
(1967) 01 MAD CK 0028
In the Madras High Court

M.J. Irani

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 13-01-1967

Acts Referred:

Tamil Nadu Town and Country Planning Act, 1971 — Section 12

Citation : (1967) 80 LW 674 : (1967) 2 MLJ 253

Hon'ble Judges : T. Venkatadri, J

Bench : Single Bench

Judgement

T. Venkatadri, J.—The petitioner, who is the owner of the land and building in S. No. 1304, Mylapore, Madras, has alleged that the provisions of the Mylapore-Teynampet Area Town Planning Scheme have injuriously affected his property in that the road to be formed as a link road would destroy the safety and privacy of his bungalow. He has, therefore prayed that this Court should issue a writ of certiorari and quash the land acquisition proceedings started by notice dated 29th March, 1963 in so far as it affects his property.

2. In order to improve the amenities in Mylapore-Teynampet area, the State Government introduced the Mylapore-Teynampet Area Town Planning Scheme and accordingly issued a notification u/s 12 of the Town Planning Act in the Fort St. George Gazette dated 13th May, 1941. The submission of the scheme took sometime, and finally the Scheme was sanctioned by Government u/s 14(3) and (5) of the Act and published in the Gazette on 18th May, 1960. In pursuance of the Scheme, a Special Deputy Collector for Land Acquisition, Corporation Scheme, Madras, was appointed to perform the functions under the Land Acquisition Act. The notices u/s 9(1) and Section 10 and Section 9(3) were duly published and served upon the petitioner on 12th March, 1963. Immediately the petitioner filed an objection petition to the Government, for the exclusion of his land from acquisition. His main objections were that the bungalow was constructed at a considerable cost and that the intended or proposed road to be formed through his land would destroy the safety and privacy of his bungalow.

As early as 1949, when the State Government conceived the idea of forming a road through his land under the Scheme, he lodged his protest as such a road would serve no useful purpose but would only be detrimental to the petitioner and also his neighbour. It is alleged in his affidavit that nothing happened afterwards, but all of a sudden he received the impugned notice dated 9th March, 1963 and the authorities proceeded with the acquisition in spite of his objections. Hence he has filed the writ petition.

3. Along with the writ petition, the petitioner also filed a miscellaneous petition and obtained an interim order restraining the land acquisition authorities from taking possession of the land of the petitioner.

4. In the counter-affidavit filed by the State it is stated that, after considering the matter fully, the Government rejected the request of the petitioner and also passed an award, and thereby decided to implement the Scheme as per the Plan. According to the counter-affidavit, the formation of EE Road was one of the roads notified in the Scheme published and the petitioner cannot question the acquisition itself as the opinion of the Government regarding the public purpose was final in acquisition matters. It is also alleged that the formation of EE Road is very essential to connect the interior places with the main road on the north.

5. During the pendency of the writ petition, the authorities concerned made drastic changes in the Plan, which resulted in the abandonment of many of the roads to be formed and of the provisions for construction of shops in the interior of the area. The petitioner has stated in his reply affidavit that the main object with which EE Road was proposed was to link it with the B.B. Road to get an outlet into Cathedral Road, and that, inasmuch as the formation of B.B. Road has been dropped, no useful purpose will be served by acquiring his land for connecting that, road,. It is contended for the petitioner that there is discrimination between the ratepayers in the matter of acquisition of the roads under the Scheme, in that some of the proposed roads have been abandoned, while the authorities are insisting upon acquiring his property for the formation of a connecting road when the formation of main road itself is dropped.

6. The object of the Town Planning Act is to regulate the development of towns, so as to secure to their present and future inhabitants sanitary conditions, amenity and convenience. In Glen and Dean's The Law and Practice of Town Planning (this book is available in the Connemara Public Library and not in the High Court Library) I find the statement of the Rt. Hon. John Burns, extracted at page 38:

I trust that the chief benefits of this Act (The Housing, Town Planning and etc. Act, 1909) will be, first, fewer houses per acre, more space and gardens about the dwelling, more attractive frontages, larger rooms, universal bath accommodation, and all the conveniences that are necessary in urban life...Above all, I trust that a new standard of ventilation will prevail, so that the new accommodation provided under this Act will be supplemented by the

admission of pure air at all times of the day or night. It is to be hoped that all local authorities, architects, landowners, tenants and all concerned will avail themselves of this new method of amicable, equitable and reasonable adjustment of their interests and property, and make them harmonise with the architectural aesthetic and neighbourly disposition of their collective municipal property, namely, their village, town or city. This mutually beneficial arrangement will not depreciate the value of any interest; on the contrary, town planning, will confer upon the community untold benefits by the co-operation of all and each for the better growth and same development of their district.

7. The whole scheme is intended to secure amenity and convenience to the present and future residents in connection with the laying out and use of such lands. Regard is to be had in the making of a scheme to the laying out and use of neighbouring lands as well as to that of the land which is the actual subject-matter of the Scheme. The result should be that as successive areas are developed they should fit into one another and eventually form a harmonious whole-(see *The Law of Municipal Corporations in British India* by P. Duraiswami Aiyengar, page 710). One of the most important things for consideration in the preparation of a Town Planning Scheme is the formation of roads. There are three kinds of roads to be considered: (1) the main traffic roads, (2) the secondary roads, and (3) the residential road. In the present case, the Scheme envisages various roads to be formed mainly with a view to have inter-communication with the existing roads, for the purpose of making it convenient for the residents to reach the main traffic road. At the time when the Plan was prepared, there was real and proved need for the particular development proposal namely, the formation of EE Road to connect the B.B. Road. But the plan underwent many changes, and as I said the B.B. Road-formation has been dropped. The road which has to pass through the petitioner's land is to connect the B.B. Road, and this road-formation therefore becomes unnecessary. The importance of the proposed acquisition is, therefore, lost. Consequent on the change in the design and appearance of the proposed road to connect the main and secondary road, the site in question becomes unnecessary for the purpose. The acquisition of land for the purpose of forming a link road should have realistic basis. The authorities should see to the sequence of the proposed chain of roads in relation to the various parts of the main road shown in the Plan. In this connection, it is useful to extract the comprehensive set of questions given in Telling and Layfield's *Planning Applications, Appeals and Inquiries* at page 182 : under which, any given case may usefully be examined:

(a) What is the importance of the existing or proposed development including its usefulness and value not only to the owner, occupier and other interested parties but also to the locality and the nation as Well?

(b) How satisfactory and efficient is the design and appearance of the existing or proposed development?

(c) How suitable is the existing or proposed site for the development in question?

(d) How suitable is the existing or proposed site for other desirable, but incompatible uses?

(e) How relatively suitable are other available sites for the proposed development?.

Applying these principles to the acquisition on hand, I am of the opinion that the formation of the EE Road is not suitable, as the design in the formation of the road has been changed. The acquisition of the property in dispute is, therefore, neither desirable nor compatible with the existing scheme of roads in the Plan.

8. It is to be noted that on the representation of the authorities of the Stella Mary's College, the Government have issued an order restraining the Corporation from taking further steps in the formation of a B.B. Road of the Mylapore-Teynampet Area Town Planning Scheme. That road has since been deleted in the Scheme. The Government have also issued orders dropping the formation of Q.Q. Road and to restore the lands to the owners. As far as this petition is concerned, once it is seen that the B.B. Road is dropped from the Plan, then the formation of EE Road by acquiring the land of the petitioner becomes unnecessary, and it is no longer necessary to acquire the land of the petitioner.

9. Learned Counsel for the petitioner further contended that once the Town Planning Scheme was sanctioned, there cannot be any variation or modification or change in the Plan, and the Scheme may be varied or revoked u/s 18 of the Act only by a subsequent scheme published and sanctioned in accordance with this Act. Learned Counsel would in effect contend that the dropping of some of the roads should be deemed to be a variation and therefore the authorities should start a new scheme which should be published and sanctioned in accordance with the Act. Though there appears to be some force in the contention still I am of the view that, it is only when new areas are added and the Scheme is enlarged, the authorities should publish it and get it sanctioned as per the provisions of the Act. Glen and Lean in his book Town Planning says at page 79; "It must be remembered that when once map has been deposited the area to be dealt within the Scheme cannot be enlarged." Without commencing de novo, though it may be demarcated by the local Government when the proposed enlargement or demarcation is not extensive the board will no doubt be prepared to dispense with some of the requirements of the regulation. In the present case, the authorities have dropped some road-formation. And my attention was not drawn to any definite provision prohibiting the planners from carrying out minor details or changes in the Plan. This cannot be considered as a variation which would require a subsequent scheme being published and sanctioned in accordance with the provisions of this Act.

10. However, I have come to the conclusion that the formation of EE Road is unnecessary, in view of the fact that the B.B. Road, which is to be connected by EE Road is not to be formed. The acquisition of the petitioner's property is, therefore, not proper.

11. The writ petition is accordingly allowed, and the proceedings of the land acquisition authorities, in so far as they affect the petitioner, are quashed. There will be no order as to costs.