

(2002) 06 MAD CK 0125

In the Madras High Court

Case No : Writ Petition No. 6530 of 1994

M. Alifullah and AJP. Ibrahim

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 03-06-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 6

Citation : (2002) 06 MAD CK 0125

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; P.P. Shanmugha Sundaram, G.A., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Rajan, J.—This writ petition is for issue of writ of certiorari to call for records relating to the G.O. (3D) No.75, Adi-Dravidar and Tribal Welfare, dated 1.2.1994 issued u/s 6 of the Land Acquisition Act and quash the same.

2. The petitioners purchased the land on 12.1.1989 in Survey No.121/5 with an extent of 4 acres and 40 cents at Sakkarai Kottai village. The petitioners spent huge amount for putting up barbed fence and for irrigation and they also dug a well. They also planted 100 coconut trees and other trees. Section 4(1) of Notification was issued on 7.1.1993 under the Land Acquisition Act for the purpose of providing house sites to Adi Dravidars of Sakkarai Kottai; Enquiry u/s 5A was conducted and objections were heard on 8.4.1993. The land purchased by the petitioners at Bharati Nagar was already acquired by the first respondent. For the purpose of providing house sites, alternative sites are available. In view of the fact that there are number of coconut trees in the land proposed for acquisition, acquisition proceedings are illegal. Representation was made on 29.6.1993 requesting to find alternative site for the production of house sites for Adi Dravidars. Further, it is stated that the petitioners have no other land except the land that is sought to be acquired. Some other property of the petitioners

was already acquired and they do not have any other income. The first respondent directed the second respondent to submit a report after enquiry on the representation sent by the petitioners. The second respondent by letter dated 30.12.1993 submitted a report after inspection and it was in favour of the petitioners. Without considering the representation, the second respondent passed the impugned order on 1.2.1994.

3. In the counter, it is stated that Section 4(1) Notification was issued on 7.1.1993. All the formalities have been complied with. Enquiry u/s 5A was conducted on 8.4.1993. During the enquiry, the petitioners did not appear even though they received notice. They raised objections stating that they purchased these lands to raise coconut plantations and spent huge amounts and the then Special Tahsildar considered their objections and found them untrue. Declaration u/s 6 was issued on 1.2.1994. Declaration under Section-7 was approved by the Government on 9.3.1994. The award enquiry was conducted on 28.3.1994 after observing all the formalities. The petitioners did not appear for enquiry though notices were received by them. Since the petitioners did not come forward to receive compensation, it was kept in revenue deposit in their favour in the Sub-Treasury, Ramanathapuram. The possession of the acquired lands were taken on 29.3.1994. Changes were carried out in the village and taluk accounts. Lay Out plans were approved and house site pattas were issued to Adi Dravidars of Anna Nagar of Sakkarai-kottai village on 31.3.1994. It is not correct to say that they spent huge amount for fencing. They have dugged the well after approval of Section 4(1) notification, only to avoid land acquisition proposals. It is also stated that in the land, there are 41 palmyrah trees aged about 3 to 4 months. Young coconut trees aged about 4 to 6 months are available. These young trees were planted only after the approval of Section 4(1) Notification. Petitioners have sufficient lands in other revenue villages. They are also running a bakery by name "Master Bakery". They also have the business, M/s. J.V. Agency in Ramanathapuram town and they have sufficient income in the business. The report by the District Revenue Officer, Ramanathapuram was not in favour of the petitioners. The writ petitioner having known that the lands are under land acquisition, in order to avoid land acquisition proceedings, planted coconut trees. Possession has been taken already after 29.3.1994, after passing the award on 28.3.1994.

4. In the reply-affidavit, the petitioners denied the averments made in the counter affidavit. It is not correct to say that the possession of the lands were taken by the respondents. The possession is still with the petitioners and they have coconut plantations and water to these plants are supplied from a well; charges for consumption of electricity were paid to Tamilnadu Electricity Board, even in June, 2001. The Tamil Nadu Electricity Board called upon them to pay additional earnest deposit. The house of the petitioners is also assessed to property tax. It is not correct to say that the lay-out plan has been prepared and pattas had already been granted to various persons. Unless physical possession is taken, they cannot give pattas to the beneficiaries. As regards the award

proceedings conducted on 28.3.1995, the petitioners were not served with notice. Further, on the same date, the award was also passed. u/s 11 of the Land Acquisition Act where the approval of the Government is a pre-condition, they have not taken the prior approval of the Government.

5. During the pendency of the writ petition, when the petitioners moved for stay of acquisition proceedings, in order to verify with whom the possession was, this Court appointed an Advocate-Commissioner to inspect and to file a report. The Advocate-Commissioner has also inspected and filed his report. He has also taken photographs and they have also been filed along with the report. Along with the report, the Advocate Commissioner has also given a sketch with respect to S.No.121/5. In the report, he has stated that the land in S.No.121/5 measuring 4 acres and 4 cents was located with the help of the Deputy Surveyor and other officials. In the green marked portion, in about 1 acre of land, there are 96 coconut trees and 36 palmyrah trees. There is a small well with a diameter of 4 feet with 1.5 H.P. electric motor, the trees are irrigated by the petitioners only from this well. The entire land in S.No.121/5 is fenced by palmyrah tree stems. There is an asbestos roofing measuring an extent of 13.6 x 6.6. metres and another tiled shed 10 x 14.2 metres. The coconut trees, palmyrah trees, two sheds and well along with the motor are in possession of the petitioners. A family consisting of husband and wife with a child were residing in the shed and they informed that they were the servants of the petitioners looking after the coconut trees.

6. The learned counsel for the petitioners submitted that the publication of the declaration u/s 6, was not made in the leading newspapers; publication made in "Kumari Murasu" and other small newspapers, is not the valid publication. In so far as this aspect is concerned, the Division Bench of this Court recently held, to be a valid paper publication, such a publication should have been made in a paper which has wide circulation in that area. But that decision is applicable only prospectively. Therefore, inasmuch as this present publication is concerned, merely because it has been published in the newspapers which has no wide circulation, it does not make the publication invalid.

7. Notification u/s 4(1) was issued on 7.1.1993; it was gazetted on 27.1.1993 and locality publication was made on 1.3.1993. Declaration u/s 6 was passed on 7.2.1994, within one year; it was published in the newspapers on 11.2.1994; locality publication was made on 24.2.1994. That is within one year from Section 4(1) notification, Declaration u/s 6 has been made. Thereafter, award proceedings have been initiated and after conducting enquiry, the award has been passed on 28.3.1994. The possession of the land was taken on 29.3.1994. Therefore, within two years from the date of declaration, the award has also been passed. Therefore, there is no procedural infirmity.

8. Learned counsel for the petitioner submitted that before passing of the award, the Collector should have obtained approval from the Government. In this case, no such approval was obtained and therefore, the Award is not legally

sustainable. In support of his contention, the counsel relied upon a judgment of the Supreme Court in State of U.P. and Others Vs. Rajiv Gupta and Another, , where this Court has held,

" Under first proviso to Section 11, no award can be made by the Collector without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf. Any award made in violation thereof, renders the award non est and void as it hinges upon the jurisdiction of the Land Acquisition Collector or Officer. "

Counsel for the petitioner also submitted that G.O.2003, dated 13.12.1984 is also to the effect that award should be passed only after getting approval by the Government. As per the G.O., the Commissioner of Land Administration has to approve every award. But, in this case, neither the approval of the Government, nor the approval of the Commissioner of Land Administration has been obtained and therefore, the entire proceedings are vitiated. He also relied upon an unreported judgement in W.P.18672 of 1992, dated 17.4.2000, where this Court has held that as per the decision of the Division Bench of this Court in W.A.1808 of 1999 that a prior approval is absolutely necessary before the award is passed and non-obtaining of prior approval in the land acquisition proceedings will have to go.

9. Learned Government Advocate rightly submitted that as per G.O.2003, dated 13.12.1984, only in cases where the amount of compensation exceeds Rs.10 lakhs, it requires prior approval by the Commissioner of Land Administration. In all cases, where the award in which the total compensation does not exceed Rs.10 lakhs, it is the District Collector who has got the power to approve the authority. But, in this case, the District Collector himself was the authority to award the compensation and the total compensation being less than Rs.10 lakhs, it does not require approval of the Commissioner; of Land Administration or that of the Government. There is no even any averment that the compensation amount is more than Rs.10 lakhs. Therefore, it cannot be presumed that the compensation amount was more than Rs.10 lakhs and hence, it requires the approval of the Commissioner of Land Administration. When the authorities take any action under law, there is a presumption that they act only in accordance with law and the rules and of course, it is liable to be rebutted. But, unless it is rebutted, it has to be presumed that the authorities have acted in accordance with law and followed the procedures as laid down by the Act and the rules. Therefore, inasmuch as the award has been passed by the Collector and no approval had been obtained by the Collector from the Commissioner of Land Administration, and such an award could be followed only in cases where the total compensation is Rs.10 lakhs, it has to be presumed, it is less than Rs. 10 lakhs. The counsel for the petitioners even during the argument did not state that the compensation was more than Rs.10 lakhs. Therefore, this Court can safely conclude that the total compensation is less than Rs.10 lakhs and since the award was passed by the Collector, no prior approval is necessary either from

the Government or from the Commissioner of Land Administration. Therefore, this argument of the counsel for the petitioners has no force and hence, it is rejected.

10. In the counter filed on behalf of the respondent, it has been categorically stated that at the time when Section 4(1) Notification was issued, there were no coconut trees in the land and they were planted subsequent to the issuance of Section 4(1) Notification and just before 4 or 6 months, counter has been filed during the month of March, 1995. Therefore, as per the counter, the trees should have been planted some time in October and November, 1994. Even the photographs taken by the Advocate Commissioner filed along with the report show that all these coconut trees found in the photographs should have been planted only 5 to 6 years prior to the taking of the photographs. The Commissioner visited the place on 22.9.2001. Therefore, the statement made in the counter-affidavit that the coconut trees were planted only subsequent to the notification appears to be correct. There is not even a specific denial in the reply-affidavit that they were planted prior to Section 4(1) notification. It is stated in the reply-affidavit that,

" On one hand, it is the categoric stand of the deponent that there are no coconut plantations in the property and that the same are untrue. However, in the very next page, the deponent states that the trees have been planted after the notification published u/s 4(1) of the Act. These contradictions would itself reveal that the petitioners herein have been utilizing the property for coconut thope or coconut grove. "

No date or month or year of the planting of the coconut trees has been given by the petitioners in their reply-affidavit. Taking note of this sort of evasive affidavit devoid of important particulars, along with the specific averments made in the counter-affidavit by the authorities that the coconut trees were planted only subsequent to Section 4(1) Notification, just 4 or 6 months before the date of filing of the counter-affidavit, it is clear that the contents in the counter-affidavit are true.

11. There is yet another fact that disproves the case of the petitioner. The case of the petitioners is that they have dug a well for irrigating the coconut trees. The Advocate-Commissioner in his report has stated that there is a small well with a dia-metre of 4" and it is connected with 1.5 H.P. motor. Further electricity consumption charges for these electric meters is being paid by the petitioners. In Tamil Nadu, electricity is supplied freely to agriculturists. Hence, electric motors used for agricultural purposes including coconut thope are exempted from payment of any charges for consumption of electricity. When that be so, the very fact that consumption charges are paid by the petitioners proved that it was not an agricultural motor connection. Further, the capacity of the motor is only 1.5 H.P. which is used only for domestic purposes and it is not even three phase connection as seen from the photographs. Therefore, the averment of the petitioners that it was for irrigating coconut trees is not correct. All these appear

to have been set up for the purpose of strengthening the case of the petitioner in order to avoid land acquisition proceedings.

12. From the foregoing discussion, it is clear that the coconut seedlings were planted only subsequent to the Section 4(1) Notification. It is only an attempt to avoid land acquisition proceedings.

13. These arguments of the counsel for the petitioner have been considered only because this Court had appointed an advocate-commissioner to find out whether possession had been taken by the authorities.

14. These arguments are extraneous for the purpose of disposal of this writ petition. The prayer in the writ petition is to quash the declaration, dated 1.2.1994, "issued u/s 6" of the Land Acquisition Act. No other argument except what have been discussed above had been advanced. That is no argument was advanced against the declaration made u/s 6. In view of the fact that all the formalities have been complied with, before issuing the declaration u/s 6 of the Land Acquisition Act, the prayer in the writ petition cannot be granted. Hence, the writ petition is dismissed.