

(2003) 10 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No's. 14676 to 14679, 14757, 14761 to 14763, 14796 to 14798, 23364 to 23367, 23506 to 23508 and 23550 to 23552 of 1995

K. Shanmugam and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 13-10-2003

Acts Referred:

Citation : (2003) 10 MAD CK 0066

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : N.L. Raja, for the Appellant; M.E. Raniselvam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

D. Murugesan, J.—Since the grounds raised in all the Writ Petitions are one and the same, they disposed of by a Common Order.

2. The lands belonging to the petitioners herein were notified under the Provisions of Tamil Nadu Acquisition of Land for Harriman Welfare

Scheme Act, 1978(Act 31/1978) and approved on 25.2.1980 and was gazette on 26.2.1980. The acquisition proceedings were challenged in

W.P. No. 1741/1980 by the petitioner in W.P. No. 14676/1995 alone before this Court. This Writ Petition was heard along with the other Writ

Petitions filed and disposed of on 9.9.1981, declaring that the Act as unconstitutional. In the mean time, an award was passed in Award No.

16/79-80 and Rc. No. A1/4837/78 dated 26.3.1980. The State took the order of this Court to the Supreme Court by filing S.L.Ps. Finally, the

Supreme Court by order dated 22.11.1994, allowed the appeals declaring the Act

as valid. In view of the order of the Supreme Court, possession of the lands were taken. In the circumstances, the petitioners have approached this Court by way of present Writ Petitions for a Writ of

Mandamus, forbearing the respondents from initiating any steps to proceed with the acquisition of lands of the petitioners herein.

3. Mr. N.L. Raja learned counsel appearing for the petitioners would submit that though the challenge to the land acquisition proceedings are not

sustainable as of today, in view of the law declared by the Supreme Court, declaring the Act 31/1978 as valid, the respondents have initiated land

acquisition proceedings as early as in 1980, and the petitioners having succeeded in the Writ Petitions on 9.9.1991, the State has chosen to prefer

appeal only in one case, and in view of the law declared by the Apex Court in the judgment reported in *Shenoy and Co., Represented by its*

Partner, Bele Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others, the State in the fitness of

things, ought to have taken out publication in such cases to alert parties bound by the Government of the fact that an appeal had been preferred

before the Supreme Court by them. In the absence of such publication, this Court in equity can direct the respondents to determine the quantum of

compensation from the date of publication till the date of taking possession viz., 7.11.1995.

4. I have heard MRs. M.E. Raniselvam, learned Government Advocate appearing for the respondents.

5. The judgment of the Supreme Court declaring the Act 31/1978 as valid was rendered on 22.11.1994. In the judgment relied upon by the

learned counsel for the petitioner it is the Apex Court has held that there was revival of the Act and it was binding on all persons though they were

not parties to the appeal. There cannot be a dispute over the land acquisition proceedings initiated against the lands belonging to the petitioners are

also covered by the judgment of the Supreme Court. Hence the challenge to the land acquisition proceedings cannot be entertained now.

6. Further, the Supreme Court has also observed in para 17 as follows:

In the fitness of things it would be desirable that the State Government also took out publication in such cases to alert parties bound by the

judgment of the fact that an appeal had been preferred before this Court by

them.

7. MRs. M.E. Raniselvam, learned Government Advocate would place reliance para 14 of the judgment of the Apex Court reported in Ram

Chand and Others Vs. Union of India (UOI) and Others, which reads as follows:

The Parliament has recognised and taken note of the inaction and non-exercise of the statutory power on the part of the authorities, enjoined by

the provisions of the Act to complete the acquisition proceedings within a reasonable time and because of that now a time-limit has been fixed for

making of the award, failing which the entire proceeding for acquisition shall lapse. But, can it be said that before the introduction of the aforesaid

amendment in the Act, the authorities were at liberty to proceed with the acquisition proceedings, irrespective of any schedule or time-frame and to

complete the same as and when they desired? It is settled that in a statute where for exercise of power no time- limit is fixed, it has to be exercise

within a time which can be held to be reasonable. This aspect of the matter can be examined in the light of the second proviso to Article 31-A of

the Constitution, which in clear and unambiguous terms prohibits making of any law which does not contain a provision for payment of

compensation at a rate, which shall not be less than the market value thereof. The Act is consistent with the second proviso to Article 31-A,

because it provides for payment of compensation at the market value of the land acquired. But, whether the constitutional and statutory

requirement of the payment of the market value to the persons, whose lands have been compulsorily acquired, is not being circumvented and

violated by keeping the land acquisition proceedings pending for more than a decade and half, without making the awards and paying the

compensation, which has been pegged to the dates of notifications under sub-section (1) of Section 4 of the Act, which in the present cases had

been issued 14 to 21 years before the making of the awards. If a person is paid compensation in the year 1980/81 at the market rate, prevailing

twenty years before, will that be compliance of the constitutional and statutory mandate? Ignoring the escalation of the market value of the lands,

especially near the urban agglomeration or metropolitan cities, will amount to ignoring an earthquake and Courts can certainly take judicial notice of

the said fact. The interest and the solatium, which have to be paid under the

provisions of the Act, are linked with the market value of the land with reference to the date of the notification under sub-section(1) of Section 4 of the Act. If a decision had been taken as early as in the year 1966, by issuance of declarations u/s 6 that the lands belonging to the different cultivators, who held those lands within the ceiling limit for cultivation, were needed for public purpose, respondents should have taken steps for completion of the acquisition proceedings and payment of compensation at an early date. In the present cases, unless a justification is furnished on behalf of the respondents, can it be said that the statutory power of making an award u/s 11 has been exercised within a reasonable time from the date of the declaration u/s 6? Due to escalation in prices of land, more so in this area, during the preceding two decades, in reality, the market rate, on the date of the notification u/s (1) is a mere fraction, of the rate prevailing at the time of its determination in the award

8. The learned counsel therefore submitted that in equity, when there is delay in taking possession of the land for over a period of nearly 15 years, it would be reasonable and justifiable to direct the respondent to fix the quantum of compensation taking into consideration of the date of taking possession of the land. In the case relied upon by the learned counsel for the petitioner wherein, there is delay of 14 to 21 years before making of the awards. In the circumstances, the Apex Court considered that if possession is taken after nearly 14 to 21 years after Section 6 Declaration made, due to escalation in prices of land, so in the area, in reality the market rate on the date of notification u/s 4(1) of the Act is a mere fraction of the rate prevailing at the time of its determination of the award and in that view of the matter, the Apex Court considered the market value of the land to be fixed after taking into consideration of the date of taking possession.

9. Coming to the facts of the present case, Notification was issued for acquisition and approved on 25.2.1980 and it was gazetted on 26.2.1980.

The award was passed pursuant to the proceedings on 26.3.1980. Pursuant to the award, compensation amount was also offered to the petitioners which were refused. Therefore, the amount was deposited immediately before the Sub-Court having jurisdiction over the issue. Till such time the amount deposited, there is no delay on the part of the State. One of the Petitioners approached this Court questioning the constitutional

validity of the Act 31/1978. Pending the Writ Petition, a further proceedings could not be carried on by the State. The said Writ Petition was

allowed on 9.9.1981 and the Act itself was declared as unconstitutional. The fact remains that an appeal was preferred by the State before the

Supreme Court. From the observation of the Apex Court made in the judgment reported in *Shenoy and Co., Represented by its Partner, Bele*

Srinivasa Rao Street, Bangalore and Others Vs. Commercial Tax Officer, Circle II, Bangalore and Others, , it is clear that in the fitness of things, it

would be desirable that the State Government also took out publication in such cases to alert parties bound by the judgment. Merely because such

publication was not made it cannot be said that the petitioners are entitled to equitable relief to fix a reasonable compensation on the basis of the

market value on the date of taking possession of the land viz., 7.11.1995. In the present case, Notification was issued and approved on 25.2.190

and it was gazetted on 26.2.1980 and award was passed pursuant to the proceedings on 26.3.1980. Further compensation amount has also been

deposited. Further it is not the case of the petitioners that before the award was passed and the quantum of amount was determined, the

procedures contemplated u/s 7 were not complied with.

10. In view of the above, I find no merit in the Writ Petitions and the same are dismissed. No costs. Consequently, all connected W.M.Ps. are

closed.