
(1986) 11 MAD CK 0048
In the Madras High Court

K. Shanmugha Sundara Nadar

APPELLANT

Vs

The Special Tahsildar I and Others

RESPONDENT

Date of Decision : 07-11-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 55(1), 5A, 6

Citation : (1987) 100 LW 652 : (1987) 2 MLJ 170

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

Nainar Sundaram, J.—The matter arises under the Land Acquisition Act I of 1894, hereinafter referred to as the Act. The prayer originally projected in the writ petition runs as follows:

For the reasons stated in the accompanying affidavit, it is prayed that this Honourable Court may be pleased to issue a writ of certiorari or any other writ, order or direction in the nature of certiorari calling for the records relating to the land acquisition proceedings culminating in Award No. 8/83, dated 30th April, 1983, and quash the same and pass such further or other orders as this Honourable Court may deem fit and proper and render justice.

W.M.P. No. 11996 of 1986 had been taken to amend the prayer in the following terms:

It is therefore prayed that this Hon'ble Court may be pleased to call for the records in G.O.Ms. N. 399 Housing Department dated 8th June, 1975 published on 11th June, 1975 and G.O.Ms. No. 981 and the notice under Sec9 of the Act culminating in award No. 8 of 1983 dated, 30th April, 1983 on the file of the respondent herein and quash the notification under Sections 4(1) and 6 of the Land Acquisition Act, and the award No. 8 of 1983 in respect of the petitioner's land bearing S.No.-127, measuring 28.42 acres in Maduravayal village, Chengalpattu Dt., published in the issue of the Tamil Nadu Government gazette, dated 11th June, 1975 and 9th June, 1978 by issuing a writ of certiorari or any

other appropriate order or direction and pass such further or other orders as this Hon"ble Court may deem fit in the circumstances of the case.

2. The amendment has been asked for, raising additional grounds in W.M.P. No. 11997 of 1986 with regard to non-compliance with the latter part of Section 4(1) of the Act, in that the substance of the notification u/s 4(1) of the Act was not locally published in accordance with Rule 1 of the Tamil Nadu Rules, hereinafter referred to as the Rules, framed pursuant to powers conferred by Section 55(1) of the Act, and further the benefit of G.O.Ms. No. 837. Housing dated 15th June, 1976, was not extended to the lands of the petitioner by excluding the entirety of the lands since they would be areas covered by factories of the petitioner. It is specifically complained in the affidavit raising the additional grounds that the publication of the notification u/s 4(1) of the Act was not done in due compliance with Rule 1 of the Rules, in that the notice was not published in convenient places in the locality and copies thereof not affixed as required in that rule, and further the publication was not done immediately after the publication of the notification u/s 4(1) of the Act in the official gazette. There is a counter affidavit filed on behalf of the respondents 1 and 2 to these petitions, W.M.P. No. 11996 and 11997 of 1986 and it is stated therein that the substance of the notification u/s 4(1) of the Act was published in the locality on 31st July, 1975 as stipulated under law. It must be noted that Rule 1 of the Rules contemplates that the notice must be published at convenient places in the concerned locality and copies thereof affixed in the offices of the Collector, the Tahsildar and in the nearest police station, Mr. V. Sundar Anandam, learned Government Advocate, representing respondents 1 and 2, produces the file relating to acquisition proceedings and points out a piece of paper stated to have been signed by the concerned village Munsif, and it bears the date 31.7.1975 and it runs as follows:

We do not get any indication as to what was the material that was published as per this endorsement and the learned Government Advocate is not in a position to improve the matter by pointing out any of the relevant records. He also points out the endorsement on the back of the notice u/s 5A of the Act, which endorsement read as follows:

This endorsement is also stated to have been signed by the concerned village Munsif and it bears the date 31.7.1975. These documents certainly do not make out that Rule 1 of the Rules stood satisfied with regard to the local publication as per the latter part of Section 4(1) of the Act. The notification u/s 4(1) of the Act was published in the official gazette on 11.6.1975. Compliance with regard to the latter part of Section 4(1) of the Act read with Rule 1 of the Rules with regard to local publication ought to have been contemporaneously. In the present case, the local publication is stated to have been done on 31.7.1975. Even with regard to this date, the material exposed on behalf of respondents 1 and 2 does not bring conviction to the mind of the Courts that there was compliance with the requirements of the statutory provisions as we could see from the discussion which has preceded. The view of the Supreme Court is that the publication of the

notice in the locality as required by the second part of Section 4(1) of the Act is mandatory and unless that notice is given in accordance with the provisions contained therein, the entire acquisition proceedings would be vitiated Vide Collector v. Raja Ram Jaiswala (1985) 3 S.C.J. 1. In that pronouncement the Supreme Court also repelled the proposition that merely because the person interested in the land did make the objections u/s 5A of the Act, the purpose of local publication stood achieved and the failure to give public notice in the locality need not be treated as fatal to the proceedings. In the present case also the petitioner did participate in the acquisition proceedings, and it is true the matter has come upto the stage of passing of an award. A Bench of this Court, consisting of V. Ramaswami and David Annoussamy, JJ., in Nandakumar v. State of Tamil Nadu 1986 WL.R. 164, has expressed the view that the provision with regard to local publication being mandatory, the writ petition could not be dismissed merely on the ground of laches. In that case, the notification u/s 4(1) was published in the official gazette on 7th June, 1978 and the local publication was done on 19th December, 1978, and the writ petitions were filed only in 1983. Even then since the mandatory provisions stood violated, laches were not put against the petitioners. Here I find that the latter part of Section 4(1) of the Act read with Rule 1 of the Rules was breached and was not complied with in that the local publication was not made in accordance with law and the mere fact that subsequent proceedings have been prosecuted, which culminated in an award cannot be put against the petitioner, if we take note of the principles countenanced in the pronouncements referred to above. For all these reasons, W.M.P. No. 11996 and 11997 of 1986 are allowed and consequently this writ petition as per the amended prayer is allowed. No costs.