
(1991) 10 MAD CK 0029
In the Madras High Court

M.D. Govindarajan and Others

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 29-10-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11(1), 11A, 31, 4(1)

Citation : (1992) 1 MLJ 469

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

Nainar Sundaram, J.—In these two writ appeals, the petitioners in W.P. Nos. 8507 and 8508 of 1987 are the appellants. The respondents

in the writ petitions are the respondents in these two writ appeals. For the sake of convenience, we are referring to the parties as per their array in

the writ petitions. The petitioners are aggrieved over the acquisition proceedings prosecuted under the Land Acquisition Act 1 of 1894, hereinafter

referred to as "the Act". The proceedings under the Act have come to the stage of passing of awards. However, the petitioners wanted to quash

the very notification u/s 4(1) of the Act. The learned single Judge did not countenance the case of the petitioners and dismissed the writ petitions

subject to a direction that in respect of the petitioner in W.P. No. 8507 of 1987 the reference u/s 31 of the Act shall be withdrawn, because the

petitioner therein alone is entitled to the compensation amount. These two writ appeals are directed against the common order of the learned single

Judge.

2. Before us, Mr. M. Raghavan, learned Senior Counsel appearing for the petitioners, would put in the forefront two points, coveting interference

at our hands. The first point taken is that for the making of the awards which events happened in September, 1986 after the introduction of the first proviso to Section 11(1) of the Act by Act 68 of 1984, there had been no previous approval of the Government or of such officer as the appropriate Government may authorise in this behalf and hence the awards passed must be struck down. The second point taken is that the awards were passed not in the presence of the petitioners and no notice thereof was given to the petitioners immediately thereafter and notices were given only in July, 1987, and this feature practically made the acquisition proceedings culminating in the awards giving compensation illusory and abrogated the rights of the petitioners to receive the compensation amount at the earliest point of time.

3. We find that in the affidavits filed in support of the writ petitions, the first point has been taken. The averments in both the affidavits are to the same effect and it is sufficient, if we extract the relevant portions of the affidavit in W.P. No. 8507 of 1987, as follows:

Under the amended provision of Section 11, no award shall be made by the Collector under the Sub-section without the previous approval of the appropriate Government. The petitioner submits that from the facts above stated, it is clear that the Land Acquisition Officer has not obtained the previous approval of the appropriate Government for passing the Award and as there is no valid award.

We must note that this point is built on the provisions of the Act itself. Section 11(1) speaks about the making of the award. Two provisos were introduced to Section 11(1) of the Act 68 of 1984, and they run as follows:

... provided that no award shall be made by the Collector under this Sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in this behalf; Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

Under the first proviso, no award shall be made under Sub-section (1) of Section 11, without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorise in

this behalf. Under the Second proviso, it shall be competent for the appropriate Government to direct that the Collector may make , such award without such approval in such class of cases as the appropriate Government may specify. In the present cases, the appropriate Government is the State Government. One of the objects and reasons for introduction of the amendments appears to be that pendency of acquisition proceedings for long periods, often causing hardship to the affected parties and rendering unrealistic the scale of compensation offered to them, should be avoided and as a measure for fresh assessment, the Collector is required before making the award, to obtain the previous approval of the appropriate Government or any officer of that Government authorised in this behalf. We do not think that the obtaining of the previous approval can be skipped over and as per the express language of the first proviso introduced, a breach of the requirement of obtaining previous approval will vitiate the passing of the award. The respondents did not care to file any counter affidavit rebutting the contention taken by the petitioner on this basis. Even before us, in these two writ appeals the learned Government Advocate appearing for the respondents is not in a position to make any say counter to what has been averred as per the extract made above and further produce the records in substantiation of any stand that the previous approval was obtained or was dispensed with. This obliges us to countenance this point. By our sustaining the first point, we are obliged to strike down the awards passed in the acquisition proceedings against the petitioners.

4. However, Mr. M. Raghavan, learned Senior Counsel, appearing for the petitioners, would go further and submit that by the infirmities suffered in the passing of the awards in the proceedings under the Act prosecuted against the petitioners and taking note of which infirmities the awards will have to be struck down; the proceedings under the Act could not be prosecuted at all against the petitioners on the basis of the notification u/s 4(1) and the consequent declaration u/s 6 of the Act, so as to pass any fresh awards, because the amendments to Section 6 of and introduction of Section 11-A into the Act by Act 68 of 1984 will come in the way. When we look into these provisions and understand their implications, we are convinced that what the learned Senior Counsel for the petitioners says is

tenable.

5. Mr. M. Raghavan, learned Senior Counsel appearing for the petitioners, though raised the second point at the initial stage of his submission;

finding that the first point has been found in favour of the petitioners by us, as per our discussion supra, says that he is not pursuing the second point

and the said question may be left open. Thus, we are not obliged to deal with the second point.

6. Our sustaining the first point obliges us to strike down the very notification u/s 4(1) of the Act as prayed for in the writ petitions. Thus, we allow

these two writ appeals; set aside the common order of the learned single Judge in W.P. Nos. 8507 and 8508 of 1987 and those two writ petitions

will stand allowed as prayed for. We make no order as to costs.