
(1994) 02 MAD CK 0006
In the Madras High Court

Harikrishnan and Another

APPELLANT

Vs

The Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 02-02-1994

Acts Referred:

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

Citation : (1994) 2 MLJ 243

Hon'ble Judges : Kanakraj, J

Bench : Single Bench

Judgement

Kanakraj, J.—These two writ petitions relate to the validity of the notification issued u/s 4(1) of the Land Acquisition Act (hereinafter

referred to as "the Act"), issued under G.O.Ms. No. 891, Backward Classes Welfare Nutritious Meal Programme and Social Welfare

Department, dated 18.10.1989 and the subsequent declaration u/s 6, in G.O.Ms. No. 10, Backward Classes and Most Backward classes

Welfare, dated 18.1.1991.

2. The petitioner in W.P. No. 6008 of 1991 owns 54 1/2 cents in R.S. No. 51/3, Keelmalai Village, Gingee Taluk, he having acquired the same in

a partition effected in the year 1993. The other half of the property of the extent of 54 1/2 cents was allotted to his brother, who subsequently sold

that property on 13.10.1978, to one Harikrishnan, who is the petitioner in W.P. No. 6007 of 1991. The acquisition is for the alleged purpose of

providing house sites to certain dhobies and barbers of Keelamali village. The enquiry u/s 5-A of the Act was conducted on 29.5.1990. The

petitioners filed their objections and over-ruling the same, the declaration u/s 6 of the Act was issued on 18.1.1991 The award enquiry was

conducted on 13.3.1991 and the award was passed on 20.3.1991.

3. Learned Counsel for the petitioner argues in the forefront that the notification u/s 4(1) of the Act itself is vitiated and consequently, all the further proceedings are liable to be quashed. The argument is that the purpose of acquisition has not been set out in clear and categorical manner and no reasonable person could ascertain the purpose of acquisition, from the said notification. To be more exact, the Notification published in the Gazette is as follows:

Whereas, it appears to the Government of Tamil Nadu that the lands specified below and situated in Keelmalai Village, Gingee taluk, South Arcot District, are needed for a public purpose, to wit, the provision, of Village 113, notice to that effect is hereby given to all Village 113, notice to that effect is hereby given to all to whom it may concern in accordance with the provisions of Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894).

[Italics mine].

4. Apparently certain words are missing, after the words "to wit, the provision of". Without those words, the notification does not convey any meaning and does not say the purpose of acquisition. From the records produced by the learned Government Pleader. I find that the draft notification sent by the Special Tahsildar on 5.12.1989 has been corrected, deleting the words house sites to the dhobies and barbers of. I do not propose to make an enquiry as to who was responsible for the deletion of such words and it is for the respondents to make an investigation on that aspect. In my opinion, the notification, as published in the gazette, without those words, vitiates the entire proceedings. Unless the notification u/s 4(1) of the Act gives the necessary particulars referred to in the sub-section, interested persons cannot file their objections. Section 4(1) of the Act says that whenever it appears to the Government that any land in any locality is needed or is likely to be needed for any public purpose, then a notification may be made in the Gazette and the other steps can be taken. Unless the public purpose is mentioned in the Notification, it will not be possible, for an owner of the land to file his objections to the acquisition proceedings. For instance, an owner may be interested in saying that the public purpose mentioned, is not really a public purpose or that a particular

public purpose can be achieved in some other manner or that there is no requirement at all to acquire the land for the said public purpose.

5. In fact, on the facts of this case, the failure to mention the public purpose assumes importance, because, the contention of the petitioners, is that

there are no dhobies and barbers in Keelmalai village. The only four barbers and the only one dhobi have been named by the petitioners. It is

further stated that all those five persons have lands of their own and do not require any assistance from the Government by way of assignment of

house sites. It is however admitted by the petitioners, that in the notice in Form 3-A issued u/s 5-A of the Act, the respondents did not mention

correctly the purpose of the acquisition, as, for providing house sites to dhobies and barbers of Keelmalai village. In my opinion this will not cure

the defect in the notification u/s 4(1) of the Act. The Government, which exercises the power of eminent domain in acquiring lands of individuals,

should bestow their best attention before embarking on land acquisition proceedings. The deprivation of the lands of a citizen cannot be undertaken

lightly. It has been well established that any defect at any stage of the land acquisition proceedings, will vitiate the very acquisition. Even though the

notification u/s 4(1) of the Act is only a preliminary notice, it cannot dispense with the basic necessities of mentioning the purpose for which the

land is sought to be acquired.

6. After, the enquiry u/s 5-A of the Act and after rejecting the objections of the petitioners, at least, while issuing the declaration u/s 6 of the Act,

the respondents could have been a little more careful, When we turn to the declaration u/s 6 of the Act, this is what one finds:

Under Section 6 of the Land Acquisition Act, 1894 (Central Act 1 of 1894), the Government of Tamil Nadu hereby declares that the lands

specified in the schedule and below and measuring 0.44.0 hectare, be the same a little more or less, are needed for a public purpose, to wit for the

provision of house sites to dhobies and barbers (Most Backward Class). A plan of the lands is kept in the office of the Special Tahsildar (Adi

Dravidar Welfare) Gingee and may be inspected at any time during office hours.

[Italics mine]

This declaration is worse than the notification u/s 4(1) of the Act, because it says that the land is required for the provision of house-sites to

dhobies and barbers (Most Backward Classes). In the light of the objections raised by the petitioners, one does not know for whose benefit the land was sought to be acquired. Certainly not for dhobies and barbers in the entire State of Tamil Nadu. In this connection, the averments in the counter-affidavit, also becomes relevant. In para. 8 of the counter-affidavit in W.P. No. 6008 of 1991 it is stated that necessary survey was made it was identified that there are about 20 houseless vannars and navithars and accordingly, the 4(1) proposals were initiated. In para. 14 of the same counter-affidavit, it has been stated that the dhobies and barbers belonging to various villages, who have come down to Anandapuram (a part of Keelmalai village) and settled and eking (sic.) their livelihood. The houseless barbers and dhobies permanently settled at Anandapuram (Kilamalai) were identified and enumerated and hence the averments are untenable.

7. Therefore, there is considerable controversy as to the persons, for whose benefit the lands were sought to be acquired. As I have already pointed out, the Government should not embark upon land acquisition proceedings without considering the question whether a particular land is or is not needed for a public purpose. Such a decision cannot be taken lightly without first ascertaining the requirements of a particular community or a particular section of the society, in the matter of the provision of house sites. In this case, prima facie, I am of the opinion that the respondents have not considered the matter properly on the basis of any valid material, to come to the conclusion that the land is needed for particular public purpose. In any event, the notification u/s 4(1) of the Act and the declaration u/s 6 of the Act, are, on the face of it, illegal and vitiated by errors of law apparent on the face of the records. They are liable to be quashed and accordingly, they are quashed. However it is open to the respondents to initiate fresh proceedings from the stage of 4(1) notification, if and only if, there is need for provision of house sites to any particular section of the people. Reserving this liberty to the respondents, the writ petitions are allowed. The respondents are directed to pay the costs of the writ petitions to the petitioners and the same is fixed at Rs. 1,000 (one set).