

(1964) 03 MAD CK 0057

In the Madras High Court

Case No : Writ App. No's. 55 and 56 of 1963

K.R. Gangadhara Mudaliar and another

APPELLANT

Vs

The State of Madras and others

RESPONDENT

Date of Decision : 20-03-1964

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 12(2), 23, 4, 4(1), 48(1)

Citation : (1964) ILR (Mad) 273

Hon'ble Judges : Ramamurti, J;Anantanarayanan, J

Bench : Division Bench

Advocate : A. Ramachandran for M/s Row and Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

Anantanarayanan, J.—In connection with a Housing Scheme in the City of Madras, sponsored by the Madras City Improvement Trust, a quasi-State institution, which came into existence first under Madras Act XXXVII of 1950, certain properties were sought to be acquired by Government and the relevant notifications were issued under S. 4(1) of the Land Acquisition Act. One such property was R.S. 3837/1 of Mylapore, the registered holder being K.R. Gangadhara Mudaliar, the appellant in W.A. 55 of 1963. Another property, similarly notified for acquisition was R.S. 3837/5 the registered holder being C. Chockalingam, the appellant in W.A. 56 of 1963. Seeking to quash the relevant proceedings in the two cases, ending with notice of the Award under S. 12 (2) of the Act, by the issue of a writ of certiorari, and also by means of a suitable injunction restraining the Government and the Chairman of the Madras State Housing Board, the respective appellants in W.P. 113 and 701 of 1961, which were dealt with by means of a common judgment, by Veeraswami J., the learned Judge came to the conclusion that there was no case established before him interference under Art. 226 of the Constitution, and the petitions were dismissed without costs. The appeals are instituted from this judgment. As the learned

Judge, Veeraswami J., himself observed, though the respective notification under S. 4(1) and S. 6 were different, the acquisition pertained to the same Schema in a contiguous area, and most of the grounds were common for this purpose, the petitions were dealt with together. But it is now possible for us to differentiate W.A. 56 of 1963 in which the appellant is Chockalingam, since the appeal, as argued, is considerably restricted in scope, and to dispose of it separately, though within a single judgment. As far as W.A. 55 of 1963 is concerned, in which K.R. Gangadhara Mudaliar is the appellant, wider issues are involved, and the facts may have to be stated here in some little detail.

2. This appellant alleges, with reference to the land and the building thereon bearing R.S. 3837/1 that this is an extent of one cawnie and 1513 sq. ft. and that he, by a sale deed dated 1st June 1959 sold 19 grounds out of the area to a certain Sherfuddin Khan Sahib. In answer to the notice under S. 5-A, the appellant wrote a letter objecting to the acquisition, addressed to the Special Deputy Collector, which is of some importance, because the case, as developed, is different from the actual objection urged at that stage. In this letter (page 24 of the typed papers in W.A. 55 of 1963) the appellant presses that the balance of 57 grounds, of which he is the owner, after the private sale in 1959, may be excluded from acquisition and the notification might be revoked "so as to (sic) to build a bungalow for my personal use." But the grounds for interference under Art. 226, as set out in the affidavit, are different. They may be tersely stated as follows. The property is situate in a locality which has already been highly developed as a residential area, and no residential building there generally has less than 11 grounds as appurtenant to the building. The acquisition under S. 4 (1) of the Act, particularly with reference to the developments of house sites as part of the Housing Scheme, can only be of vacant land. Where it is sought to acquire a land, which already has a residential building thereon, the proceedings must be held ultra vires of the Acquisition Act, and the statement in the notification will not amount to a "public purpose" under S. 4(1) of the Act. According to the appellant, there is already a building on the site with two wells, and he has been residing there for over 20 years. The relevant notices issued by Government did not at all specify the existence of the terraced and tiled building, which is a residential house, and the two wells. After this the appellant proceeds to urge certain grounds, of what, according to him, really amounts to an unfair discrimination against him. Two other properties, one belonging to his son G. Rajagopal and another to his son Chockalingam, are not within the project of acquisition, and in the first case, the land on which the main building stands has been excepted. The acquisition proceedings also do not cover the neighbouring site with building to the west, owned by the wife of the late Sri Justice Chandrasekhara Aiyar. Again, 8 grounds and 1232 sq. ft. of land sold to Sherfuddin Khan Sahib have been excepted from the acquisition, though this was included in the original notification under S. 4 (1) and this also amounts to discrimination. The argument is that the acquisition is a colourable exercise of the power under the provisions of the Act; one instance of this is that the

amount of contribution by Government from public revenues (5 naye paise) forms only an infinitesimal part of the total compensation. We shall deal with W.A. No. 56 of 1963, upon a particular ground relating to an alleged difference in the areas specified under the respective notifications under S. 4(1) and S. 6 of the Act, which is exclusive to that appeal. The other grounds are common and they have been more particularly pressed in W.A. No. 55 of 1963. Hence, it would be appropriate to deal with them immediately.

3. In brief, Sri Ramachandran for the appellants contends that the power of Eminent Domain, which is sought to be exercised by the State in these cases under Part II of the Land Acquisition Act, cannot be validly exercised, where the "public purpose" for which the Scheme has been sanctioned has already been fulfilled in the case of the concerned individual, whose property is sought to be acquired. The further argument is that either this is no "public purpose" at all, in such a context, or it will be a colourable exercise of the power, to be rightly struck down by the Courts. No authority has been cited before us for the proposition as set forth in this form, and indeed, it can easily be shown that the consequence of the acceptance of any such generalisation might be startling. For instance, a private individual might be running a Clinic for patients suffering from Tuberculosis as a Specialist in that line. Can it be conceived that the State cannot validly acquire this property, along with other adjoining properties, for the construction of a Tuberculosis Sanatorium for the public, because the need has already been fulfilled, even if only in some small measure, by the affected individual? The same argument could apply to a private Educational Institution in the context of the acquisition of land for a wide Scheme of State Education, and many other instances could be conceived. In the present case, it has to be borne in mind that the acquisition sought to be impugned is part of a wide Housing Scheme affecting a large block of lands in this area, and we are quite unable to see, assuming that the Scheme is not a colourable exercise of power, how the existence of one or two houses in this block can suffice to frustrate the Scheme as such. It is rightly argued for the State, that in his original objections under S. 5-A the appellant did not stress the structure on his ground, but stated that he desired to build a bungalow for his use. Again it is urged that the structure is not a proper and substantial house at all, but of a relatively make-shift and temporary character. But this argument apart, so long as there is no colourable exercise of power of unfair discrimination consciously exercised, we are quite unable to see how the acquisition of sites for a Housing Scheme Project, for the public or a section thereof, becomes the less a "public purpose" because 2 or 3 buildings may exist on the area sought to be acquired. In *Babu Barkya Thakur Vs. The State of Bombay and Others*, the Supreme Court observed:

It will thus be noticed that the expression public purpose has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited.

4. In *Natesa Asari v. State of Madras* (1963) 2 M.L.J. 684=66 L.W. 999 it was

clearly enunciated by Rajamannar, C.J., and Venkatarama Aiyar, J. that where there was a "public purpose" the powers of the Government to acquire was not excluded, because the acquisition was for the benefit of a company. In *Somawanti v. State of Punjab* AIR 1963 S.C. 1510 the Supreme Court observed as follows:

"Public purpose" as explained by this Court in *Babu Barkya Thakur Vs. The State of Bombay and Others*, means a purpose which is beneficial to the community. But whether a particular purpose is beneficial or is likely to be beneficial to the community or not is a matter primarily for the satisfaction of the State Government.....It was vehemently argued before us that manufacture of refrigeration equipment cannot be regarded as beneficial to the community in the real sense of the word, and that such equipment will at the most enable articles of luxury to be produced. But the State Government has taken the view that the manufacture of these articles is for the benefit of the community. No materials have been placed before us from which we could infer that the view of the Government is perverse, or that its action based on it constituted a fraud on its power to acquire land.....

5. We are, therefore, clearly of the view that this Housing Scheme Project is a "public purpose" and that the acquisition of lands in this area for implementing this Project is perfectly valid, apart, of course, from any question of misuse of power for some ulterior purpose, which would amount to a fraud or colourable exercise of power. Nor can we conceive that the objective of the "public purpose" disappears, merely because the appellant already has some house property on this land, with regard to which he is paying municipal tax. As was stressed during arguments, the appellant may very well have some priority with reference to an application for house-site in this very land or area. That was definitely conceded on behalf of the Government and the State Housing Board, and, at one stage of the arguments, the acquiring authorities were willing to exclude altogether from the scope of the acquisition the actual plinth area of the house structure and some appurtenant extent considered reasonable. We are referring to this fact, not as relevant for the determination of the respective rights of parties, and indeed, the appellant had every right to decline to accept this offer if he thought that he was justly entitled to the total exclusion of this property from acquisition, but in order to show that, as a matter of common sense and equity, there is something to be said for the view that, since the appellant already has a house in this area, he might be entitled to preferential treatment by virtue of this fact. He is a member of the class benefited, or sought to be benefited, by the Housing Scheme and the fact that he has already a house on his property, cannot be merely brushed aside. But we are quite unable to see that it is a legal and valid ground for striking down the proceedings themselves. As we have earlier stressed, the very recognition of any such principle, for which we have been shown no authority, may altogether defeat the exercise of the power of Eminent Domain for a demonstrable "public purpose".

6. This is really the crux of the argument. The other arguments are subsidiary in character, and may be briefly dealt with. We are fully satisfied that there is no question of lack of bona fides in this case on the part of the authorities, nor is there any question of any deliberate discrimination favourable to others, and unfavourable to the appellant, on grounds which are irrelevant or improper. The strongest argument, on this aspect, relates to the withdrawal by the Government from acquisition under S. 48(1) of the Act, with regard to the property sold to Sherfuddin Khan Sahib. It is alleged that this property was being used for a petrol supply depot, and not for a house. But we have the counter-affidavit on behalf of the Government, in clear terms, that certain properties were excluded because of the state of those properties and the exigencies of the layout, and not with any deliberate purpose of favouring the concerned person. After all, as one of us pointed out during the course of the arguments, the authorities themselves will be interested in excluding buildings, structures etc., as far as possible from the layout for the Housing Scheme. The simple reason is that all such buildings and structures will involve special compensation, which will thereby increase the cost of acquisition and thus bear heavily on the lower income or middle-class group for whose benefit the Scheme itself was formulated. Again even at a late stage, the authority can withdraw from acquisition under S. 48 of the Act, if they find that the cost of compensation for buildings, structures or house, will inflate the price per ground, which the allottee under the Scheme has to pay to a disproportionate extent. Hence, we are satisfied that there has been no unfair discrimination, that such a Scheme based on a layout may necessarily have to exclude some properties and include others, and that, unless this Court feels that some improper grounds have influenced any such decision, the acquisition cannot at least be struck down as amounting to a fraud of the powers of "Eminent Domain."

7. Learned Counsel (Sri Ramachandran) on this aspect has cited and stressed the dicta of the Supreme Court in *S. Pratap Singh Vs. The State of Punjab*, . The following observations of the Supreme Court were particularly relied on:

In legal parlance it would be a case of a fraud on a power, though no corrupt motive or bargain is imputed. In this sense, if it could be shown that an authority exercising a power has taken into account-it may even be bona fide and with the best of intentions as a relevant factor something which it could not properly take into account, in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad.

Again,

The nature of the power thus discloses its purpose. In that context, the use of that power for achieving an alien purpose.....would be mala fide and a colourable exercise of that power and would therefore be struck down by the Courts.

8. But the point here precisely is that there is no colourable exercise of power, for

the simple reason that there is nothing to show the intrusion of any ulterior object; nor can it be said that irrelevant factors have been taken into account, or that the acquisition is not for a "public purpose". The observations of Denning L.J., in *R. v. Minister of Agriculture and Fisheries* (1955) 2 All E.R. 123 at 136 were stressed. The decision related to a proceeding under the U.K. Agriculture Act, 1947, under which an order of dispossession was made with regard to a farm and house, and Denning, L.J., observed:

All I say is that, if an English farmer is to be turned out of his farm, which he and his family have worked for generations, it should not be done except with the full authority of Parliament and in strict accordance with all the safeguards and provisions laid down by Parliament.

9. But, in the present case, we are unable to see that, so far, any thing has occurred to which objection can be reasonably taken. The proceedings of acquisition are valid, and the appellant may not merely be entitled to compensation for his structure on the land, but also to priority of assignment of house-site if he cares to apply. We do not think that this English decision has really any bearing upon the instant case.

10. In *Smt. Somavanti and Others Vs. The State of Punjab and Others*, their Lordships of the Supreme Court referred to *Senga Naicken v. Secretary of State* 50 Mad. 308=25 L.W. 34 and pointed out that, while a token contribution by the State towards the costs of acquisition may not amount to evidence that the exercise of power is colourable, that would depend upon the facts of the individual case and that a purely nominal contribution may, in particular circumstances, indicate that the action of the State was a colourable exercise of power. There are two answers to this objection. Firstly, there is absolutely nothing to indicate that the token contribution by the State from public revenues, in this case, points to any colourable exercise of power. On the contrary, the organization for whose benefit the Scheme is being implemented is itself a quasi-Government Organisation and a Statutory Body, which came into existence in the context of housing shortage in urban areas. The second and equally significant answer is, that the City Improvement Trust is not merely a quasi-Government Organisation, but has also been created as a "local authority" under the relevant enactment (Schedule to City Improvement Trust Act XXXVII of 1950- para (1) on a par with Municipalities and Corporations). This comes under the proviso to S. 6 (1) of the Act. The ground of objection that the token contribution evidences a colourable exercise of power by Government, is not valid.

11. We shall now pass on to the restricted ground which is exclusive, upon the facts, to W.A. No. 56 of 1963, where the appellant is Chockalingam the son of the appellant in the former appeal.

12. The ground, briefly stated, is as follows. Under S. 4 (1) notification, after a reference to the property (S. No. 3837/5), the authorities stated that an extent of 23 grounds out of 33 grounds was sought to be acquired. The appellant filed

objections (see page 11 of the typed papers in W.A. No. 56 of 1963) under S. 5-A in which he claims that the unsold portion left with him was 16 grounds, whereon he had constructed a bungalow and intended to construct appurtenant quarters. Hence, the property ought not to be acquired. Ultimately, from the stage of the notification under S. 6 onwards, nearly 28 grounds were acquired, which is an excess of about five grounds over the area noted in S. 4(1) notification. The learned Judge (Veeraswami, J.) observed that this objection was not material, since the entire land possessed by the appellant in this survey number was only 16⁷ grounds less than what was specified in S. 4 (1) notification. But the point is now urged that the area specified in the notification under S. 4 (1) cannot be subsequently exceeded. This has deprived the appellant of his right to object to the acquisition of an enlarged extent, under S. 5-A of the Act, with regard to the additional area, and further, the valuation of the excess land under S. 23 cannot be a valuation as on the date of S. 4 (1) notification. That would work hardship to the appellant.

13. We have very carefully examined this argument, in the light of the authorities available, and, in our view, it is not substantial. A study of the language of S. 4 (1) and of S. 5-A would indicate an interesting comparison. S. 4 (1) speaks of the appropriate Government considering "that land in any locality is needed or is likely to be needed for any public purpose." S. 5-A states that any person interested in any land which has been notified under S. 4, Sub-S. (1) may object to the acquisition "of the land or of any land in the locality, as the case may be." Hence, there are two contingencies possible with regard to the objections to acquisition. They may relate to the land which is sought to be acquired under S. 4 (1), or they may generally relate to the acquisition of "any land in the locality". Again, if we contrast the language of S. 4 (1) with S. 6 (2), it will at once be clear that the declaration under S. 6 (2) must not merely give the particulars of the land but also "its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected." The point here is, what is the purpose of the notification under S. 4(1) of the Act, and is it incumbent on the authorities to specify the area or approximate area, of the land in that notification itself ? If it is so incumbent, can the authorities subsequently proceed to acquire a wider area, without a separate notification under S. 4 (1) for the additional extent, and a separate proceeding of acquisition?

14. The point is covered by authority, and it is very clear that it is not at all essential that the area of the land sought to be acquired, whether approximate or precise, should be an essential component of the S. 4 (1) notification, in such manner as to inhibit the acquiring authorities from subsequently proceeding to acquire a large area in that acquisition itself. The only decision on this aspect which at all supports the argument of the learned Counsel for the appellant is *Iftikhar Ahmed Vs. State of Madhya Pradesh and Others*, . That was a case in which all that the notification under S. 4(1) stated was that an area, six acres in Bhopal City, was sought to be acquired, and that applied to the S. 6 notification as well. The learned Judges of the Bench held that the notifications were vague,

as they did not show the particular land to be acquired and they were quashed for the omission to specify such particulars as would put a party affected on notice that the acquisition of his property was contemplated. We do not see how this decision at all helps the appellant, on the facts of the present case. Indeed, it will be difficult to dispute the argument that the purpose of S. 4 (1) notification can only be fulfilled, if the notification sufficiently particularises the property sought to be acquired, so that the affected party could be enabled to advance objections under S. 5-A of the Act. In the above decision the learned Judges observed that the locality at least must be given, and that "the locality should be reasonably a small one to show the whereabouts of the land." The learned Advocate General for the State does not dispute that the purpose of S. 4 (1) notification would be altogether frustrated if, for instance, the Government declared an intention to acquire 20 acres of land "in the City of Madras." In the present case, not merely was the locality indicated, but also the very survey number in which the appellant owned only a partial extent. Without the process of peg marking the area, according to the layout plan, and sub-dividing the survey number, even the acquiring authority might not have been able, at the stage of S. 4(1) notification, to state the precise or even approximately precise area, or how much of it would include the land held by the appellant in particular, as distinguished from other co-owners as alienees in possession of the same property. Two other decisions cited by the learned Counsel for the appellant appear to have no direct relevance or significance on the instant facts. Thus *Gulabchand Gupta Vs. The Hitkarini Sabha and Others*, is merely authority for the view that where there is a notification under S. 6, the efficacy of the notification under S. 4 comes to an end. Any proposal for further acquisition in the same locality, particularly after a lapse of 11 years, as in that case, would have to be by a fresh notification under S. 4(1) and by separate proceedings *Corporation of Calcutta Vs. Omeda Khatun Bewa*, is upon the same principle that, after the S. 6 notification, there can be no piecemeal acquisition without separate proceedings. On the contrary, the purpose of S. 4 (1) notification itself, and its ambit, were both elucidated by the Supreme Court in *Babu Barkya Thakur Vs. The State of Bombay and Others*, . To quote:

The purpose of the notification under S. 4 is to carry on a preliminary investigation with a view to finding out, after necessary survey and taking of levels and, if necessary digging or boring into the subsoil, whether the land was adapted for the purpose for which it was sought to be acquired. It is only under S. 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a company. What was a mere proposal under S. 4 becomes the subject-matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification under S. 4 is fatal to the validity of the proceedings.....

15. In *T.D. Corporation Ltd. v. State of Assam* AIR 1961 Assam 133 the very same dicta are emphasised, in the context of an alleged vagueness of the S. 4

(1) notification, Hence, we are definitely of the view that the fact that the subsequent declaration under S. 6 fixed the area, inclusive of some more ground in the same survey number, the property having been described as situate in a particular locality, cannot invalidate the prior proceedings, or render it essential that another notification under S. 4(1) should be issued for the alleged additional area.

16. The question of the date for the valuation of the property does not really affect the issue, for that will be in accordance with law; it may be that, depending upon the price fluctuations, the date of S. 4 (1) notification as the base-line for valuation may benefit or adversely affect a party, even if, ultimately, an additional extent is actually included in the area notified under S. 6. The appeals thus seem to be without merits upon any of the substantial grounds urged before us. There may be certain equitable considerations in favour of the writ petitioners (appellants) because of the fact that they have structures in the lands sought to be acquired. When it becomes a question of recognising any priority in their favour with regard to the assignment of house-sites for house building purposes, in this Scheme itself, that is a matter to be borne in mind by the relevant authorities in implementing the Scheme. The appeals fail and are dismissed. The parties will bear their own costs.