
(2001) 07 MAD CK 0103

In the Madras High Court

Case No : Writ Petition No. 17345 of 1992 and WMP No. 24766 of 1992

Kannaiya Reddiar

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 17-07-2001

Acts Referred:

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

Citation : (2001) 07 MAD CK 0103

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : V. Subramani, for the Appellant; P. Gunaraj, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—Heard Mr. V. Subramani, learned Counsel appearing for the Petitioner, Mr. M.S. Palanisamy learned Special Government Pleader appearing for the Respondents.

2. Kannaiya Reddiar, who originally instituted the writ petition passed away and his legal representatives namely S. Sampala, K. Ramamurthy, K. Krishnamurthy and M. Urmila were substituted in this writ petition by order dated 13.7.2001.

3. With the consent of counsel for either side the writ petition itself is taken up for final disposal. The Petitioners have prayed for the issue of a writ of mandamus directing the Respondent to drop all proceedings pursuant to the notification issued u/s 4(i) of the Land Acquisition Act in G.O. Rt. 124, Housing, dated 11.6.1975 in so far as the lands of the Petitioner were concerned in S. No. 102/2 in Nerkundram Village, Measuring an extent of 76 cents at Saidapet Taluk.

4. The writ petition is resisted by the Respondents by filing counter affidavit. However, according to the learned Counsel for the Petitioners, the Petitioners are bound to succeed on the very contents of the counter affidavit filed on behalf of the Respondents and the rule nisi has to be made absolute.

5. Per contra, the learned Special Government Pleader contended that the Petitioners are not entitled to any relief.

6. It is also contended by Mr. V. Subramani, learned Counsel for the Petitioners that the point raised in this writ petition is covered by the orders passed by P. Sathasivam, J. in WP No. 18379 of 1991 (Ponnammal v. State of Tamil Nadu and Anr.) dated 1.7.1999, as well as the order 1.7.1999 made in WP No. 18384 of 1991 (Gajamal v. The State of Tamil Nadu and Ors.), which were allowed to become final as no appeals have been preferred.

7. Concedingly those two writ petitions have been allowed by P. Sathasivam, J., granting the very relief prayed for in this writ petition and the present writ petition relates to the very same acquisition proceedings. Placing reliance on the said orders of P. Sathasivam, J., Mr. V. Subramani, learned Counsel for the Petitioners contended that the writ petition has to be allowed as after the remand by the Division Bench, quashing Section 6 Declaration while retaining Section 4(1) Notification. Section 5A enquiry was conducted as early as 28.8.1990, and even after eleven long years, no fresh declaration u/s 6 of the Act has been made so far and therefore the writ Petitioners are entitled to succeed. There is force in the contention advanced by the counsel for the Petitioner which is well founded and it has to be sustained.

8. Even in the affidavit filed on behalf of the Respondents, it is admitted that a Division Bench of this Court in WP No. 10351 of 1982 etc, batch (L.N. Venkatesan and Ors. v. State of Tamil Nadu) dated 8.1.1988 as well as W.P. No. 8370 and 8371 of 1986, (Gajammal v. State of Tamil Nadu) dated 2.11.1988, wherein the Division Bench quashed Section 6 Declaration issued by the State Government and remitted the matter back to the Land Acquisition Officer to conduct a fresh 5A enquiry while pointing out certain illegalities. The entire Section 6 declaration had been quashed and thereafter the second Respondent herein conducted a fresh 5A enquiry as seen from its proceedings dated 28.8.1990. The second Respondent considered the objections, and recommended to the State Government to over rule the objections and to publish a fresh declaration in terms of Section 6. After the said proceedings dated 28.8.1990 and even after a lapse of eleven long years no fresh declaration u/s 6 has been made uptill now.

9. In fact in the Counter affidavit filed on behalf of the State Government it is set out thus: "In Government D.O. Letter No. 87986 (a)/LAI.I(2)/89-11, dated 12.7.1993, instructions have been issued to send fresh draft Declaration proposals to Government". The Petitioners asserted that they are in possession and that no declaration has been passed by the first Respondent-State Government, after the earlier Declaration had been quashed, and contended that a mandamus should be issued forbearing the Respondent from proceeding further with the acquisition of their land in view of the long passage of time and no Section 6 Declaration had been issued within the time provided in Section 6 reckoned from the judgment of the Division Bench.

10. While considering the identical contention arising out of the same land acquisition Notification, P. Sathasivam, J., in WP No. 18379 of 1991 held Thus:

5. There is no dispute that by order dated 21.1.1968 at the instance of the Petitioner as well as another in W.P. Nos. 8370 and 8371 of 1986, Division Bench of this Court quashed the declaration made u/s 6 in respect of the land of the Petitioner. After quashing the same the Division Bench has made an observation to the effect that, it is open to the Petitioners to prove their ownership in relating to the respective properties at the time of enquiry u/s 5-A of the Act The said declaration was made and published on 9.6.1978. In view of the quashing of the said declaration, if the Respondents really interested they could have persuaded the same immediately within the time prescribed. As rightly contended by the learned Counsel appearing for the Petitioner, even by applying the Amendment Validation Act, 1967 the Respondents could have passed award within three years from 21.1.1988 the date on which the Division Bench has quashed the 6. Declaration. However the second Respondent has not conducted fresh 5.A enquiry nor the first Respondent published the declaration made u/s 6 till date. No doubt, in the counter affidavit filed by the first Respondent in para. 4 it is stated that.

...a copy (xerox) of the judgment dated 21.1.1988 in W.P. No. 8370/86 and 8371/96 was received by them only on 12.12.1991.

However, it is seen from the records of the Registry that copy of the said order was made ready even on 1.2.1988 and delivered and despatched on 4.2.1988. In such circumstance, the explanation offered by the first Respondent in para 4 of the counter affidavit cannot be accepted. Even otherwise, in the present writ petition this Court has granted interim order only for four weeks in WMP No. 27490 of 1991. It is not dear, why the Respondents have not taken necessary steps after expiry of the said period of after getting appropriate permission from this Court. In such circumstance, as rightly contended legally it is not open to them to pass award on the basis of 4(i) notification issued on 11.6.1975.

6. learned Counsel appearing for the Petitioner has brought to my notice earlier order of mine reported in S. Vijaycdakshmi v. State of T.N. 1999 (1) LAC 273 wherein I had an occasion to consider the very same 4(i) notification as well as the Division Bench order of this Court. After considering the similar orders passed and the 4(i) notification issued in the year 1975 or 1978, I have concluded.

In Special Deputy Collector (I.A.) v. Kappu Gounder 1985 L.R. 694 a Division Bench of this Court affirmed the view expressed by Mohan, J., in Sree Vengeeswarar Alagarperumal Devasthanam Vs. The State of Tamil Nadu and Another, In the case before Mohan, J. there was a delay of more than 20 years while before the Division Bench, the delay was more than 14 from the date of notification u/s 4(i). I have already stated that in our case, 4(i) Notification was published in the Government Gazette in the year 1975 in some cases and 1973

in other cases. If the principles laid down in the above referred two decisions are applied, the delay in our cases would be more than 20 years; accordingly even on the principle of equality, it is not open to the Respondents to proceed further on the basis of the notifications Issued u/s 4(i) in the year 1975 or 1978.

Inasmuch as the very same 4(i) notification has already been quashed by this Court, for the reasons mentioned therein, I am of the view that the same is applicable to the present writ petition:

7. Under these circumstances, I hold that the Respondents are not legally entitled to proceed further on the basis of 4(i) notification published on 11.6.1975, according to the writ petition is allowed. No costs. It is made clear that if the Respondents are satisfied that if the acquisition is necessary for public interest, it is open to them to proceed afresh by exercising their power of eminent domine.

The above order relates to the very same Section 6 Declaration and the land of the Petitioners is also covered by the same declaration and Section 4(1) notification.

11. In the circumstances in the light of the admission in the counter affidavit that till date no declaration has been made as well as following the orders passed by P. Sathasivan, J., which has not been challenged by preferring an appeal, this Court holds that the Petitioners are entitled to the relief as prayed for inasmuch as there cannot be a declaration at this point of time and after a lapse of Eleven long years from the date of judgment of the Division Bench and after a lapse of 26 years from the date of Section 4(i) notification.

12. The writ petition is allowed as prayed for and Rule Nisi is made absolute. However, nothing in this order prevents the Respondent from initiating fresh acquisition proceedings according to law if the land is still requires for the public purpose. The parties shall bear their respective costs.

13. Consequently connected W.M.P. No. 24766 of 1992 is closed.