

(1982) 09 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 1546 of 1980

K.A.S. Khader Sahib and Others

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 14-09-1982

Acts Referred:

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

Citation : AIR 1983 Mad 383

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Advocate : P. Chidambaram, for M.N. Krishnamain and C.M. Krishna Kumar, for the Appellant; M.A. Sadanand, Govt. Advocate, for the Respondent

Judgement

Sathiadev, J.—The substantial point taken in this writ petition is that, by issuing an errata beyond the period contemplated under proviso to S. 6(1) of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the Act), the State cannot acquire the lands involved in the errata issued on 20-12-1978 and again by another errata dated 27-2-1980.

2. This is an interesting matter in which land acquisition proceedings have been pending for more than seven years, and the State has committed more than one error in acquiring the lands of the petitioners. Having been acquainted with the procedure to be adopted under Land Acquisition Act, which was framed as early as 1894, it is startling to note that such procedural errors could be committed by the State and to the detriment of the citizen.

3. The first notification under S. 4(1) of the Act was made on 14-3-1973, and an extent of 35.6 cents in S. No. 910/3 in Surampatti village in Erode taluk, which is involved in this writ petition, was not notified as part of the said notification. Section 5-A enquiry was held on 18-6-1973 and the petitioners participated therein. On 10-3-1976, Section 6(1) declaration was made, and it was then for the first time, the land in question was included in the declaration. There being no antecedent notification made under Section. 4(1) for the said lands,

petitioners brought this infirmity to the notice of the authorities, when an enquiry was conducted under S. 9(3) on 6-7-1977. It was thereafter on 20-12-1978, Government issued an errata to the S. 4(1) notification, dated 14-3-1973, to the effect that the lands covered by S. No. 910/3 was also included. Again Section 9(2) enquiry was conducted on 29-10-1979. An objection was taken that this notification is beyond the three year period and that the lands have not been precisely described. This resulted in the State coming forward with a further errata on 27-2-1980 mentioning the extent of the land as 35.6 cents in S. No. 910/3. Again, another enquiry was proposed to be held under S. 9(2) of the Act, and since three enquiries have been so conducted, the petitioners apprehending that the authorities may dispossess them by further pursuing with the illegal action, have filled the present writ petition for the relief of a writ of mandamus to restrain the authorities from proceeding to pass an award and take possession of the lands.

4. Mr. P. Chidambaram, learned counsel for the petitioners, by referring to first proviso to S. 6(1) of the Act, which is to the following effect:-

"Provided that no declaration in respect of any particular land covered by a notification under S. 4, sub-section (1) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance 1967 shall be made after the expiry of three years from the date of such publication." contends that when certain lands have not been already notified, beyond the period of three years from the notification already made in respect of the other lands, after the publication of the S. 6 declaration, no errata should be published, so as to include a land, which was never included as part of S. 4(1) notification.

5. It is needless to state that the first errata published on 20-12-1978, was subsequent to the Section. 6 declaration and by a subsequent errata published, lands which could not have been included under Section. 6 declaration, cannot be acquired. It is the admitted case that the extent involved in this writ petition was not included in the Section 4(1) notification.

6. Not stopping with error committed in first notification and first errata, the State comes forward with a further errata on 27-2-1980. There has to be a limit on the part of the authorities in committing mistakes. Stern action should have been taken against those responsible for this, so that in future such omissions are not committed. In respect of land acquisition proceedings, having been acquainted with the procedure that should be adopted in acquiring lands during the past 85 years, it cannot be done in view of proviso to S. 6(1). By committing such errors, it is the affected citizen who undergoes the agony of land acquisition proceedings for seven long years and then to seek for remedies in Court. It is by such errors committed, the successful completion of land acquisition proceedings also gets stalled. It is claimed that Award had been passed, but is now of no benefit of the State. Taking note of the errors committed and the protracted course for seven long years the petitioners had to undergo in participating in the S. 5-A enquiry, and thereafter in three enquiries under S. 9(3) of the Act, costs is

awarded in this writ petition.

7. In the light of what has been held above, the petitioners are entitled to the relief as prayed for and hence this writ petition is allowed with costs. Advocate's fee fixed at Rs.400/-.

8. Petition Allowed.