
(1967) 06 MAD CK 0019
In the Madras High Court

K.V. Krishna Iyer

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 20-06-1967

Acts Referred:

Land Acquisition Act, 1894 — Section 6(1)

Citation : (1967) 80 LW 544 : (1967) 2 MLJ 422

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—This petition is filed under Article 226 of the Constitution for the issue of a writ of certiorari, quashing the notification of the 1st respondent, State of Madras, represented by the Secretary to Government Home Department, in G.O.Rt. No. 4709, Home, dated 5th December, 1963, u/s 6(1) of the Land Acquisition Act. The acquisition proceedings were initiated by the issue, on 1st July, 1959, of a notification u/s 4(1) of the Act that several items of land, including Survey No. 92/1 measuring 2.10 acres of the petitioner, were required for a public purpose, namely, for providing house-sites to the Harijans of Alagapuram village, Salem District. The details of the petitioner's main grievance in regard to the abovesaid land acquisition proceedings, as stated by the learned Counsel before me, Sri V. Vedantachariar, at the time of the hearing of the petition are as under.

2. Though the Section 4(1) notification was issued on 1st July, 1959, the subsequent proceedings dragged on through an unconscionably long time, with the result that the Section 6(1) declaration was published in the Fort St. George Gazette only on 1st January, 1964, after a period of nearly four years. Under the statute the petitioner for the purpose of claiming compensation is restricted to the market value of the land as on the date of the Section 4(1) notification. According to the petitioner, the land is in the centre of the colonies of Swarnapuri and Fair lands, abutting the Yercaud to Sooramangalam road, and it was also represented before me at the time of the hearing of the Writ Petition, that the

locality is about one mile from Salem Town. It is urged that the period 1959 to 1964 was a period of rapidly rising land values especially of lands in the outskirts of towns and which are valuable as house sites. As a result of the long delay, the compensation which the petitioner would be awarded after 1964 on dispossession would have no substantial relation to the value of the land prevailing at or about the period of his dispossession, but would be related to a long anterior period, 1959. It was urged that though the statute does not prescribe any time-limit for completing the acquisition proceedings (unlike for example Section 48-A) of the Land Acquisition Act which prescribes a time-limit of two years for passing the award in the case of acquisition proceedings initiated by the City Improvement Board in the City of Madras), it is permissible to the Court in particular cases, where the dilatory nature of the proceedings has acted so oppressively on the subject, as to make the compensation paid to him not really compensation at all, to grant the appropriate relief by quashing the proceedings and directing the initiation of fresh proceedings u/s 4(1) of the Land Acquisition Act. For this purpose, learned Counsel for the petitioner has relied upon the decision of the Supreme Court in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, . I shall refer to the decision a little later, with some detail while dealing with this part of the argument.

3. Along with the declaration u/s 6(1) the Respondent Government also added a declaration, empowering the acquiring department to take possession of the land u/s 17(2) of the Act, immediately after the publication of the notice mentioned in Section 9(1) of the Act. It is urged that such a procedure for taking possession is not authorised under the statute. The ordinary rule is that possession shall be taken after the passing of the award and the payment or deposit of the compensation amount as the case may be. The statute permits a deviation from the procedure u/s 17(2) in a case where the Collector is of the opinion that immediate possession is necessary in certain specified cases. In such an event he could take possession immediately after the publication of the notice mentioned in Section 17(1) of the Act and with the previous sanction of the appropriate Government. But it is not disputed by the other side in this case that there was no notification u/s 17(1) of the Act declaring this to be a case of urgency. In fact, the record shows that Section 5-A enquiry was held more than once in this case and that therefore the urgency clause in Section 17(1) was not applied. It was therefore clearly inappropriate in this case to apply the provision for immediate taking of possession relying upon Section 17(2) of the Act. It is also urged that the actual declaration u/s 6(1) shows that the discretion to take immediate possession was exercised not by the Collector, but by the Governor of Madras, an authority different from the one mentioned in the statute. As a further deviation from the statute, it was urged that the declaration mentions that possession could be taken immediately after the publication of the notice mentioned in Section 9(1) of the Act. The statute nowhere affords authority to take immediate possession after the publication of the notice mentioned in Section 9(1) of the Act. The learned Counsel for the petitioner contends, and in

my opinion rightly, that this aspect of the proceedings relating to the taking of immediate possession was clearly irregular and illegal.

4. It was urged by the learned Counsel that though the petitioner's land was included along with other items in the Section 4(1) notification, at the earlier stages the authorities were not keen on acquiring the petitioner's land. In fact, the local authorities recommended the acquisition of the other lands alone leaving out the petitioner's land. This fact is made also clear in the counter-affidavit filed by the Department. It would appear from this counter-affidavit, that from a motion initiated by the Harijans themselves sometime in 1963 by approaching the Government, it was decided in January, 1963, that the petitioner's land also would be acquired to meet the requirement of the Harijans. After the decision was taken, fresh notices u/s 5-A were issued and an enquiry was conducted on 25th March, 1963, when the petitioner filed his objections. The objections were over-ruled and it was decided to proceed with the acquisition. Learned Counsel for the petitioner refers in this context to the actual notice u/s 5-A which was served on the petitioner before the aforesaid enquiry. According to the learned Counsel, this notice was issued on 6th March, 1963, and it gave 15 days to the petitioner for filing his objections. It was served on him on 8th March, 1963. He filed his objections on 22nd March, 1963. An enquiry was held on 25th March, 1963. It was urged that in addition to the statute, the rules framed u/s 55(1), of the Land Acquisition Act contain certain valuable directions in this regard. They include a provision in Rule 3(b) that after objections are received from a person interested in the land, the Collector is required to fix a date for hearing the objections and give notice of it to the objector as well as to the department or company requiring the land. In the present case, the land was required by the Harijan Welfare Department for providing house-sites to Harijans. To comply with the requirement of the above rule, it was necessary to fix a date, after the receipt of objections, for the hearing and give notice of that date both to the objector as well as to the above department who was interested in the acquisition proceedings. It was urged by the learned Counsel that this obligation to give notice to the Department serves an important purpose both in the interests of the owner of the land as well as of the Department, because if the department is made aware of the objections of the owner of the land, it might consider the alternative of selecting a different land more suited for its purpose, and which may also meet the objections of the owner. This aspect of the rules has been referred to by a Bench of the Kerala High Court while considering the Madras rules, in the decision reported in *Lonappan Vs. Sub-Collector, Palghat*, and that decision was also quoted before me.

5. Viewing the objections catalogued above to the acquisition proceedings, I am of the opinion that in regard to the first objection mentioned above, though the statute does not prescribe any time-limit for issuing the Section 6(1) declaration after the publication of the Section 4(1) notification or for passing an award at a subsequent stage, that circumstances does not deprive the aggrieved party of a remedy, where undue prolongation of the proceedings has operated in an

oppressive manner on the owner of the land especially in circumstances where land values have increased by leaps and bounds in the intervening time. The Supreme Court, in the decision referred to earlier in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others*, , has made the following observation, no doubt in a somewhat different context:

...as the compensation has to be determined with reference to the date of the notification u/s 4(1) the person whose land is to be acquired may stand to lose if there is a great delay between the notification u/s 4(1) and the notification u/s 6 in case prices have risen in the meantime. This delay is likely to be greater if successive notifications u/s 6 can. be issued with respect to land comprised in the notification u/s 4 with greater consequential loss to the person whose land is being acquired if prices have risen in the meantime.

The Supreme Court was dealing with a case where successive notifications u/s 6 were issued. Referring to a notification u/s 4, they observed that the first subsequent notification u/s 6(2) would exhaust the power conferred by the statute for that purpose, and successive notifications would be illegal. That apart, the decision of the Supreme Court, is valuable for the above cited observations; they show that a long delay between Section 4(1) notification and the Section 6 notification, in situations where prices have increased very greatly in the interval may be considered as a ground where the proceedings have acted oppressively on the owner of the land as to cause him substantial loss in compensation.

6. A reference to the counter-affidavit of the department shows that the delay in this case was not caused by the petitioner. The local authorities in the first stage were inclined to leave out his land altogether. As mentioned already, it was only by a belated move on the part of the Harijans in insisting upon the petitioner's land also being included as per the original Section 4(1) notification, that led the Collector to hold an enquiry u/s 5-A afresh in the case of the petitioner. As already mentioned, in that enquiry the date for filing objections and the date for hearing were prescribed in a single notice. That notice also did not take into account the requirement of the rules that the department also should be informed of the enquiry so that they might be in a position to meet any objection raised by the petitioner relating to the acquisition.

7. Taking all the aforesaid circumstances into account, I am of the opinion that this is a case where the requirement of law as well as the requirement of paying adequate compensation can be adequately met only if the proceedings taken hitherto are quashed and a fresh notification issued u/s 4(1) and proceedings taken in regard to the petitioner's land. Accordingly the petition is allowed and the impugned notification is quashed. The petitioner will get the costs of this petitions.