

(2000) 12 MAD CK 0059

In the Madras High Court

Case No : W.A. No's. 534 and 535 of 1994 and C.M.P. No's. 5732 and 5733 of 1994

Md. Nazir Khan and three others

APPELLANT

Vs

The Union of India and three others

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 48, 5, 6

Citation : (2001) 1 LW 715

Hon'ble Judges : V.S. Sirpurkar, J;M. Chockalingam, J

Bench : Division Bench

Advocate : Mr. G. Masilamani, for Mr. T.P. Manoharan, for the Appellant; Mr. R. Natarajan, Additional Government Pleader, for the Respondent

Judgement

V.S. Sirpurkar, J.—Original writ petitioners feeling aggrieved by the order of the learned Single Judge of this Court have approached by

way of these appeals. In the original writ petitions which were filed in the year 1984, notification u/s 4(1) and declaration u/s 6 of the Land

Acquisition Act were challenged on various grounds. It was pointed out that the land acquisition proceedings were started first against the father of

the appellants/petitioners by way of a notification dated 12.1.1974. Initially the enquiry u/s 5(A) of the Act was sought to be dispensed with and

second Section 4(1) notification came to be passed and that notification was also withdrawn by the State Government, and ultimately after the

enquiry the declaration u/s 6 came to be passed on 2.4.1976. It is also significant to note that it was pointed out in the writ petitions that the lands

of 8 persons were withdrawn from the notification by the State Government on 26.4.1975. It was also pointed out that on 21.7.1977, the original

landlord viz., Abdul Aziz Khan expired. It was then pointed out that on 28.3.1983 the lands of 21 persons were exempted. Thus out of the total

extent of 3 hectares 24 acres, 50 acres of land in all was exempted from the acquisition proceedings. It was therefore prayed in W.P.No.2732 of

1984 that the appellants/petitioners who were the owners of Plot Nos.10,11,30 and 31 should also be given the same benefit as had been given

firstly to 8 persons and thereafter to 21 persons, and a writ of mandamus therefore was sought for directing the State Government to withdraw the

land acquisition proceedings in respect of these plots.

2. By the second writ petition in W.P.No.2860 of 1984, the proceedings under Sections 4 and 6 of the Act were generally challenged. The

present Writ Appeal No.535 of 1994 is pertaining to the Writ Petition No.2732 of 1984, while the Writ Appeal No.534 of 1994 is in respect of

Writ Petition No.2860 of 1984. This judgment shall govern both the writ appeals as both the writ petitions were disposed of by the learned single

Judge of this Court by a common order.

3. As we have already pointed out earlier, the challenges were twofold. Firstly the general challenge was against the notification u/s 4(1) and

declaration u/s 6 of the Land Acquisition Act on the ground that that was not a bona fide exercise, and also there was hopeless delay in passing the

Award which had invalidated the whole land acquisition exercise. In so far as the other Writ Petition No.2732 of 1984 was concerned, the

challenge was that the appellants/petitioners were also entitled to the same treatment, as was given to 29 other persons, whose lands were

exempted from the land acquisition proceedings and were released.

4. The learned single Judge dismissed both the writ petitions. However, a very substantial relief came to be granted to the appellants/petitioners

inasmuch as the learned single Judge held that the Award was passed with undue delay of about 9 years i.e., on 2.12.1983, and therefore the

compensation amount should be calculated not on the basis of the date i.e., 12.1.1974, on which date Section 4(1) notification was passed, but on

the date when the lands of 21 other persons were released i.e., 28.3.1983. Thus the Award was also quashed while the land acquisition

proceedings were maintained. But the authorities were directed to pass a fresh Award. This was done by the learned single Judge in pursuance to

the course adopted by the Apex Court in the decision reported in Ujjain Vikas Pradhikaran Vs. Raj Kumar Johri and others,

5. It is this Judgment which is challenged not by the State Government, as we would have normally expected, but by the appellants/petitioners

themselves, according to whom the mere enhancement of compensation which would have been the natural result of the judgment, would not be

enough but the whole proceedings of the land acquisition were liable to be declared as null and void.

6. The learned Senior Counsel appearing on behalf of the appellants Mr.G. Masilamani very strenuously argued that this was the classic example

where though the original notification u/s 4(1) was passed as back as on 12.1.1974, the Award itself came to be passed somewhere on

2.12.1983, i.e., almost after about 9 to 10 years. He pointed out that in the meantime, the State Government also released the lands in favour of as

many as 29 persons. First it released the lands of 8 persons on 26.4.1975 and thereafter of 21 persons on 28.3.1983. According to the learned

Counsel, all this was absolutely mala fide and there was no reason why the similarly circumstanced petitioners/appellants should not have been

treated in the same fashion by the State Government. The learned Senior Counsel pointed out that there is absolutely no justification pleaded by the

State Government in its counter giving any reasons muchless good reasons for withdrawing the lands of 29 persons from the land acquisition

proceedings. He invited our attention to the sketchy counter filed wherein a bare denial was asserted by the State Government, and it was

suggested that the withdrawals were not for the oblique reasons. We are not at all satisfied with the said counter. We are also of the opinion that

the State Government should have come with a better counter giving some good reasons as to why the withdrawals were allowed. However, this

cannot absolve the appellants/petitioners from pleading specifically the charges of mala fides.

7. The charges of mala fides cannot be generally made. They are to be very specific with the necessary details and against the named persons. The

general allegations of mala fides cannot entitle the appellants/petitioners to rely on the plea of mala fides. Very significantly such details are totally

absent in the writ petitions filed by the appellants/petitioners. Even in the Writ Petition No.2732 of 1984, where the appellants/petitioners are

claiming the similar treatment, the appellants have not given any reasons nor have they given any details as to for what reasons and in pursuance of

which the presentation of the said land was withdrawn, from the acquisition proceedings. In our opinion, the learned single Judge was right in

holding that there was no question of issuing any such direction in favour of the appellants to withdraw their lands also from the acquisition

proceedings. In paragraph 6 of his order, the learned single Judge has dealt with that subject, and ultimately in paragraph 8, the learned single

Judge has chosen to hold that the acts of mala fides have to be specifically attributed and that in the present writ petitions they were not so

attributed. Ultimately the learned Judge relied on the decision reported in Special Land Acquisition Officer, Bombay and Others Vs. Godrej and

Boyce, , to take a view that in case of the withdrawal of the proceedings u/s 48, the order of withdrawal need not be backed by reasons or

opportunity of hearing to the land owners and the Government could not be compelled to acquire land in a particular place. The learned Judge then

took the view that though apparently there was no principle behind the withdrawals or release in favour of certain other persons, the entire land

acquisition exercise could not be quashed.

8. Fortunately, there is also a decision of the Supreme Court which supports the views by the learned single Judge. The Supreme Court is a

reported decision in Chandra Bansi Singh and Others Vs. State of Bihar and Others, , has taken the similar view. In that case also some lands

were illegally released from the acquisition in favour of a family called Pandey Family and that release was attacked for the purpose of canvassing

that the whole acquisition becomes tainted and bad and has to be declared as null and void. The Supreme Court has taken a view that the entire

exercise does not necessarily become bad on account of some land being released in an unprincipled manner. At the most such release may itself

become bad. In that case the Supreme Court declared the said release of lands to be null and void. In view of this pronouncement of the Supreme

Court, there will be no reason to hold that on account of the withdrawals or release of lands in favour of some other persons than the appellants,

the whole exercise of land acquisition by way of Section 4(1) notification and Section 6 declaration would become bad and would be required to

be declared as such.

9. The learned Senior Counsel for the appellants relied heavily on the judgment of the single Judge of this Court in the Kannan alias Osuran and

others v. Union of India and others, Writ Petition Nos.785, 1186 etc., of 1982 by Mohan, J. as His Lordship then was, and pointed out that in

that case, the learned single Judge had called for the files and had given the factual findings regarding the mala fides, and that we should adopt the

same course. We do not think such would be a course to be adopted by us in the circumstances of the present case, where no specific mala fides

have been alleged by the appellants/petitioners. That apart, the aforementioned Supreme Court Judgment in Chandra Bansi Singh and Others Vs.

State of Bihar and Others, would be providing enough guidance for the course that should be undertaken. We accept the findings of the learned

single Judge on this question.

10. The learned Senior Counsel then earnestly argued that the hefty delay caused in this case would really go to the root of the matter and would

invalidate the whole land acquisition exercise. A map was produced before us during the hearing to suggest that almost all the lands which are

sought to be acquired have now been either encroached upon or have been utilised by some other persons. It is earnestly suggested that the public

purpose of housing and urban development stated in the notification has been defeated because of these huge encroachments on the concerned

lands. It was also tried to be suggested that if the land is allowed to be acquired now, many people including the appellants/petitioners would face

hardship, inasmuch as their houses would have to be raised to ground in favour of some other persons for whom also the State Government is only

trying to build the houses. It was therefore tried to be argued that the hefty delay was invalidated the whole purpose of land acquisition and the

whole exercise has become noxious. The learned Senior Counsel also argued that though there was no time limit prescribed by the Act which

stood then for passing the Award, that should have been done within the reasonable time. We fail to follow the portion of this argument particularly

on the backdrop of the fact that the appellants themselves have chosen to approach the Court after full 10 years of Section 4(1) notification.

11. It is to be remembered that Section 4(1) notification was passed in the year

1974 while the writ petitions challenging the acquisition

proceedings itself were filed after 10 years and that too after the Award was actually passed. We fail to follow as to what the appellants were

doing in all these 10 years, and whether they would be justified to raise the plea of delay in the wake of their own laches. Fortunately for them their

writ petitions have not been dismissed on that ground. On the other hand a substantial relief has been given to them. Be that as it may, since the

State Government has not filed any appeal against the judgment of the learned single Judge, we would not be justified in going over that aspect. But

the fact remains that in this case, the petitioners/appellants themselves approached the Court after full 10 years and that too at the stage when they

could not have challenged the said notifications. The position regarding the passing of Award has now been reiterated by the Supreme Court time

and again. We cannot also appreciate the criticism leveled against the learned single Judge regarding the facts which are posterior to the judgment

of the learned single Judge.

12. The learned single Judge has disposed of the writ petitions which were pending almost for 8 years, in the year 1992. We have been told now

at the bar that as per this judgment, the fresh Award has already been passed, in the year 1995. Not only this, but the amount has also been kept

ready. The learned Additional Government Pleader pointed out that the concerned departments were now armed with the amounts. The learned

Senior Counsel for the appellant had something to say in this behalf also. According to him all these exercises could have been done during the

pendency of the writ appeals, as there was no stay of the matter. We will not go into these questions for the simple reason that all these facts are

posterior to the judgment of the learned single Judge. Again we cannot completely ignore the fact that the writ appeals were actually pending and

were directed to be heard at the early date, perhaps because no stay was granted. Again we cannot also completely ignore the fact that the

number of other persons had been challenging this very proceedings time and again by different writs. In fact one such petition was mentioned by

the learned Additional Government Pleader, which is still pending in this Court before the Hon"ble Single Judge. Under such circumstances, we

cannot hold that merely because the second award came to be passed in the

year 1995, in pursuance of the judgment which was given in the year 1992, the whole proceedings would become illegal, or for that matter, the whole public purpose would become frustrated.

13. The learned Additional Government Pleader points out that in the same property presently almost about in 10 plots, the State Government has already constructed some godowns. In this view, it cannot be said that merely because the Award was delayed, if it can be so called, the whole purpose of the land acquisition has been frustrated. This is apart from the fact that we will not go into the question of public purpose now, at this juncture, when the Award itself has been passed. That will not be our jurisdiction. In that view we are of the clear opinion that merely because the Award has been passed in the year 1983, the whole proceedings have not been frustrated. We cannot at this backdrop forget the fact that the appellants/petitioners have been given a very substantial relief by the learned single Judge by directing that though initially Section 4(1) notification has been passed on 12.1.1974, it shall be deemed to have been passed on 28.3.1983 with a further direction that the compensation should be calculated as on 28.3.1983. In our opinion whatever inequity was there against the appellants/petitioners, has also been met by such a direction.

14. In view of what we have observed, in our opinion, both the writ appeals have absolutely no merits, and they deserve to be dismissed. They are accordingly dismissed with the costs of Rs.2000 each. Consequently connected CMPs are also dismissed.