

(2004) 11 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No. 7184 of 2000

Koppinedi and Others

APPELLANT

Vs

Union Territory of Pondicherry

RESPONDENT

Date of Decision : 23-11-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) WritLR 530

Hon'ble Judges : F.M. Ibrahim Kalifulla, J

Bench : Single Bench

Advocate : T.S. Rajagopalan for N. Krishnaveni, for the Appellant; K.K. Sashidharan, Govt. Pleader (Pondy), for the Respondent

Judgement

F.M. Ibrahim Kalifulla, J.—The challenge in this writ petition is to the land acquisition proceedings of the respondents in G.O. Ms. No. 26

Revenue Department dated 10.3.2000 issued u/s 4(1) and G.O.Ms.no.36 Revenue Department dated 6.4.2000 issued u/s 6 of the Land

Acquisition Act 1894.

2. The petitioners 1 and 2 claim to be the owners of 39 Ares and 36 Ares and 40 cents respectively in Survey No. C/1/19/6 & 19/5, said to have

been inherited from the mother-in-law and the mother respectively. Likewise, petitioners 3, 4 and 5 claim to be owners of 3 ares 71 cents in

Survey No. 22/1 and 1 acre 18 ares and 40 cents in Survey No. 22/5 by virtue of sale deed dated 12.4.1974. The 6th petitioner claims to be the

owner of 1 hectare 32 ares and 80 cents in Survey No. 22/2, 7 ares, in Survey No. 22/3, 56 Ares and 20 cents in Survey No. 22/4. The 7th

petitioner claims to be the owner of 5 ares and 60 cents in Survey No. 22/8. The above said lands are situated in Kanakalpet Village, Yanam,

Union Territory of Pondicherry.

3. By the Notification dated 10.3.2000 made u/s 4(1) of Land Acquisition Act (hereinafter called the Act), the above said lands were notified for

acquisition. Section 5-A enquiry came to be dispensed with by invoking the emergency provision available u/s 17 of the Act. Thereafter, section 6

declaration came to be made on 6.4.2000. Immediately thereafter, the petitioners have come forward with the present writ petition on 15.4.2000.

While invoking section 17 of the Act and dispensing with Section 5-A enquiry, it was held by the first respondent that the land in question were

required for a public purpose namely for the construction of drinking water tank in Kanakalpet and therefore in view of the urgency of the case, the

enquiry u/s 5-A of the Act shall not apply.

4. According to the petitioners, there was every provision available in Kanakalpet village for storage of sufficient water for the villagers and

therefore, the mere statement of the respondents in the notification dated 10.3.2000 that the emergent provisions are to be invoked, is total non-

application of mind on the part of the respondents. According to the petitioners, Yanam Region consist of seven hamlets, amongst which the

Kanakalpet village is located, that while in the Yanam City itself there is a water tank in an area of around 23 acres which is hardly 1 k.m. away

from the land sought to be acquired, there is another water tank called Dharialadippa Water Pumping scheme in an extent of 18 acres which is

within 8 Kms radius of Yanam Town and the Extension Water Tank in Kanakalpet village is situated in an area of four acres in Town Survey No.

C-5-48 in R.S. No. 36-1. The petitioners would therefore contend that irrespective of the above said situation prevailing in Kanakalpet village

itself and the surroundings of Yanam Town, the present impugned notifications for dispensing with the 5-A enquiry under the guise of invoking the

emergency provision of section 17 of Land Acquisition Act was not bonafide and it lacks application of mind.

5. A counter affidavit has been filed on behalf of the respondents wherein it is only stated that the Yanam Region which is located adjacent to the

State of Andhra Pradesh, is dependant on the main water sources available in the neighbouring State of Andhra Pradesh and therefore, in order to

meet the severe water crises during summer seasons, necessary arrangements

have to be made for the villagers of Kanakalpet to store water to cater to their needs for a period of about three months. It is also stated that the existing storage facility to meet the requirements is only for three months. It is also stated that as a welfare measure, pattas were granted to about 400 landless labourers in the village of Kanakalpet and to meet their requirements also the creation of a water tank was necessitated.

6. The learned Government Pleader also produced a copy of the relevant pages containing the construction of the present acquisition and the decision to invoke section 17(4) of the Land Acquisition Act. What is found in paragraph 19 have already been reiterated in the counter filed in the writ petition. In paragraphs 22 and 23, the provisions of section 17(4) and (1) of the Land Acquisition Act have only been extracted and I do not find any emergent situation narrated in order to invoke the said provisions for dispensing with section 5-A enquiry.

7. In this context, it would be relevant to refer to the decision of the Hon''ble Supreme Court reported in 2004 (7) Supreme 407 (Union of India and Ors v. Mukesh Hans). The Hon''ble Supreme Court while dealing with the notification of the emergency provision contained in Section 17(4) of the Land Acquisition Act, has stated the legal position as under in paragraph 31.

31.

But then that is not language of the Section which in our opinion requires the appropriate Government to further consider the need for dispensing with 5 A inquiry in spite of the existence of unforeseen emergency. This understanding of ours as to the requirement of an application of mind by the appropriate Government while dispensing with 5A inquiry does not mean that in and every case when there is an urgency contemplated u/s 17(1) and unforeseen emergency contemplated u/s 17(2) exists that by itself would not contain the need for dispensing with 5 inquiry. It is possible in a given case the urgency noticed by the appropriate Government u/s 17(1) or the unforeseen emergency u/s 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry u/s 5A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation of the 5A inquiry is inherent in the two types of urgencies contemplated

u/s 17(1) and (2) of the Act.

(underling is mine)

Again in paragraph 36, the Hon''ble Supreme Court has restated the legal position as under:

36.

We have also noticed hereinabove that an earlier attempt to acquire 40 bighas of the land for the very same purpose was allowed to be lapsed by

the authorities concerned by afflux of time which is also a relevant factor to be taken note of by the Lt. Governor when he took the decision to

dispense with the 5A inquiry but the same was not placed before him. The facts coupled with the findings of the High Court that in almost all the

notings in the file there is no reference to the need for invoking Section 17(4) indicates that the Lt. Governor was not apprised of all the necessary

and relevant facts before he took the decision in question. Therefore, in our opinion, the findings of the High Court that the decision of the Lt.

Governor to dispense with 5A inquiry suffered from the vice of non-application of mind has to be upheld. For the reasons stated above, these

appeals fail and are dismissed.

8. Therefore, mere reference to section 17(1) and 17(4) of the Land Acquisition Act by itself would not ipso facto mean that dispensation with the

enquiry under 5-A was imminent under all circumstances. As law has now developed as regards invocation of section 17(1) and 17(4) of the Act,

in a case on hand where it is contented that there are enough water storage facilities available in Kanakalpet village, to meet the requirements, the

question would be whether there would still be scope for invoking the emergency provision u/s 17(4) of the Act in order to dispense with the

enquiry u/s 5-A and thereby deprive the valuable rights of the petitioners to own their lands in question.

9. Having regard to the statement of Law found in the case cited and also the averments of the petitioners in the affidavit filed in support of the writ

petition as well as the reply affidavit, I am of the considered view that such a notification u/s 17(4) of the Act was not warranted in the facts and

circumstances of the case and I am convinced that the petitioners should have been given an opportunity to putforth their objections as against the

acquisition sought to be made pursuant to Section 4(1) Notification dated

10.3.2000. In fact, it is represented that the petition came to be filed immediately after the Section 6 declaration dated 6.4.2000 and in W.P.M.P. No. 10650 of 2000, stay of dispossession was granted which was made absolute on 8.3.2002. In the meantime, however an award is said to have been passed on 28.3.2002.

10. Having regard to my conclusion, that for inadequacy of the reasons and non application of mind on the part of respondents in issuing the notification u/s 17(1) and (4) of the Land Acquisition Act, while dispensing with Section 5-A enquiry, I am of the view that Section 6 declaration dated 6.4.2000 in G.O.Ms. No. 36 Revenue Department cannot be sustained, while the respondents can proceed further based on Section 4(1) Notification dated 10.3.2000.

11. Therefore, while setting aside that part of the impugned Notification dated 10.3.2000 dispensing with Section 5-A enquiry by invoking the powers vested with the respondents, u/s 17(1) and (4) of the Act, it is made clear that it will be open to the respondents to proceed afresh from the stage subsequent to section 4(1) Notification by issuing appropriate notice and holding an enquiry u/s 5-A and determine the same in accordance with law. It will be in order for the respondents to issue such notice for enquiry u/s 5-A and conclude the same within a period of three months after giving due opportunity to the petitioners.

12. The Writ Petition is ordered on the above terms.