

(1985) 03 MAD CK 0058

In the Madras High Court

Case No : Writ App. No's. 214 to 225 and 435 of 1984

G. Nandakumar and others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 20-03-1985

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 4(1), 4(2), 4(b)

Citation : (1985) 03 MAD CK 0058

Hon'ble Judges : V. Ramaswami, J; David Annoussamy, J

Bench : Division Bench

Advocate : M.S. Subramaniam, for the Appellant; N.R. Chandran, for the Respondent

Final Decision : Allowed

Judgement

V. Ramaswami, J.—These are batch of writ appeals filed against the common order of a learned single Judge of this Court. The facts relating to the point in dispute may be stated as follows-- The Government of Tamil Nadu issued a notification dated 12th May, 1978 under S.4(1) of the Land Acquisition Act, stating that the lands specified therein and situated in Tambaram village, Saidapet taluk, Chingleput Dt., are needed for a public purpose, to wit, for the Tambaram Housing Scheme and published the said notification in the Gazette on 7th June, 1978. The substance of the notification was published at the convenient places of the locality as required under S.4 (1) of the Act only on 19th December, 1978, i.e., to say more than six months later. It appears that in the meanwhile notices were sent to the landowners under S.5-A of the Act, calling upon them to state their objections. The objections received from the Land owners were forwarded to the Tamil Nadu Housing Board which is the acquiring body and the Board gave its opinion on 12th December, 1978 and 10th March, 1980 An enquiry under S.5-A of the Act on the objections filed by the land owners was held on 10th January, 1979, and 20th January, 1979. The objections were overruled and the Government published the declaration under

S.6 of the Act on 6th June, 1981. The appellants filed writ petitions under Art.226 of the Constitution praying for issue of a writ of certiorari calling for the records relating to the issue of notification under S.4 (1) of the Act and the declaration made under S.6 in respect of the writ petitioners' lands and to quash the same.

Before the learned Judge, the petitioners urged two main contentions. The first was that the notice under S 4(1) was published on 19th December, 1978 while the Gazette publication of the notification under S.4 (i) was made as early as on 7th June, 1978 and that the long delay in the publication of the substance of the notification in the locality vitiated the entire proceedings. The second ground was that there was no valid enquiry under S 5-A of the Act and that the procedure under Rule 3 was not properly followed in that the remarks of the Housing Board were not made known to the respective petitioners prior to the enquiry under S.5-A and that vitiated the entire proceedings. The learned single Judge did not accept the first contention. However, on the second ground the learned Judge found that the remarks of the Housing Board were made available only after the enquiry under S.5A of the Act, that the petitioners were not provided with the proceedings of the acquiring body at the time of enquiry; that the petitioners have been deprived of their valuable right to put forth an effective representation and their objection to the remarks and considering this as a serious flaw, the learned Judge allowed the writ petitions and quashed the declaration under S.6 of the Act. However, he left the notification under S.4 (1) of the Act in act with an observation that the Government, if so advised, can take fresh acquisition proceedings from the stage of S.4 (1) of the Act. Aggrieved by this order, the appellants have filed these writ appeals praying to quash the notification under S.4(1) of the Act as well. In these appeals, the learned counsel for the appellants raised two main contentions. The first contention was that the notification in the Gazette as well as the substance of the notification in the locality should have been published simultaneously and that the delay to do so would render the notification invalid and vitiates the entire proceedings. The second contention was that under the Act, the compensation is payable as per the value of the property on the date of the publication of the notification under S.4(1) of the Act; that in the present proceedings, there was not only delay in the issue of public notice in the locality but also in subsequent proceedings, the declaration under S.4 of the Act having been made only on 6th June, 1981, in respect of the matter in which the notification under S.4 (1) of the Act, was published on 7th June, 1978. They contended that on account of the sharp rise in the value of the property especially in the area concerned, they are made to suffer substantial loss since with the amount paid by the Government they could not purchase a property of equivalent value. Therefore viewed on this angle also, the proceedings should be quashed, they argued.

2. The respondents had not filed any counter affidavit in the writ petitions. However, on the legal contentions raised, the learned Additional Government Pleader contended simultaneity of the notification and the notice in the locality is

not contemplated in the Act and that the appellants were fully aware of the proposal of the Government through the individual notice served upon them for an enquiry under S.5A of the Act. In dealing with the first contention of the appellants, it is necessary to set out first S 4 (1) of the Act which reads as follows

Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Any act of the Government, if it is to be given effect to by the public has to be brought to their knowledge. The usual mode of effecting publication is to issue a notification in the Gazette. But in the land acquisition matters in addition to such notification, the law contemplates a public notice of the substance of the notification in the locality. The reasons are twofold. Firstly, the people concerned residing mostly in villages would not become aware of the notification published in English in the Gazette. Secondly, the notification having the important effect of announcement to the concerned persons that his or their properties are proposed to be acquired compulsorily should reach that person or persons. The object of the scheme is therefore that the publicity is to be made through the various modes mentioned therein and the decision of the Government becomes fully published only when such publication has been made; otherwise, the publication remains incomplete and without any effect. The fact that the public notice is mandatory and its noncompliance is fatal to the entire acquisition proceedings is now well settled by the decision of the Supreme Court in *Khub Chand and Others Vs. State of Rajasthan and Others*, The real dispute between the parties in these appeals is only regarding the interval between the date of publication of the S.4(1) of the Act in the Gazette and the publication of the notice under S.4(1) of the Act in the locality. The appellants contended that the notification and the public notice should be coeval or simultaneous, as they are two operations forming the same act. The Additional Government Pleader, on the other hand, contended that the simultaneity was impossible to achieve and there will be necessarily time gap between the notification and the publication of the notice in the locality. The second point in dispute is even if there is any interval what shall be considered is the reasonable time and as to what would be the effect of the interval, if any, between the notification and the public notice. While the learned counsel for the appellants contended that even If we are of the view that simultaneous publication is not necessary, the interval should not be long or unreasonable and that an unreasonable interval would vitiate the notification and the whole proceedings, the Additional Government Pleader would contend that it would not have such effect.

3. The publicity contemplated under S.4 (1) of the Act--is aimed to serve several purposes. The first is to make known to the general public the proposal of the Government in respect of the scheme and the desire of the Government and the

location of the scheme in a particular locality. Those who are interested in challenging the scheme itself or its location for independent reasons are entitled to do so even if they are not the owners of the lands proposed to be acquired. The second purpose is to make known to the persons whose properties are likely to be acquired eventually so that they could put forth their specific reasons for objecting to the acquisition of their lands or take steps for finding alternative lands. The third purpose is to enable the Government to enter upon the properties notified in order to take all steps, ascertain the (sic) suitability of the land for the purpose for which it was notified and to take necessary measures for delineating and measuring exactly the properties to be acquired. Through the publicity the owners of the lands would become aware of the above rights of the Government and of the fact that they would have to abstain from obstructing the officers in performing their duties in accordance with S. 4 of the Act, failing which they would be liable for prosecution.

4. S 5-A of the Land Acquisition Act reads as follows-

(1) Any person interested in any land which has been notified under S.4, Sub-S (1), as being needed or likely to be needed, for a public purpose or for a company, may, within thirty days after the issue 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-S.(1) shall be made to the Collector in writing, and the Collector, shall give the objectors an opportunity of being heard either in person 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 under S.4, Sub-S(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.

It may be seen from this provision that a period of 30 days is prescribed from the date of publication of the notification under S.4 of the Act, for the purpose of filing an objection to the acquisition of the land.

5. We shall now turn to the decided cases regarding the effect of the delay in the publication of the notice in the locality. In a case decided by the High Court of Mysore in *Gangadhariaha v. State*, ILR 1960 Mys. 636 the Gazette notification was published on 9th January, 1958 and the public notice in the locality was made on 28th January 1958. The Court held that the owners did not have the opportunity to file their objections within 30 days provided under S.5A of the Act, and accordingly quashed the entire proceedings.

6. In a case decided by the Supreme Court in *State of Mysore Vs. Abdul Razak Sahib*, the Gazette notification was issued on 17th August, 1961, and the public notice was issued on 1st and 9th November, 1961, whereupon objection was filed on 4th December, 1961. The Supreme Court held that on account of the delay, the land owners had no opportunity to file their objections, and as such, the prevention of the right of revision, which was a very valuable right, rendered invalid, the whole proceedings were accordingly quashed. The Supreme Court also observed that the objections filed after 30 days from the date of notification need not be considered as they are not filed in accordance with the provisions of S. 5A of the Act.

7. In a case decided by a single Judge of the High Court of Allahabad in *Shrimati Daya Wati and Another Vs. Collector, Saharanpur and Another*, the public notice was effected after the expiry of 30 days from the date of notification and thereafter objections were filed and considered. After referring to *Abdul Kazakhs* case referred to supra, it was held that the objections filed were not in accordance with law and the same need not be considered and further held that since the land owners did not have the opportunity to file their objections under S.5A of the Act in time the proceedings should be quashed.

8. In another decision of the Full Bench of Punjab and Haryana High Court in *Rattan Singh and Another Vs. The State of Punjab and Others*, public notice was issued 29 days after the Gazette notification. The Court held that opportunity of filing objections under S.5A of the Act was lost and accordingly quashed the acquisition proceedings. However, in some of the decided cases, it was held that even if the landowners filed their objections beyond 30 days but before an enquiry was held and the report of the enquiry officer had not been sent to the concerned authority who considered the objections on merits any consideration by the concerned authority would not be in violation of law. On that ground in some cases where it was considered that no prejudice was caused by the delay in the publication in the locality the Courts have refused to interfere in the acquisition proceedings, In W.P.974 of 1978, dated 20th April, 1978, a learned single Judge of this Court held that since no publication was caused in the locality and since objections filed by the landowners after the expiry of the 30 days contemplated under S.5A of the Act were considered, the delay in the publication of the notification in the locality is of no consequence. In another decision in W.P.1334 of 1978 dated 19th June, 1978, the same principle was followed. However, an objection that may be filed under S 4(1) of the Act is not merely an objection by the owner of the land but also would include an objection by any member of the public or objection to the scheme or its location and therefore the relevancy of publishing the notification in the locality could not be oversimplified. In this connection, we may point out an important judgment of the Supreme Court in *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, where the Supreme Court, held as follows:--

The law as settled by this Court is that such a notice under the second part of

S.4 (1) is mandatory and unless that notice is given in accordance with the provisions contained therein the entire acquisition proceedings are vitiated...

It also lays down in unequivocal and clear terms that both things have to be simultaneously done under S.4(1) of the Act, that is, a notification has to be published in the official Gazette that the land is likely to be needed for any public purpose and the Collector has to come a notice to be given of the substance of such notification at convenient places in the locality in which the land is situated.

9. The above Supreme Court decision was followed by a single Judge of this Court in *Sri Tirumeni Alagar Devasthanam Vs. The State of Tamil Nadu and Another*, and the notification under S.4 (1) of the Act was quashed for the reason that the local notice was issued belatedly. The same view was taken by a Division Bench of this Court to which one of us was a party in *W.A.97 of 1979* dated 11th June, 1984. In a majority decision of the Full Bench of Andhra Pradesh High Court reported in *K. Gangaram v. Tahsildar Metapally 1983 An.W.R. 354* it was held that the local publication being an essential and integral part of the publicity under S.4(1) of the Act, simultaneous local publication was mandatory and it was immaterial whether other purposes of the Act were defeated or not. The only decision in which simultaneous or local notice was held to be not necessary was rendered by one of us on 29th June, 1978 while disposing of a batch of writ petitions in "*W.S.Nos. 2234, 2233, 2270 and 2272 of 1978*". But in that case the question of delay in the issue of public notice was not raised in the affidavit. So the point was not dealt with in detail. It may also be mentioned that the petition was dismissed for other reasons as well.

10. Even in the rule framed under S. 55(1) of the Land Acquisition Act, (Vide Standing Principles in Appendix I. Chapter VII, Board's Standing Orders, 1976 Edn, volume II page 28) stipulates as follows--"Immediately after the publication of the notification under S.4 (1) of the Act, the Collector shall issue a notice stating that the land is needed or likely to be needed as the case may be, for a public purpose." It is seen from the observations of the Supreme Court in *Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others*, above referred to, that the publication of the notice under S.4(b) of the Act in the Gazette and the causing of the substance of the notification should be put on convenient places in the locality in which the land is situated, are mandatory. The nature of the operation also requires that there should not be much interval between the two publications since as pointed out earlier the Gazette notification and the local notice are two modes of acts of publicity. In fact the parties cannot be left in a state of uncertainty for a long time after the issue of the notification and without making local publicity. The provisions being mandatory and the law of acquisition being one of depriving the citizens of their right to property to which some of them are sentimentally attached, strict compliance of the provisions of law is required. It is thus clear that local notice should be made if not simultaneously at the announced time in the Gazette and in the locality, but at least within a minimum possible time after the notification. The officials

concerned have to act with sincerity and in a most diligent manner because any avoidable delay would render the publicity contemplated under Sec.4(1) of the Act effectual

11. In this connection we may also notice a decision of the Supreme Court on the subject reported in *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, . In that case, the Supreme Court held as follows:

It may be noticed at once that S.4(1) does not prescribe that public notice of the substance of the notification should be given in the locality simultaneously with the publication of the notification in the Official Gazette or immediately thereafter. Publication in the Official Gazette and public notice in the locality are two vital steps required to be taken under S.4(1) before proceeding to take the next step of entering upon the land under S.4(2). The time factor is not a vital element of S.4 (1) and there is no warrant for reading the words "simultaneously" or "immediately thereafter" into S.4 (1). Publication in the Official Gazette and public notice in the locality are the essential elements of S 4 (1) and not the simultaneity or immediacy of the publication and the public notice. But since the steps contemplated by S.4(1) cannot be undertaken unless publication is made and public notice given as contemplated by S. 4(1), it is implicit that the publication and the public notice must be contemporaneous though not simultaneous or immediately after one another. Naturally contemporaneity may involve a gap of time and by the very nature of the things, the publication in the Official Gazette and the public notice in the locality must necessarily be separated by a gap of time. This does not mean that the publication of the public notice may be separated by a long interval of time. What is necessary is that the continuity of action should not appear to be broken by a deep gap. If there is publication in the Gazette and if there is public notice in the locality, the requirements of S.4 (1) must be held to be satisfied unless the two are unlinked from each other by a gap of time so large as may lead one to the prima facie conclusion of lack of bona fides in the proceedings for acquisition. If the notification and the public notice are separated by such a large gap of time it may become necessary to probe further to discover if there is any cause for the delay and if the delay has caused prejudice to any one.

We may consider here an argument which is usually advanced against any time gap between the publication in the Official Gazette and the public notice in the locality. S.5-A provides that any person interested in any land which has been notified under S. 4(1) may object to the acquisition of the land or of any land in the locality within 30 days after the issue of the notification. It is, therefore, suggested that if the publication of the notification in the gazette is not immediately followed by a public notice in the locality, it may lead to a denial to the person interested of an opportunity to object to the acquisition. We think, that this is too narrow an interpretation of S.5A. Notice to interested persons of a proposed acquisition of land is given by publishing a notification to the effect that land in any locality is needed or is likely to be needed for any public purpose in

two ways--first, by causing publication of the substance of the notification to be given at convenient places in the locality. There is no reason to confine the period of 30 days prescribed by S.5A to one mode. The period of 30 days may be reckoned from either the date of publication in the Gazette or the date of public notice of the substance of the notification in the locality, whichever is later. In our view, that is the only reasonable and practical way of construing S.5A so as to advance the object of the provision, which is to provide a reasonable opportunity to interested persons to oppose the acquisition. We particularly notice that S.5A does not refer either to the date of publication in the Official Gazette or the date of public notice of the substance of the notification in the locality. It speaks of "the issue of the notification". This we consider is significant and, in the context, the words "the issue of the notification" can only signify the completion of the prescribed process--rather, the twin process of notifying the interested public of the proposed acquisition in the manner provided for by S.4(1), that is by publication in the official Gazette and giving public notice in the locality.

It may be seen from this that though the publication need not be simultaneous, the public notice must be contemporaneous. We have already noticed that S-4(1) notification was published in the Gazette on 7th June, 1978 and the publication in the locality was made only on 19th December, 1978 more than six months later. No counter affidavit has been filed to show the continuity of action as required in the judgment of the Supreme Court. The learned Additional Government Pleader vaguely suggested that there was an errata published in respect of the same some time on 1st November, 1978 and that was the reason for the delay. We have perused the land acquisition file produced by the learned Additional Government Pleader. The errata related to one or other of the boundaries of 4 or 5 survey numbers and not any deletion or omission of any property. Nothing prevented the Government from publishing the notification in the locality immediately after publication in the Gazette. Even after the alleged errata published on 1st November, 1978, there was a long gap of more than one month and 19 days in the issue of public notice. We are satisfied that the continuity of action was broken by a deep gap. We are not satisfied that the delay in the publication in the locality was caused by any bona fide reasons.

12. The learned Additional Government Pleader sought to argue that the appellants have come to this Court belatedly, in that they filed writ petitions only in 1983, while the declaration under S. 6 of the Act itself was on 6th June, 1981, and that this Court should not interfere with such belated petitions. But we had not permitted the Additional Government Pleader to raise this averment as they had not filed any counter affidavit in the main writ petition. If they had raised this averment the writ petitioners would have had an opportunity to explain as to why they could not approach this Court earlier. Accordingly we could not permit the learned Additional Government Pleader to raise without proper pleadings. Apart from this, as we have already stated, the Supreme Court has held that both the publication of the notification in the Gazette and the local notice are mandatory and we could not dismiss the petition merely on the ground of laches.

We may also point out that the learned single Judge had quashed the declaration under S. 6 of the Act and the subsequent proceedings and the Government: had not filed any appeal and that had become final. We therefore could not dispose of the writ appeals on the ground of delay in approaching this Court in filing the writ petitions. For the foregoing reasons, we allow the appeals and set aside the notification under S.4(1) of the Act also in so far as the land of the appellants are concerned. How ever, there will be no order as to costs.