

(1997) 11 MAD CK 0014
In the Madras High Court

K. Kumar Naicher

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 27-11-1997

Acts Referred:

Citation : (1998) 2 MLJ 533

Hon'ble Judges : K. Samapath, J

Bench : Division Bench

Judgement

K. Samapath, J.—The petition is for the issue of a writ of certiorari to call for the records in G.O.Ms.No. 857 Housing and Urban

Development Department dated 26.8.1985 published in the Tamil Nadu Government Gazette dated 25.9.1985 and G.O.Ms.No. 1525 Housing

and Urban Development Department dated 28.9.1986 which was published in the Tamil Nadu Government Gazette Extraordinary dated

29.9.1986 from the first respondent herein and quash the notification and declaration respectively u/s 4(1) and 6 of the Land Acquisition Act,

1894 (hereinafter referred to as the "Act) published in the issues of the Tamil Nadu Government Gazettes dated 25.9.1985 and 29.9.1986

respectively in respect of the petitioner's land in S.Nos. 83 part 87/1 and 99/1 measuring 1.40 acres totally in No. 79, Vanagaram village,

Saidapet Taluk, Chingleput District, alleging as follows:

The petitioner's father was the owner of the lands in S.No. 87/1 measuring 1.52 cents. The father partitioned the property and gave the petitioner

76 cents in S.No. 87/1. Similarly, in S.No. 83 part, an extent of 61 cents was given to the petitioner and an extent of 0.03 cents in S.No. 99/1 in

No. 79, Vanagaram Village, Saidapet Taluk, Chingleput District in the year 1982.

The father died on 10.4.1985 and the petitioner had been in possession and enjoyment of the said properties. The other half in each of the survey numbers was in the possession of the petitioner's brother one K. Ekamabram. The petitioner had been using the land mainly for agricultural purpose. As per notification and declaration u/s 4 and 6 of the Act published in the Tamil Nadu Government Gazettes on 25.9.1985 and 29.9.1986 respectively, the lands were sought to be acquired. The powers for acquisition had been conferred on the Special Tahsildar (LA) IV, Tamil Nadu Housing Board, Nandanam, Madras-35 to carry out the land acquisition proceedings. The notification u/s 4(1) of the Act was approved in G.O.Ms.No. 857, Housing and Urban Development, dated 26.8.1985 and published in the Tamil Nadu Government Gazette on 25.9.1985 and declaration u/s 6 of the Act was approved in G.O.Ms.No. 1525, Housing and Urban Development, dated 28.9.1986 and published in the Tamil Nadu Government Gazette Extraordinary dated 29.9.1986. Thereafter, the Special Tahsildar (LA) Office, National Highways, the third respondent herein, notified the same lands for laying roads which had already been proposed for acquisition by the State Housing Board by issuing a notice to the petitioner and his brother u/s 3A of the Act. In 4(1) notification dated 25.9.1985 only the petitioner's father's name was found in respect of S.Nos. 83 and 87/1. In Section 6 declaration only the above two survey Nos. were mentioned. Even prior to the acquisition proceedings, the petitioner had become the owner of the property. Still the Gazette notification did not contain the petitioner's name. Proceedings were therefore illegal and invalid. In 5 A enquiry conducted by the second respondent, the petitioner and his brother submitted their objections. However, there was no detailed enquiry as contemplated under the rules framed. The detailed remarks of the Requisitioning Department were also not communicated to the petitioner by the second respondent. This failure on the part of the second respondent was fatal to the proceedings. Writ petition has therefore been filed questioning the land acquisition proceedings.

2. A counter has been filed by the Deputy Secretary to Government on behalf of the respondents alleging as follows:

The 4(1) notification was published in the Tamil Nadu Government Gazette dated

25.9.1985 and in the local dailies namely, Dinathanthi and News

Today on 30.9.1985 as per the provisions of the Land Acquisition Act, 1894. The notice for enquiry as per Section 5-A of the Act was served on

the persons concerned and they have also filed objections at the time of 5-A enquiry stating that the lands are all cultivable lands and that they had

no other lands or house sites. The objections raised by the owners were forwarded to the Requisitioning Body namely the Tamil Nadu Housing

Board and the remarks of the Housing Board were also communicated to the land owners. An enquiry u/s 3(b) of the Rules framed u/s 55(1) of

the Act was "conducted on 18.4.1986 and 15.5.1986 with the land owners and representatives of the Tamil Nadu Housing Board. As the

Housing Board had stated that the lands already notified for acquisition were essentially required for the implementation of the schemes and as the

land owners had not raised any fresh objections, order recommending overruling the objections of the petitioner was issued in Chairman Tamil

Nadu Housing Board's letter No. I.A. I(3)/11326/86 dated 12.3.1986. The draft declaration u/s 6 of the Land Acquisition Act was approved in

G.O.Ms.No. 1525 Housing and Urban Development Department dated 28.9.1986 and published in the Tamil Nadu Government Gazette dated

29.9.1986. Out of an extent of 1 acre in S.No. 83/2 and an extent of 1.52 acres in S.No. 87/2 published u/s 6 declaration, an extent of 0.86 acre

and an extent of 0.48 acre in each survey number respectively were withdrawn along with other lands since they were required by the National

Highways Department for the formation of approach roads of Highways 5 and 45. The withdrawal notification was also published in the Tamil

Nadu Government Gazette dated 30.12.1987. Further an extent of 0.07 acre out of 0.12 acre in S.No. 99/1 was also withdrawn along with other

lands since the land lay outside the scheme boundary. The award enquiry was conducted on 22.8.1988, 29.8.1988 and 6.9.1988. In spite of

receipt of Section 9(3) and 10 notices, the petitioner did not attend the award enquiry nor did he produce any documentary evidence. In respect of

S.Nos. 83/2 and 87/1 an award was passed in favour of the petitioner. So far as S.No. 99/1 was concerned since the petitioner did not produce

any documentary proof, his name was not included as interested person in the award. The notices were issued to all land owners to appear before

the Land Acquisition Officer for enquiry u/s 5-A of the Act. The petitioner's brother Ekambaram had also appeared before the Land Acquisition

Officer on 18.11.1985 and given a statement that their lands could not be relinquished to the Housing Board since they were not having any other

source of income. The gist of the objections raised by the land owners was forwarded to the Requisitioning Body and after the Chairman, Housing

Board, opined that the lands were essentially required for public purpose, the objections were recommended to be overruled by the Requisitioning

body. It was also communicated to the petitioner on 31.5.1986 in Special Tahsildar's letter Rc.5847/81-E1 dated 30.4.1986. All the other

formalities were scrupulously followed and no exception could be taken to the proceedings initiated for acquisition of the lands.

3. Mr. David Thyagaraj, learned Counsel for the writ petitioner submitted that the same notification had been quashed by Govindasami, J in A.

Vembuli Naicker Vs. State of Tamil Nadu and Others, and this decision of Govindasami, J. had been followed by R.R. Jain, J. in W.P.Nos.

10120, 10221 and 10122 of 1988. The learned Counsel submitted that the present writ petition also should be allowed on the basis of the above

two judgments and relief granted to the writ petitioner.

4. Mr. V. Rangaraju, learned Government Pleader for land acquisition submitted by relying on the decision in Abhey Ram (dead) by LR. and

others Vs. Union of India and others, that the benefit of the quashing of the declaration by the High Court would not ensure to the persons who

were not parties to the judgment. It is the submission of the learned Government Pleader that unless a case is made out for quashing the notification

so far as the writ petitioner is concerned, he is not entitled to succeed. The learned Government Pleader also relied on the penultimate paragraph of

the judgment of Govindaswami, J and submitted that the learned Judge had restricted the quashing only so far as Section 4(1) notification related to

the petitioner's lands in that writ petition.

5. Now let us have a look at the judgment of Govindaswami, J. The points raised before the learned Judge, considered and decided by him are as

follows:

(1) The public purposes mentioned in the notification were vague and indefinite in which case, the notification was liable to be quashed.

(2) Section 55(1) and Rule 1 relating to giving public notice of the substance of the notification was mandatory and failure to do so, vitiated the acquisition proceedings.

(3) While holding enquiry u/s 5-A the interested person should be furnished with the views of the requisitioning Department. If it had not been done, the proceedings were liable to be quashed.

(4) Section 6 declaration if made beyond one year from the date of publication of 4(1) notification in the Government Gazette is improper and the proceedings had to go.

6. While dealing with the vagueness and the indefiniteness of the public purposes specified in the notification, Govindaswami, J relied on the

decision in *L. Krishnan and Others Vs. State of Tamil Nadu and Others*, . The Division Bench in *L. Krishnan v. State of Tamil Nadu* considered

the decision of another Division Bench of this Court in the *The State of Tamil Nadu and Another Vs. A. Mohammed Yousuf and Others*, and also

the decision of the Supreme Court in *Munshi Singh and Others Vs. Union of India (UOI)*, and ultimately quashed the impugned 4(1) notification in

that case on the ground of vagueness. Govindaswami, J relied on these decisions and held that so far as the notification G.O.Ms.No. 857 was

concerned, it did not specify the public purpose with sufficient particulars and clarity and therefore, it was liable to be quashed. The decision in *L.*

Krishnan and Others Vs. State of Tamil Nadu and Others, was taken to the Supreme Court in *State of Tamil Nadu v. L. Krishnar*, (1996) 1 SCC

250 . The decision was reversed. However, the other decision in *The State of Tamil Nadu and Another Vs. A. Mohammed Yousuf and Others*,

was taken to the Supreme Court and it was confirmed in *State of Tamil Nadu and another Vs. A. Mohammed Yusef and others*, by the Supreme

Court. The latter decision in *State of Tamil Nadu v. L. Krishnar*, (1996) 1 SCC 250 explained the decision in *Mohammed Yousuf's* case as

follows:

For all the above reasons, we find it difficult to read the holding in *Mohammed Yousuf* as saying that in no event can the land be acquired for the

purpose of the Act/Board unless a final and effective scheme is framed by the Housing Board under the provisions of Sections 37 to 56. The said

limitation applies only where the land is sought to be acquired avowedly for the

purpose of execution of a housing or improvement scheme

prepared by the Housing Board under Chapter VII of the Tamil Nadu Housing Board Act. In other words, unless the notification u/s 4 of the Land

Acquisition Act expressly states that land proposed to be acquired is required for executing a housing or improvement scheme (i.e. a final and

effective scheme) framed by the Housing Board under the provisions of the Tamil Nadu Housing Board Act, the principle and ratio of Mohammed

Yousuf is not attracted. Mere statement in the notification that land is required for the purpose of the Housing Board would not by itself attract the

said principle and ratio. In the instant appeals, the notifications do not even state that the land proposed to be acquired is meant for the purpose of

the Housing Board.

Even in State of Tamil Nadu and another Vs. A. Mohammed Yousef and others, , the Supreme Court made the following observations in

paragraph 11:

On the other hand, the order, in which the different steps for the preparation of the scheme and the acquisition of the land, is suggested on behalf of

the petitioners to be taken, appears to be impractical and defeating the purpose of Section 5-A of the Land Acquisition Act. If the notification u/s 4

under the Land Acquisition Act is published without waiting for the scheme, as has been done in the present case, it will not be possible for the

land owners to object to the proposed acquisition on the ground that the land is not suitable for the scheme at all, and therefore does not serve any

public purpose, or that another piece of land in the area concerned, is far more suitable, leading to the possible conclusion that the proposed

acquisition is mala fide. As discussed above, the provisions of the Housing Board Act also suggest the same. The Board has not been vested with

the unrestricted power to frame any scheme, as suggested by its planners. It has to take into account the representation by the local authority as

mentioned u/s 50 and the objection of any other person u/s 53 and decide the same on merits before according sanction. The matter is not

concluded even at that stage; the aggrieved person may appeal to the State Government and it is only subject to the final result therein that the

scheme becomes enforceable. In this set up it will be practical and consistent with common sense to have the scheme finalised before starting an

acquisition proceeding. We, accordingly, hold that a proceeding under the Land Acquisition Act read with Section 70 of the Madras Housing

Board Act, can be commenced only after framing the scheme for which the land is required. The notification issued u/s 4 in the present case must,

therefore, be held to be premature, and it was rightly quashed by the High Court.

In view of the decision of the Supreme Court in *State of Tamil Nadu v. L. Krishnar*, (1996) 1 SCC 250, the vagueness or indefiniteness in the

notification may not avail the petitioner. Therefore, the first ground urged by the learned Counsel for the writ petitioner cannot succeed on this

score.

7. The next ground on which Govindaswami, J. quashed the notification related to want of public notice of the substance of the notification. The

learned Judge in paragraph 6 of his judgment has stated as follows:

Insofar as the second contention that public notice of the substance of the 4(1) notification was not given in the locality as contemplated under Rule

1 of the Rules framed u/s 55 of the Act, learned Government Advocate represented that the public notice of the substance of the 4(1) Notification

was given in the locality by beat of tom-tom as required under the rules on 1.10.1985. In this context, it is relevant to consider the Rule 1 of the

Rules which is as follows; 1. Issue and publication of notice by the Collector- Immediately after the publication of the notification u/s 4(1), the

Collector shall issue a notice stating that the land is needed as the case may be, for a public purpose and requiring all persons interested in the land

to lodge before the Collector within thirty days after the issue of the Notification, a statement in writing of their objection, if any, to the proposed

acquisition. This notice should be published at convenient places in the said locality, and copies thereof fixed up in the Offices of the Collector, the

Tahsildar, and in the nearest Police Station.

The above rule clearly prescribed that the notice should be published at convenient places in the said locality and copies thereof should be fixed up

in the Offices of the Collector, the Tahsildar, and in the nearest Police Station. It is obligatory on the part of the respondents not only to see that the

notice is published in the convenient places in the said locality but also to see that copies thereof are affixed in the Offices of the Collector, the

Tahsildar and in the nearest Police Station. The learned Counsel for the writ petitioner contended that mere publication of the Notification would

not suffice but notice should be published at convenient places in the locality and copies thereof should be fixed up in the Offices of the Collector,

the Tahsildar and in the nearest Police Station and that is mandatory, and failure to do so vitiates the acquisition proceedings. In this context, the

learned Counsel for the petitioner referred to the decision of a Division Bench of this Court in Valleswarar Temple, Nerkundram represented by

sole trustee Kasiviswanathan v. The State of Tamil Nadu represented by the Secretary to Government Housing and Urban Development and Anr.

(1990) 2 M.L.J. 142, in which it was held as under:

Mr. A. Sivaji, learned Counsel for the appellant, covets the quashing of the very notification u/s 4 (1) of the Act and for this purposes, he advances

the point that as enjoined by Section 4(1) of the Act and Rule 1 of the Tamil Nadu Rules under The Act, there was no publication of the substance

of the notification u/s 4(1) of the Act, point to the above effect has been taken in the affidavit filed in support of the writ petition. But, this point has

not been adjudicated upon by the learned single Judge. That the provisions of Section 4(1) of the Act and Rule 1 of the Tamil Nadu Rules under

the Act with regard to publication of the substance of the notification u/s 4(1) of the Act, are mandatory in nature and non-compliance with them

will vitiate the entire acquisition proceedings, is a proposition well settled, which cannot permit any disputation. The respondents have not care to

file any counter-affidavit rebutting the above contention of the appellant, based on violation of the mandatory provisions of law, either during the

pendency of the writ petition or during the pendency of the writ appeal. Mr. K. Ravi Rajapandian, learned Additional Government Pleader (Writs),

is also not in a position to put forth any voice of rebuttal supported by records in the course of his submissions, over this aspect. The result is, here

we find a case where the mandate of law has been breached and the appellant must have the relief of quashing the Notification u/s 4(1) of the Act

as converted through its learned Counsel.

It is clear from the above decision that the procedure prescribed under Rule 1 of its rules framed u/s 55 of the Act for giving public notice of the

substance of the 4(1) Notification is mandatory and failure to follow the

procedure will vitiate the entire proceedings. In the instant case, except the averments that public notice of the substance of the notification u/s 4(1) of the Act publication was given in the locality by beat of tom-tom under rules on 1.10.1985, there is nothing on record to show that the respondent has followed the prescribed procedure for giving notice of the substance of the Notification in the locality viz., publication of the notice at convenient places in the said locality, and affixing copies thereof in the Offices of the Collector, the Tahsildar, and in the nearest Police Station: Having regard to the aforesaid peculiar circumstances of the case, the impugned proceedings are liable to be quashed.

So far as this point is concerned, the counter filed on behalf of the respondents does not advert to the giving of public notice of the substance of the notification as required under the section and the Rules framed thereunder. There is no specific answer in the counter though the writ petitioner has raised it as ground (a) in his writ affidavit. This point has therefore to be held in favour of the writ petitioner.

8. The third point urged before the learned Judge and considered by him is that while holding enquiry u/s 5-A, the petitioner had not received the views of the requisitioning department. The learned Judge found that in that case, the Government was not in a position to substantiate its stand that any detailed enquiry was conducted as contemplated under the Rules framed. J. Kanakaraj, J. In Kanaammal (Deceased) v. N. Devaraj v. State of Tamil Nadu and Ors. (1990), W L.R. 439 held that "remarks of the Requisitioning Authority should be available to the owner so called claimant whose land is acquired at the time of enquiry u/s 5-A. As the remarks of the Tamil Nadu Housing Board in that case had been communicated to the petitioner therein nearly two years after the enquiry u/s 5-A, it was held that it vitiated the entire enquiry u/s 5-A of the Act". The learned Judge held that in many cases, the Land Acquisition Officers held a second enquiry after the remarks were obtained by issuing notices to the land owners as well as to the Requisitioning Body and in the opinion of the learned Judge, such a procedure will alone conform to the requirements of Rule 3(b) (c) of the Rules. The learned Judge held that the enquiry u/s 5-A of the Act was vitiated. It does not appear in the present case, whether there was a further enquiry as required under Rule 3(b). On this ground also, the petitioner

is entitled to succeed.

9. The fourth point on which Govindaswami, J., found in favour of the writ petitioner therein was that Section 6 declaration was made beyond one year from the date of publication of 4(1) Notification in the Government Gazette. This aspect is answered by the respondents in paragraph 7 of the counter As per the allegations in paragraph 7, it can be seen that the publication u/s 6 of the Act was made within the time stipulated. The petitioner's case on this point has to be rejected.

10. In *C. Ponnusamy and Others Vs. Govt. of Tamil Nadu and Another*, E. Padmanabhan, J. following the judgment of a Division Bench of this Court in *Ramanujam v. Collector of Madras and 2 Ors.* (1994) W L.R. 326, held that inasmuch as the objections by land owners were forwarded to the Tamil Nadu Housing Board after 5-A enquiry and remarks offered by the Housing Board were also forwarded to the land owners but there was no further hearing or enquiry conducted thereafter and the acquisition proceedings were in violation of Rule 3 and hence vitiated.

11. In view of the discussion above, it has to be held that the writ petitioner has made out a case for interference under Article 226 of the Constitution. Accordingly, the writ petition will stand allowed and the acquisition proceedings are hereby quashed as prayed for. No costs.

12. In view of the disposal of the main writ petition, W.M.P.No. 16829 of 1988 is dismissed.