Government that "Theekadhir", "Pirpagal" and "Namadhu MGR" are approved by the Government and all the legal advertisements of the Government, Local Bodies and Cooperatives are published in these newspapers, the above judgment of the Division Bench is alone applicable to the facts of this case. That apart, as we have held that once an award is passed and possession is taken, the acquisition proceedings cannot be put in issue and challenged even in case of violation of the mandatory provisions of Section 4(1) in regard to the mentioning of the name of the owners and publication of the notification in the two dailies having circulation in the locality being procedural and as to whether these newspapers have wider circulation is a question of fact, in our opinion, the acquisition proceedings which were completed as early as on 23.4.94 and 18.4.95 when the awards were passed cannot be interfered with.

16. There is one more aspect as to the power of judicial review of this Court under Article 226 of the Constitution of India to probe into the matter as to whether the newspapers are being circulated in the locality, a reference can be made to a judgment of the Division Bench in State of Tamil Nadu through its Secretary, Adi Dravidar and Tribal Welfare v. Kailasa Nambiar W.A. Nos. 1536 and 1554 of 2001, wherein the Division Bench had taken the view that "unless and otherwise the facts are undisputed, nor it is permissible for this Court to jump into the conclusion that the publication of the notification was not made in the newspaper having circulation in the locality, more so when the records produced disclose that it is otherwise and the public notice was also made by beat of tom-tom." The said judgment was quoted with approval by a subsequent Division Bench in the judgment in Ramgopal Estates Pvt. Ltd. Vs. The State of Tamil Nadu and The Managing Director, Tamil Nadu Industrial Development Corporation Ltd., , wherein it has been held that "when the State strongly contends that these newspapers are being circulated in the locality, it may not be proper for this Court to interfere, while exercising the power of judicial review under Article 226 of the Constitution of India, as the power under Article does not permit this Court to go into the factual disputes of the case."

17. Coming to the facts, W.A. No. 1241 of 2005 is concerned with the Survey No. 411/1 and the notification u/s 4(1) is dated 5.3.91. Award No. 2/94 was passed on 23.4.94 and the writ petition admittedly came to be filed only on 30.11.94. Hence the writ petition is liable to be dismissed on both the grounds that it was filed after the award was passed and the possession was taken as well as the challenge to the 4(1) notification published in "Theekadhir" and "Pirpagal" newspapers. W.A. No. 1242 of 2005 relates to the Survey No. 405/1 and the 4(1) notification is dated 5.2.92. Award No. 1/95 was passed on 18.4.95 and even

before the award was passed, the writ petition came to be filed on 30.11.94. Hence the first ground of attack as to the passing of award and taking of possession cannot be applied to the said challenge. Nevertheless, in view of our finding as to the publication of the notification in the newspapers, namely, "Namadhu MGR" and "Pirpagal", the said writ petition is also liable to be dismissed.

18. For the foregoing reasons, the writ appeals are allowed, the common order passed in W.P. Nos. 19925 and 19927 of 1994 is set aside and the writ petitions shall stand dismissed. Consequently, W.A.M.P. Nos. 2254 to 2256 of 2006, 299, 300, 860 & 861 of 2006 are closed. No costs.