
(1992) 04 MAD CK 0071
In the Madras High Court

M. Rajagopal and Others

APPELLANT

Vs

The Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 29-04-1992

Acts Referred:

Forest Act, 1927 — Section 4A
Land Acquisition Act, 1894 — Section 4(1)

Citation : (1992) 2 MLJ 404

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Division Bench

Judgement

K.S. Bakthavatsalam, J.—In all these petitions, the petitioners challenge the acquisition proceedings initiated under the Land Acquisition Act for the construction of Additional buildings for Coimbatore Regulated Marketing Committee.

2. The Government passed G.O.Ms. No. 1665, Agricultural Department, dated 14.10.1988 and issued the draft notification u/s 4(1) of the Land Acquisition Act, hereinafter referred to as the Act and it was published in the Gazette on 2.11.1988. The paper publication in the local dailies was on 27.10.1988 which was prior to Gazette publication. As enquiry under Sec.5-A of the Act was held and the petitioners objected to the acquisition proceedings stating that they have purchased the lands for construction of houses and the Land Acquisition Officer sent a report to the Government recommending exclusion of the lands belonging to the petitioners and certain others to an extent of 1.10 acres in Survey. Field No. 55.

3. However, the Government after calling for a report from the Special Commissioner overruled the objections and decided to proceed with the acquisition and issued a declaration u/s 6 of the Act on 11.11.1989 and it was published in the gazette on the same date. Aggrieved by the same, the petitioners are before me. 3. Notice of motion has been ordered by S. Ramalingam, J., on 8.8.1990. Mr. Meenakshisundaram, learned Government

Advocate appears for the State. Several contentions have been raised in the affidavit filed in support of the writ petitions. Mr. K. Govindarajan, learned Counsel appearing for the petitioner mainly contends that the provisions of Section 4(1) of the Act cannot be invoked in this case and as such, the acquisition is bad in law. Learned Counsel for the petitioners referred to the decision of the Supreme Court reported in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, , for the proposition that there cannot be a publication in the newspapers prior to the issuance of the publication of the notification in the official gazette. Learned Counsel for the petitioners contends that on this ground alone, the acquisition proceedings are vitiated. Per contra learned Counsel appearing for the State referred to Section 4(1) of the Act which has been amended by Act 68 of 1984 and contends that Sub-section (1) to Section 4 of the Act stated that a notification to that effect shall be published in the official gazette and in two daily newspapers circulating in that locality apart from the public notice of the substance of such notification and nowhere it is stated in the section that the Gazette notification should precede paper publication. According to the learned Counsel for the State, the petitioners have taken part in the enquiry u/s 5-A of the Act and their objections have been duly considered and as such every opportunity had been given to the petitioners and therefore, the acquisition proceedings cannot be said to be vitiated.

4. I considered the arguments of the learned Counsel for the petitioners and also the State. Sub-section (1) of Section 4 of the Land Acquisition Act reads as follows :

(1) Whatever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the official gazette and in two daily newspapers (underlining mine) circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

Prior to amendment Act 68 of 1984 the requirement of publication of the notification in two dailies was absent. The Supreme Court in the decision referred to above had an occasion to consider the question of public notice and the notification in the gazette and held that there cannot be a publication in the locality prior to publication of the notification in the Official Gazette. The Supreme Court held as follows:

Assuming that a notification in the Official Gazette is a formal expression of the decision of the Government, the decision of the Government is hardly relevant, unless it takes the concrete shape and form by publication in the official gazette. Where a decision of the Government to be effective and valid has to be notified in the Government Gazette, the decision itself does not become effective unless a notification in the official gazette follows. In Manindra Lal Jain v. State of V.P.

(1963) (Supp.) S.C.C. 912 it was held that a notification u/s 4-A of the Indian Forest Act, 1927 is required to be published in the Gazette and unless it is so published, it is of no effect. Logically, the same view must be adopted for a notification u/s 4. Therefore assuming that a notification is a formal expression of a decision of the Government to acquire land, unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. Section 4(1) further requires that "the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality." The expression "such notification" in the latter part of Section 4(1) and sequence of events therein enumerated would clearly spell out that first the Government should reach a decision to acquire land, then publish a notification u/s 4(1) and simultaneously or within a reasonable time from the date of the publication of the notification cause a notice to be published containing substance of such notification meaning thereby that notification which is published. Obviously, there--fore, there cannot be a publication in the locality prior to the issuance of the notification. The submission of Mr. Kadher does not commend to us.

The Supreme Court has held that unless the decision is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. I am of the view, that the position of law settled by the Supreme Court will hold good even after the amendment made by Act 68 of 1984.

5. Learned Government Advocate relies upon the decision in M/s. Garg Farms, Delhi and others Vs. State of U.P. and others, , where in a Division Bench of the Allahabad High Court has held that after the amendment in 1984, it is not necessary that the notification u/s 4(1) has to be published in the Gazette earlier than it is published in the newspapers. He relies on the following passage in the judgment:

The upshot is that the impugned notifications are not invalidated merely because the Collector caused public notice of the substance of the notification under the latter part of Section 4(1) to be made prior to the issue of the publication of the notification in the gazette and in the newspaper.

He then relies upon the decision of a Division Bench of the Andhra Pradesh High Court in Gompa Lali Naidu v. The Secretary A.P. (1990) L.A.C.C. 589, where in the dictum laid down in M/s. Garg Farms, Delhi and others Vs. State of U.P. and others, was referred to. A decision in Principal Secretary to Government Housing Municipal Administration and Urban Development Department, Hyderabad and Another Vs. Chilkala Adilakshamma and Another, was also referred to in Gompa Lali Naidu v. The Secretary, A.P. (1990) LA.C.C. 589, and it was held therein that there was no occasion for the Division Bench to decide that question. It is seen that the decision in Principal Secretary to Government Housing Municipal Administration and Urban Development Department, Hyderabad and Another Vs.

Chilkala Adilakshmamma and Another, is not overruled in *Gompa Lali Naidu v. The Secretary, A.P.* (1990) L.A.C.C. 589. The learned Government Advocate further relies on the decision of a learned single Judge of the Kerala High Court in *Balakrishna Pillai and Another etc. Vs. State of Kerala and Others*, wherein the principles laid down by the Allahabad High Court in *M/s. Garg Farms, Delhi and others Vs. State of U.P. and others*, have been followed.

6. Mr. Govindarajan, learned Counsel for petitioners, on the other hand, points out that the Division Bench of the Allahabad High Court in *Principal Secretary to Government Housing Municipal Administration and Urban Development Department, Hyderabad and Another Vs. Chilkala Adilakshmamma and Another*, has arrived at the correct conclusion that the gazette notification should precede any other notification either in newspapers or by public notice and this conclusion has not been overruled by the decision in *Gompa Lali Naidu v. The Secretary A.P.* (1990) L.A.C.C. 589. However, as I have already stated, the notification u/s 4(1) in the gazette is a preliminary stage by which the Government declared that the land is needed for a public purpose.

7. Before the amendment came into force, the Supreme Court had an occasion to consider the gap of time between publication of notification and public notice of substance of the said notification, in *Deepak Pahwa and Others Vs. Lt. Governor of Delhi and Others*, . In that case, the Supreme Court had made observations to the effect that, if there is publication in the gazette and if there is public notice in the locality, the requirements of Section 4(1) must be held to be satisfied, unless the two are unlinked from each other by a gap of time so large as may lead one to the prima facie conclusion of lack of bona fides in the proceedings for acquisition. A reading of the judgment of the Supreme Court clearly shows that the publication u/s 4(1) in the Gazette is a preliminary step. I do not think that the conclusion arrived at by the Allahabad High Court that only modes of publication are given in Section 4(1) and there is no necessity to follow the modes given in the seriatim as given in the section, could be said to be correct. Though the modes are prescribed in Section 4(1), after the amending Act, 1984, in my view, the publication has to be made first only in the Gazette and then only the other publications are to follow. It is settled law that where a power is given to do a certain thing, that thing must be done in that way or not at all and the other modes of performance are necessarily forbidden. In my view, these principles would apply when the question is considered with regard to notification in a newspaper earlier than the publication is made in the gazette. As such I am not able to accept the decision of the Allahabad High Court or the Andhra Pradesh High Court and I am of the view that the power given u/s 4(1) has to be followed strictly by the State and the publication has to be made only in the seriatim as given in the section itself.

8. Considering the facts and circumstances of the case and the section, as extracted above, I am of the view that the notification in the gazette should be published first and then only paper publication should be made. The section itself

has given the modes of publication in seriatim, first, in the official gazette, second, in two daily newspapers and third, by way of public notice of the substance of the said notification at convenient places. In this case, the paper notification has been made prior to the publication of the notification made in the official gazette. The notification has been published in the gazette on 2.11.1988. whereas in the newspapers it was on 27.10.1988. I am of the view that, on this score alone without going into the other contentions, the acquisition proceedings have got to be set aside and the writ petitions are allowed. No costs.