
(1976) 11 MAD CK 0002
In the Madras High Court

K.N.E. Jaganatha Iyer

APPELLANT

Vs

State of Madras and Others

RESPONDENT

Date of Decision : 04-11-1976

Acts Referred:

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

Citation : (1978) 1 MLJ 19

Hon'ble Judges : A.D. Koshal, J

Bench : Division Bench

Judgement

A.D. Koshal, J.—The petitioner owned land bearing survey No. 1271 and having an extent of 14 cents in the village of Madakulam in

Madurai South Taluk, Madurai district. That land was acquired by the Government of Tamil Nadu for the avowed purpose of "formation of a road

in T.V.S. Nagar". The locality known as T.V.S. Nagar is a colony owned by the T.V.S. Co-operative Building Society (here in after referred to as

the Society). The notification under Sub-section (1) of Section 4 of the Land Acquisition Act (here in after referred to as the Act) was published

on the 25th of February, 1972. The petitioner filed his objections u/s 5-A of the Act after the 3rd of April, 1972, when he was served with a

notice in that connection. The enquiry into the objections was held on the 29th April, 1972 without any notice thereof having been issued either to

the Society or the concerned department of the Government. On the 28th of May, 1972, a copy of the objections filed by the petitioner was sent

to the Society which submitted its reply thereto on the 9th of June, 1972. That reply was communicated to the petitioner through a letter dated

24th of June, 1972 issued by the Revenue Divisional Officer (here in after referred to as the R.D.O.) Madurai, who was conducting the acquisition

proceedings. The petitioner received the said reply on the 28th of June, 1972 and on that date itself the R.D.O. sent his report in relation to the

acquisition to the Government. A declaration u/s 6 of the Act was published on the 27th of September, 1972. It stated that the petitioner's land

was needed "for a public purpose, to wit, for the formation of a road to T.V.S. Co-operative Building Society Ltd., Madurai.

2. The petitioner is aggrieved by the acquisition proceedings which he seeks to have quashed by the issuance of a writ of certiorari through this

petition under Article 226 of the Constitution of India.

3. The first contention raised on behalf of the petitioner is that the Society is a "Company" within the meaning assigned to that expression in Clause

(e) of Section 3 of the Act, that the acquisition was made for that company and that therefore, the procedure detailed in Sections 39 and 40 of the

Act should have been followed to the exclusion of that prescribed by Sections 6 to 37 which the R.D.O. acted upon. The provisions of Clause (e)

of Section 3 and of Sections 39 and 40 are reproduced below:

3. In this Act, unless there is something repugnant in the subject or context.

(e) the expression "Company" means a company registered under the Indian Companies Act, 1882, or under the (English) Companies Act, 1862

to 1890, or incorporated by an Act of Parliament of the United Kingdom or by an Indian law, or by Royal Charter or Letters Patent and includes

a society registered under the Societies Registration Act, 1860, and a registered society within the meaning of the Cooperative Societies Act,

1912, or any other law relating to co-operative societies for the time being in force in any State.

39. The provisions of Sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any company, unless with the previous

consent of the appropriate Government, nor unless the Company shall have executed the agreement here in after mentioned.

40. (1) such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector u/s 5-A, Sub-section

(2), or by an enquiry held as here in after provided.

(a) that the purpose of the acquisition is to obtain land for erection of dwelling houses for workmen employed by the company or for the provisions

of amenities directly connected therewith, or

(aa) that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging

itself in any industry or work which is for a public purpose; or

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.

Such officer may summon and enforce attendance of witnesses and compel the production of documents by the same means and, as far as

possible, in the same manner as is provided by the CPC in the case of a Civil Court.

Although in the counter-affidavit filed on "behalf of the State Government, it was contended that the society was not a company as defined in

Clause (e) above extracted, that stand is not seriously pressed at the hearing in view of the definition of the expression ""Company"" clearly stating

that it would include a registered society within the meaning of the Co-operative Societies Act, 1912, or any other law relating to co-operative

societies for the time being in force in any State. That the society is a society so registered is not disputed and it must therefore be held that it is a

"company" as defined in the said clause. All the same the land in dispute cannot be said to have been acquired for the society. In this connection

the provisions of Sub-section (1) of Section 5-A, of Sub-sections (1) and (3) of Section 6 and of Section 7 of the Act are illuminating and are

extracted below:

5-A. (1) Any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be needed for a public

purpose or for a company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality,

as the case may be.

6. (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s

5-A, Sub-section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the

signature of a Secretary to such Government or of some officer duly authorised to certify its orders, and different declarations may be made from

time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) u/s 5-A, Sub-section (2).

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the appropriate Government may acquire the land in manner here in after appearing.

7. Whenever any land shall have been so declared to be needed for a public purpose, or for a company, the appropriate Government, or some officer authorized by the appropriate Government in this behalf, shall direct the Collector to take order for the acquisition of the land.

These provisions leave no room for doubt that land may be acquired by the State Government for either of two purposes, namely--

(1) for a public purpose, and

(2) for a "company",

which are mutually exclusive of each other. Nor is it in view of the provisions of Section 40 of the Act true that when land is acquired for a

company, the purpose of the acquisition has to be a public purpose or something akin to a public purpose; but then the Government concerned

does not acquire it on its own, but acquires it for the company concerned and at the company's own expense. That does not however mean that if

a company has interest in the acquisition, the Government cannot acquire the land by itself, provided the purpose of the acquisition can be

described as a public purpose. It is now settled law (see the decisions in Smt. Somavanti and Others Vs. The State of Punjab and Others, ;

Indrajit C. Parekh of Ahmedabad and Another Vs. State of Gujarat and Others, and Patel Mangalbhair Nathabhai and Others Vs. State of

Gujarat, Revenue and Industries Department, Sachivalaya, Ahmedabad and Others, ; that if the Government makes even a token contribution

towards the compensation to be paid for the land, the land need not be acquired under the provisions of Sections 39 and 40 of the Act even

though the bulk of the price is paid by the interested company, so long as the purpose of the acquisition can be legitimately described as a public

purpose. In the present case the purpose of the acquisition was the construction

of a road to the T.V.S. Colony, which is said to be a very big habitation populated by members of the society which carries on the activity of building houses. In view of the general housing shortage in the country, such activity is certainly one relatable to public utility and the facility of the proposed road cannot be divorced from the concept of a public purpose. With this proposition the learned Counsel for the petitioner does not have any serious dispute. His main argument in support of the contention is that the acquisition having been made in pursuance of a demand therefore from the society and the society having paid the bulk of the price the acquisition must necessarily attract the provisions of Sections 39 and 40 of the Act. In view of the fact however that the acquisition is for a public purpose and is in part paid for by the Government the case falls squarely within the dictum of their lordships of the Supreme Court in.

Smt. Somavanti and Others Vs. The State of Punjab and Others, and Indrajit C. Parekh of Ahmedabad and Another Vs. State of Gujarat and

Others, . The contention is therefore rejected as untenable.

4. The only other contention pressed on behalf of the petitioner is that the proceedings held by the R.D.O. were void inasmuch as they were taken in contravention of the provisions of Sub-rule (b) of Rule 3 of the Rules framed under Sub-section (1) of Section 55 of the Act. That Sub-rule states:

(b) If any objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of Section 5-A, the

Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the department or company requiring the

land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company.

The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also

depute a representative to attend the enquiry.

In view of the fact that the acquisition was made by the Government for a public purpose as held above, it was incumbent on the R.D.O. to give

notice of the objections by the petitioner to the concerned department which in this case was the Housing Department. That no such notice was

given is admitted on all hands. The provisions of Sub-rule (b) being mandatory,

the absence of the notice to the concerned department would vitiate the proceedings as laid down in *State of Mysore and Others Vs. V.K. Kangan and Others*, . Faced with this situation learned Counsel for the Government contends that in the present case the land was required for a company (that is, the society) that notice was given to that company and that the directions contained in the Sub-rule were thus fully complied with. This contention, in my opinion, is wholly without substance. As stated earlier, for an acquisition to be ""for a company"" it has to be paid for entirely by the company, which is not the case here and that is why the acquisition has been upheld in rejection of the first contention raised by learned Counsel for the petitioner. If it could be spelt from the facts of this case that the land was acquired ""for a company"", the proceedings held by the R.D.O. would be liable to be quashed for the simple reason that they did not satisfy the requirements of Sections 39 and 40 of the Act. From the discussion held under the first contention raised on behalf of the petitioner it follows that the expression ""for the company"" as used in Sections 5-A, 6, 7 and 30 of the Act has a special meaning, that is, that it must be financed wholly by the company concerned and not by the Government to any extent whatever. The expression ""company requiring the land occurring in Sub-rule (b) above extracted must, in my opinion, be interpreted in the light of the meaning of the expression ""for the company"" in the Act. Thus interpreted, the Sub-rule would mean that when land is acquired by the Government but is solely paid for by the company concerned the notice of which the rule talks has to be given to the company but that when the land is acquired for a public purpose and the Government pays for it wholly or in part, albeit through a token contribution, the land cannot be said to have been acquired ""for the company"" nor can the company be said to be ""requiring the land"" in the sense in which that expression is used in Sub-rule (b) and that in such a case the notice has to go to the concerned department of the Government. No such notice having admittedly been given, the proceedings held by the R.D.O. subsequent to the presentation of the objections by the petitioner u/s 5-A of the Act must be held to be illegal and liable to be struck down.

5. It may also be stated here that the enquiry held by the R.D.O. was conducted without a prior notice even to the society. As pointed out earlier a

copy of the objections was sent to the society on the 28th of May, 1972, that is, full one month after the enquiry took place so that the provisions

of the rule must be held to have been contravened whether or not the society can be deemed to be ""requiring the land"" within the meaning of Sub-

rule (b). As it is, however, a notice had to be sent not to the society but to the concerned department as concluded by me earlier.

6. In the result, the petition succeeds and is accepted and the proceedings held by the R.D.O. subsequent to the presentation by the petitioner of

his objections u/s 5-A of the Act are quashed. It will of course be open to the R.D.O. to continue the proceedings in the light of the observations

made above and in accordance with law from the stage they had reached when the petitioner filed his objections. The parties are left to bear their

own costs.