

(2001) 04 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No. 7405 of 1993

K. Ponnuswamy Gounder

APPELLANT

Vs

The State of Tamil Nadu and another

RESPONDENT

Date of Decision : 26-04-2001

Acts Referred:

General Clauses Act, 1897 — Section 21

Land Acquisition Act, 1894 — Section 4, 4(1), 48(1), 5(A), 6

Citation : (2001) 04 MAD CK 0066

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Advocate : Mr. T.L. Rammohan, for Mr. P. Ananthakrishnan Nair, for the Appellant; Mr. S. Wilson, Government Advocate, for the Respondent

Judgement

1. The writ petition is for the issue of writ of Certiorari to call for the records relating to Notification u/s 4(1) of the Land Acquisition Act 1894 by

G.O.3D, No.36 Adi Dravidar and Tribal Welfare, 23rd January 1992 published in the Tamil Nadu Government Gazette dated 26th February

1992 and the related Section 6 Declaration published in the Tamil Nadu Government Gazette on March 26, 1993 concerning the petitioner's lands

measuring 0.29.0 Hectares comprised in R.S.No.279-2 A2 in Erode Village. Erode Taluk, Periyar District and quash the same.

2. Learned Senior Counsel for the petitioner submitted that the petitioner's lands situate at Veerappampatayam, Hamlet of Erode (A) Village,

Erode Taluk were sought to, be acquired for providing house sites to Adi Dravidas. In this context, notification u/s 4(1) of the Tamil Nadu Land

Acquisition Act was issued on 18.11.1989 and gazette publication was made on 13.12.1989. The substance of the notification in the local

newspapers was made on 16.12.1989 and 17.12.1989. The enquiry notice u/s 5(A) of the Act was issued on 25.1.1990. The petitioner has filed

the objections on 2.3.1990. The enquiry was held on 7.3.1990. Learned Senior Counsel for the petitioner has further submitted that after the

enquiry was held u/s 5 of the Act, the petitioner was not informed of the further developments. While so, the respondents authorities have again

issued the notification u/s 4(1) of the Act to the petitioner on 23.1.1992. The gazette publication of the said 4(1) notification was made on

26.2.1992. The substance of the notification was published in the news papers on 27.2.1992 and 29.2.1992. Again the enquiry notice u/s 5(1) of

the Act was issued on 30.3.1992 and enquiry was held on 18.5.1992. The enquiry report was made ready on 22.5.1992. The Declaration u/s 6

of the ACE was made on 26.3.1992. The petitioner has made a representation to the Government on 14.8.1992 to delete the subject lands from

the acquisition proceedings. Learned Senior Counsel for the petitioner has further contended that when the earlier notification issued u/s 4(1) of the

Act on 18.11.1989 is in existence, the respondents authorities have no power to issue the successive notification u/s 4(1) of the Act on 26.2.1992.

He has further submitted that without dropping the earlier notification issued u/s 4(1) of the Act, the respondents authorities should not have issued

the second notification u/s 4(1) Act with regard to same lands, on 26.2.1992. The further contention of the learned Senior Counsel for the

petitioner is that the respondents authorities have not come forward with the details of considerations available to them for issuing the successive

notification u/s 4(1) of the Act, when the earlier notification issued u/s 4(1) of the Act is in existence. The other ground urged by the learned Senior

Counsel for the petitioner is that the declaration u/s 6 of the Act has to be issued within one year from the date of issuance of the notification u/s

4(1) of the Act. In this case, the earlier notification u/s 4(1) of the Act was made on 18.11.1989 and the authorities have proceeded till the enquiry

u/s 5A of the Act which was held on 7.3.1990 and the respondents have failed to make the declaration u/s 6 of the Act, within one year and

instead they have chosen to restart the proceedings by issuing the successive notification u/s 4(1) of the Act on 26.2.1992 which vitiates the

acquisition proceedings. For these reasons, learned Senior Counsel submitted that the impugned land acquisition proceedings are liable to be set

aside.

3. The petitioner has filed Writ Miscellaneous Petition No.29235 of 2000 before this court for raising the additional ground and the same was

allowed by this court by order dated 18.4.2001. The additional ground raised is if the State Government desires to provide house sites to the

families of Adi Dravidar Community, the Government have to initiate proceedings under the Tamil Nadu Act 31 of 1978 and the proceedings

initiated under the Central Act 1 of 1894 are invalid and liable to be set aside.

4. To substantiate his contention that unless the earlier notification issued u/s 4(1) of the Land Acquisition Act is withdrawn, the Government is not

entitled to issue successive notification u/s 4(1) of the Act with respect to the same land in view of the different considerations prevailing at the time,

learned Senior Counsel for the petitioner has relied upon the following decisions:

1. Brij Nath Sarin Vs. Uttar Pradesh Government and Another, 2. V. Harihara Prasad v. K.Jagannadhan, AIR 1975 Antlhra 184. 3. Sadar

Anjuman Ahmediyya, Muslim Mission v. State of Andhra Pradesh, AIR 1980 A.P. 246. 4. M.J. Swamy v. Special Deputy Collector, Land

Acquisition, Visakhapatnam 1986 (2) A.L.T. 427. 5. In S. Arjuman Ahmediyya, Muslim Missions"s case, AIR 1980 A.P. 246, a Division Bench

of the Andhra Pradesh High Court has held as follows:

The notification under Sections 4 and 6 cannot also be deemed to have been cancelled by reason of a memo of the Government directing the

Collector to drop further proceeding in this regard, by invoking S. 21, General Clauses Act. While S. 21, General Clauses Act empowers the

Government to rescind a notification made by it under any Act or Regulation, it provides that the power to rescind must be exercised in the like

manner and subject to the like sanction and condition as in the case of making a notification. It therefore follows that if the power to acquire the

land is to be exercised by means of notification under Ss. 4 and 6 of the Land Acquisition Act which are to be published in the Gazette, the power

to cancel or rescind that notification should also be exercised by the issue of a notification duly published in the Gazelle. Thus whether the previous

notification has to be withdrawn under S. 48(1) of the Land Acquisition Act or cancelled under S. 21 of the General Clauses Act, it has to be done

only by means of another notification published in the Gazette.

6. In M.J. Swamy's case, 1986 (2) A.L.T. 427, the Andhra Pradesh High Court has held as follows:

The second notification published on 1.6.1984 u/s 4(1) is not a valid one in view of the fact that the first notification dated 5.1.1981 was still in

subsistence and unless that was withdrawn which admittedly has not been done, the second notification cannot be issued.

In the above decision, the Andhra Pradesh High Court has followed its earlier decision in S. Anjuman Ahmedia Muslim Mission's case, AIR 1980

A.P. 246.

7. As the respondents have neither filed counter nor produced the records, it is not known whether the award has been passed. The petitioner has

filed an affidavit before this court on 23.3.2001 to the effect that he is in possession and enjoyment of the land in Survey No.279/2A2 measuring

0.29.0 hectares together with the rest of the land measuring 1.42.5 hectares (subject lands). From the said averment, it is presumed that no award

has been passed though interim stay was granted only with regard to dispossession, by order dated 19.4.1993 and the same was made absolute

on 3.8.1993 and the respondents were not prevented from proceeding further with the acquisition proceedings in other respects. The respondents

have not come out with any case for issuance of the subsequent notification u/s 4(1) for different considerations prevailing at that time, when the

earlier notification u/s 4(1) of the Act was in existence. As there is no material to show that the earlier notification issued u/s 4(1) of the Act was

withdrawn, following the decisions of the Division Bench of the Allahabad High Court and the Andhra Pradesh High Court cited above, it has to

be held that the successive notification issued u/s 4(1) of the Act on 26.2.1992, without withdrawing the earlier notification, is not a valid one and

the land acquisition proceedings vitiate. In State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , it has been held by the Supreme

Court that if no award has been passed on or before 22.11.1994 (the date of judgment of the Supreme Court in Ananthi Animal's case), the

authorities have no power to proceed under the Central Land Acquisition Act and they have to proceed under the Acquisition of Land for Harijan

Welfare Schemes Act (Act 31 of 1978), if they desire to acquire the lands. In this case, it is clear that no award has been passed on or before

22.11.1994. Following the decision of the Supreme Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , it has to be held

that the respondents herein have no power to acquire the lands of the petitioner under the Central Land Acquisition Act and they have to proceed

under the Act 31 of 1978 stated above, if they so desire. For the reasons stated above, the impugned land acquisition proceedings are quashed

and the writ petition is allowed. No costs.