
(2009) 07 MAD CK 0222

In the Madras High Court

Case No : Writ Appeal No. 550 of 2009 and M.P. No. 1 of 2009

Jayalakshmi

APPELLANT

Vs

The District Collector, The Special Tahsildar, Adi Dravidar
Welfare and Government of Tamil Nadu

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

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

Citation : (2009) 07 MAD CK 0222

Hon'ble Judges : S.J. Mukhopadhaya, J;Raja Elango, J

Bench : Division Bench

Advocate : J. Saravana Vel, for the Appellant; D. Srinivasan, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—The appellant-writ petitioner having unsuccessfully challenged the land acquisition proceedings, has preferred this Writ Appeal.

2. It appears that the second respondent-Special Tahsildar, Adi Dravidar Welfare, Sri Ram Colony, Dharmapuri, initiated proposal for acquisition of land(s) for the welfare schemes of backward class and submitted a proposal on 11.9.1995. A Draft Notification u/s 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") was approved on 11.1.1996 and published in the Government Gazette on 28.2.1996. Publication was also made in two leading dailies on 19.8.1996 and also in the locality on 28.8.1996. Notices in Form 3/3-A were also issued to the concerned person(s) including the appellant-writ petitioner. Enquiry u/s 5A of the Act was conducted on 15.10.1996. The appellant-writ petitioner made a grievance that the Notification u/s 4(1) of the Act was issued in the name of her husband, i.e. the Notification was issued against a dead person. Section 4(1) Notification having been issued against a dead person, the same is liable to be set aside.

3. Learned Counsel appearing for the appellant-writ petitioner relied on a decision of a Division Bench of this Court in the case of Savithiriammal Vs. The State of Tamil Nadu, , wherein, it was held that the Land Acquisition Officer should rectify the mistake in all the proceedings including the Notification u/s 4(1) of the Act.

4. On the other hand, according to the learned Counsel appearing on behalf of the respondents-State, the name of the husband of the writ petitioner has been shown as land-holder in the records/files and the Notification u/s 4(1) of the Act was rightly issued in his name. On receipt of the objections, the moment it came to the notice of the authorities that the husband of the writ petitioner is dead and his legal heir is the appellant herein, the Declaration u/s 6 of the Act was issued in her name.

5. We have heard the learned Counsel appearing for the parties and perused the records.

6. It will be evident that the Enquiry u/s 5A of the Act was fixed/conducted on 15.10.1996. On receipt of the notice for Enquiry u/s 5A of the Act, the appellant-writ petitioner submitted her objections. It is for the first time, at this stage, she informed that her husband died. But it was accepted that the land was not transferred in any other person's name and no mutation was made to reflect the name of any other person. Her other objections were considered on merits and after due enquiry, her other objections were rejected. The appellant-writ petitioner is a wealthy person and the other land(s) are available to her in Boodanahalli Village. A Draft Declaration u/s 6 of the Act was issued on 22.8.1996. Though such a Draft Declaration was published on 22.8.1996, followed by an Award, the Writ Petition was filed only in the year 1998, wherein, curiously, the Declaration u/s 6 of the Act has not been originally challenged in the Writ Petition, but subsequently, the prayer in the Writ Petition was amended challenging the Declaration u/s 6 of the Act.

7. In the case of G.S. Gopalakrishnan, Smt. Rajamma and M. Krishnappa Vs. Government of Tamil Nadu and The Tamil Nadu Small Industries Development Corporation Ltd., , similar question was raised before a Division Bench of this Court. In the said case, having noticed the facts, the Court observed that the normal principle that the proceedings against a dead person is a nullity, cannot be imported into the proceedings under the Land Acquisition Act, 1894, unless it is established that the factum of death was not brought to the notice of the acquiring authority at the appropriate stage.

8. In the present case, the proposal for acquisition of land(s) was submitted on 11.9.1995 and it was forwarded by the District Revenue Officer to the State Government on 9.11.1995. The husband of the appellant-writ petitioner being alive by that date, the proposal for acquisition was rightly made in his name. The said proposal was approved on 11.1.1996 and Gazetted on 28.2.1996. But, in the meantime, the husband of the appellant-writ petitioner died on 13.11.1995.

The appellant-writ petitioner having not intimated the fact relating to the death of her husband, and/or having not mutated her name in the records by that time, we find no illegality in the Notification issued u/s 4(1) of the Act issued in the name of her husband and there was no occasion for the State Government to rectify the Notification issued u/s 4(1) of the Act, in the absence of any such mistake. For the first time, the appellant brought to the notice of the respondents the fact that her husband died only when she filed her objections u/s 5A Enquiry, which was held on 15.10.1996. Having come to know of the same after enquiry and after hearing the appellant-writ petitioner, the Declaration u/s 6 of the Act having been properly issued in the name of the appellant-writ petitioner, she cannot derive the advantage of the judgment rendered in the case of Savithiriammal Vs. The State of Tamil Nadu, .

9. The respondents having come to know of the death of the land owner after Section 5A Enquiry and having issued the Declaration u/s 6 of the Act in the name of the appellant, thus, they having corrected the proceedings from that stage, the appellant cannot challenge the proceedings on such ground.

10. In the case of Satendra Prasad Jain and Others Vs. State of U.P. and Others, , the Supreme Court held that the validity of Section 4(1) Notification and Section 6 Declaration of the Act, cannot be gone into, when once the possession is taken.

11. That being the position, the Declaration u/s 6 of the Act, having been issued and the Award having been passed, after necessary possession, it was not open for the appellant-writ petitioner to raise the question of acquisition before this Court in the year 1998 and the learned single Judge, having not entertained such a prayer, we find no ground made out to interfere with the same.

12. There being no merits, the Writ Appeal is dismissed. No costs. The Miscellaneous Petition is closed.