
(2003) 02 MAD CK 0079

In the Madras High Court

Case No : Writ Petition No. 4555 of 1996 and W.M.P. No. 7321 of 1996

Immaculate Heart of Mary Society

APPELLANT

Vs

The Special Tahsildar, Adi Dravidar Welfare

RESPONDENT

Date of Decision : 04-02-2003

Acts Referred:

Land Acquisition Act, 1894 — Section 4(2)

Tamil Nadu Land Acquisition Act, 1978 — Section 4(2)

Citation : (2003) 1 CTC 449 : (2003) 1 MLJ 579 : (2003) WritLR 362

Hon'ble Judges : A.S. Venkatachalamoorthy, J

Bench : Single Bench

Advocate : S. Natarajan, for the Appellant; S. Gomathinayagam, Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

A.S. Venkatachalamoorthy, J.—The above writ petition has been filed praying this Court to issue a Writ of Certiorari calling for the records

of the respondents relating to the land acquisition notification of the first respondent as published in page 2 of the District Gazette, Pasumpon

Muthuramalinga Thevar District, Special Edition dated 30.1.1996, Sivaganga and quash the same.

2. The petitioner is a Society and has filed the above writ petition with the following averments.

The Petitioner Society was formed with the noble object of looking after the temporal affairs and to promote spiritual, educational and other

interests to do the charitable and benevolent works and that several public oriented institutions like schools and colleges etc. are being run by the

Society. The Society, to improve its activities, purchased lands to an extent of 5.38 acres comprised in Survey Nos. 444/4 and 445/1. Those lands

were purchased by way of two registered sale deeds dated 15.9.1995 on the file of the Sub-Registrar, Madhagupatti, Sivaganga Taluk. Out of

this, one acre in S. No. 444/4 was purchased from one Arockiasamy, son of Anthony Udayar and the remaining 4.38 acres in S. No. 445/1 and

444/4 were purchased from Fr.A.Sebastian, son of Adaikalam. The work for the construction of the building for institutions are already going on in

full swing and the total cost of construction is estimated at Rs. 20 lakhs.

Petitioner came to know that some portion of the lands purchased by it is under acquisition and on enquiry it came to know that the same is being

acquired to provide house sites for Adi Dravidas. Though the extent of 2,30 acres (0.92.0 Hectares) has been shown in the notice issued to the

said Arockiasamy alone, in fact he was owner of only one acre. The owner of the remaining portion of the land of 1.30 acres was not served with

any notice. Coming to know about the acquisition, both Arockiasamy and Fr.Sebastian, filed W.P. 12142 and 12143 of 1995. The said writ

petitions were allowed following the decision of the Supreme Court reported in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, :

and the said order was passed on 7.9.1995. The land that is sought to be acquired viz., 2.30 acres forms part of 5.38 acres, purchased from

Arockiasamy and Fr.Sebastian. It appears only Arockiasamy was served with notice u/s 4(2) of the Tamilnadu Acquisition of Lands for Harijan

Welfare Schemes Act, 1978 and he was informed about the date of enquiry as 19.12.1995. On that day, the said Arockiasamy informed the

authorities that he sold his one acre to the Petitioner. But thereafter the petitioner was not served with any notice. After some time, Arockiasamy

received a notice and that is one in Form III and Rule 5 of the Tamil Nadu Acquisition of lands for Harijan Welfare Schemes Rules, 1978, to fix

the compensation. Even though the said notice mentions the name of the petitioner, the petitioner was not served with any notice. For the above

reasons, the petitioner has sought for quashing of the notification referred above.

3. On behalf of the respondents, a counter affidavit has been filed wherein it is contended that the notice was sent only to Arockiasamy since there

was no village records to prove the title of the land with Fr.Sebastian. The notice contemplated u/s 4(2) of the Act 31/78 was served on

Arockiasamy on 21.8.1995. Or in other words, Arockiasamy sold the property

only after he received notice on 21.8.1995. Petitioner, being subsequent purchaser, cannot question the acquisition and at best it can take part only in the award proceedings. It is also the case of the respondents that since the Supreme Court has ruled that if any award had been passed by 22.11.1994 in respect of acquisitions initiated under the Central Act, the State Government can proceed only under Act 31/78. The fact that W.P.12142 and 12143 of 1995 were pending on the date of serving of notice on Arockiasamy, would not affect the proceedings. The respondents would pray this Court to dismiss the writ petition.

4. Two questions arise for consideration.

(a) Whether invoking the provisions of Act 31/78 without withdrawing the proceedings already initiated under the Central Act 1/84 or before the

Court quashing the proceedings, the Act 1/84 is bad in law ?

(b) Whether the petitioner can come forward with the prayer as found in this writ petition ?

5. The relevant dates in this writ petition are as follows:

On 5.4.1995, notification u/s 4(1) of the Land Acquisition Act 1/84 was published in the gazette proposing to acquire an extent of 0.92.0 H

comprised in S.No. 444/4 (part). On 12.4.1995 Publication carried only in the name of Arockiasamy. The said Arockiasamy was served with

notice on 12.4.1995, who also filed objections. W.P. 12142 and 12143 of 1995 were filed by Fr.Sebastian and Arockiasamy questioning the

acquisition. On 22.11.1994, the Supreme Court of India in State of Tamil Nadu v. Anandhi Ammal and Ors., 1995 WLR 781, held that the Act

31/78 is valid and further ruled that if acquisition proceedings were already started under Act 1/84, but if no award had been passed by

22.11.1994, those proceedings should lapse and the State Government can proceed only under Act 31/78. On 21.8.1995, Arockiasamy was

served with notice u/s 4(2) of Act 31/78. As no award proceeding was completed by that time in the above two writ petitions referred supra, a

learned single Judge of this Court on 7.9.1995, allowed both the writ petitions. On 15.9.1995 petitioner purchased one acre comprised in S.No.

444/4 from Arockiasamy and an extent of 4.38 acres comprised in S.No. 444/4 and 445/1 from Fr.Sebastian. On 21.11.1995, Arockiasamy

received notice, issued u/s 4(2) under Act 31/78, informing the date of enquiry

as 19.12.1995. On the said date, Arockiasamy appeared before the authorities and informed about his sale of one acre on 15.9.1995 to the petitioner herein. On 30.1.1996, Form II (vide Section 4(1) Rule 3(ii)) was issued. On 1.3.1996 Form III (vide Rule 5(1)) was issued and wherein names of Arockiasamy as well as Petitioner have been mentioned.

6. Firstly, let this Court consider whether the authorities issued notice u/s 4(2) to Arockiasamy before withdrawing the acquisition proceedings already instituted under Act 1/84 or before the dismissal of writ petition, is valid. The Supreme Court by its judgment dated 22.11.1994 upheld the validity of the Act 31/78 except for the provision of Section 11(1) of the said- act in so far as they provide- for payment of the compensation amount in instalments, the said Act is intra vires the Constitution. The Court ruled, Section 11(1) is valid only to the extent to provide that after the amount has been determined, the prescribed authority shall tender payment of the amount to the person entitled thereto and shall pay it to them and that it must be in a lump-sum. The rest of Section 11(1) is held ultra vires to the Constitution.

7. True, the general legal position is, when proceedings are initiated under the Central Act, without withdrawing the same, fresh proceedings cannot be initiated under the State Act. But, in this case, the position is different. The Supreme Court has laid down the law of the land and it binds each and everyone, so also all the Courts in this Country. It is rather impossible that a Court of law (i.e.) the High Court can lay down a different law.

That being so, in effect and for all practical purposes, all the pending writ petitions on this issue are disposed of accordingly in terms of the said decision of the Supreme Court. But only thing is, the formal order was passed by the High Court on 7.9.1995. Or in other words, in effect, so far as the two writ petitions viz., W.P. 12142 and 12143 of 1995 are concerned, this Court could not have passed any other order except to allow them and that was done on 7.9.1995. That being so, there is nothing wrong in authorities proceeding under Act 31/78 and issuing notice to Arockiasamy on 21.8.1995.

8. The next question is whether there is any flaw in the acquisition proceedings initiated by the authorities. The acquired extent is 2.60 acres. While it is the case of the petitioner that the same is comprised in two survey numbers

viz., S. No. 444/4 and 445/1, originally owned by Arockiasamy and Fr. Sebastian, the case of the respondents as reflected from Section 4(1) notification and counter affidavit is that the extent is sold by Arockiasamy, In fact, a specific stand is taken in the Counter affidavit that in the revenue records, nothing is shown as regards the title of Sebastian in respect of the lands to be acquired.

When the State acquires a land belonging to a citizen, it is not that the citizen is giving the land voluntarily. In such an event, it is the bounden duty of the State to see that it acts fairly, prudently and in compliance with the provisions of the Act. As already mentioned, when this land was sought to be acquired under Act 1/84, both Arockiasamy and Sebastian filed two independent writ petitions. The two writ petitions were disposed of by a common order dated 7.8.1995. If really Fr. Sebastian has no title or interest in the property, then certainly the State would have brought it to the notice of the Court. A perusal of the order does not disclose anything to that effect. That apart, admittedly on the appointed day viz., on 19.12.1995, Arockiasamy appeared before the authorities and informed in writing after referring to the notice received by him dated 21.11.1995, that he had already sold an extent of one acre owned by him on 15.9.1995 to the petitioner. That being so, in all fairness, the respondents should have at least on that day woken up and called for details from the petitioner as to from whom he purchased the remaining extent. In the written statement it is stated as under,

... There was no village records to prove the title over the land by Thiru A. Sebastian....

Village records can not prove title to the property, but would only show, as per the revenue records who is the owner. This Court does not know as to what prevented the authorities from calling for the details from the petitioner or further probing into the matter. At the risk of repetition, it has to be pointed out that (a) Fr. Sebastian also filed writ petition earlier, (b) the order in writ petition does not mention as if Sebastian had no interest in the property proposed to be acquired, and (c) at the enquiry, Arockiasamy informed the authorities that he sold only his one acre to the petitioner.

By some more probing into the matter, the authorities could have certainly found out the complete and correct facts. As already mentioned they

have to remember that the property of a citizen is being compulsorily snatched and the citizen is not before them with a begging bowl. The Officer, who conducted the enquiry has failed to discharge his duties in a diligent manner and in the interest of the public at large.

9. In this view of the matter, the writ petition is allowed with costs of Rs. 2,000. The second respondent shall localise the concerned officer, who has failed in his duties and he alone shall be made liable to pay the cost personally to the petitioner. Allowing this writ petition does not mean that the authorities cannot initiate fresh proceedings under Act 31/78. Connected W.MP.7321 of 1996 is closed.