

(1997) 10 MAD CK 0030
In the Madras High Court
Case No : Writ Petition No. 155535 of 1988

M.J. Saravanaperumal and Another	Vs	APPELLANT
State of Tamil Nadu and Others		RESPONDENT

Date of Decision : 06-10-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A
Land Acquisition Rules — Rule 3B, 3C

Citation : (1997) 3 CTC 605

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : R. Krishnamoorthy for S.T.S. Murthi and M. Suresh, for the Appellant; S. Gopinathan, Government Advocate for Respondents 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

K. Sampath, J.—The writ petition is for the issue of a writ of certiorartified mandamus to call for the records of the respondents comprised

in the Notification u/s 4(1) of the Land Acquisition Act, 1894 passed in G.O.Ms.No. 892, Housing and Urban Development dated 10.9.1982 and

published in Tamil Nadu Government Gazette dated 29.9.1982 and the consequential declaration u/s 6 of the Act in G.O.Ms. No. 966, Housing

and Urban Development, dated 20.9,1985, and published in the Tamil Nadu Government Gazette dated 2.3.1985 quash the entire acquisition

proceedings thereon including passing of the Award relating to the petitioner's lands in T.S.Nos. 205, 207/1, 207/2, 207/3, 207/4 and 208/2 of

No. 81, Mugappair Village, Saidapet Taluk, Chingleput District, and direct the respondents no to acquire the abovesaid lands for any purpose,

alleging as follows:

The petitioners are brothers. They along with one Nandagopal Mudaliar constituted a Hindu joint family, which owned and possessed lands in

Survey Nos. 205, 207/1, 207/2, 207/3. 207/4 and 208/2 to the total extent of 2.16 acres in Mugappair Village Saidapet Taluk, Chingleput

District. The elder brother Nandagopal Mudaliar expired on 11.7.1978 and the first petitioner is in management as the kartha of the joint family.

They purchased a specific extent of 12 cents in S.No. 207/2, one of the items subject matter of the proceedings by means of a registered sale

deed on 3.4.1963. They got another extent of 12 cents in S.No. 207/3 under a registered settlement deed from the legal heirs of one Natesh

Mudaliar, their uncle, on 22.7.1970. Patta and other revenue records stand in their names. They are paying all land taxes and other public charges

relating to those lands from the date of purchases and settlement respectively.

They are permanent residents of Mugappair Village and their only avocation is agriculture. In 1963 the first respondent Government initiated land

acquisition proceedings and acquired the petitioners' agricultural lands in S.Nos.59, 517/2, 24/3, 26/1, 27, 28 and 54 measuring an extent of 7.67

acres in Mugappair Village for establishing Ambattur Industrial Estate. In the same year, another land acquisition proceeding for the Korattur

Neighbourhood Scheme in the same village was initiated and the petitioner's lands in S.Nos. 182, 208/1, 86 and 107 measuring a total extent of

4.16 acres were acquired. Thus, the Government had so far acquired 12.28 acres of agricultural lands belonging to the petitioners. They were left

only with 2.16 acres in S.Nos.205 etc. already referred to. The petitioners' family is a big one consisting of 13 members and the entire family

depended on the income from the lands. They did not possess any other lands elsewhere.

The first respondent herein issued yet another Section 4(1) Notification under the Land Acquisition Act, hereinafter referred to as the Act in the

Tamil Nadu Government Gazette dated 29.9.1982 passed in G.O.Ms.No. 892, Housing and Urban Development Department, dated 10.9.1982

including the entire remaining extent in their holding in the aforesaid survey numbers in Mugappair Village stating that the lands were needed for a

public purpose, to wit, for the further extension of Ambattur Neighbourhood Scheme. The Notification regarding S.Nos.205, 207/1, 207/4 and

208/4 stands in the name of the petitioners" eldest brother N.T. Nagappa Mudaliar. Though the petitioners got the lands in S.Nos. 207/2 and

207/3 from the Perundevi Ammal and M. Natesa Mudaliar respectively long before Section 4(1) Notification and all the revenue records stand in

the names of the petitioners, their names do not find a place in the Notification. Only the names of Perundevi Ammal and Natesa Mudaliar are

mentioned. They had nothing to do with lands and they are not interested persons. The revenue records and the patta stand in the joint names of

the petitioners and their elder brother late Nandagopal Mudaliar. Still the Notification u/s 4(1) gives the name of only Nandagopal Mudaliar, who

had died as early as 11.7.1978. The Notification u/s 4(1) is therefore not valid. After the issuance of Section 4(1) Notification, the subsequent

publication of the substance in the locality and on the interested persons was not made. Rule 3(b) framed u/s 55 of the Act was also not complied

with.

The petitioners appeared before the Land Acquisition Officer during Section 5-A enquiry and raised their objections for the impugned acquisition

on the ground that the lands were cultivable lands and could not be acquired. Without considering the objections raised by the petitioners in a

proper perspective, the first respondent had mechanically passed declaration u/s 6 of the Act by accepting the recommendation of the Land

Acquisition Officer in G.O.Ms.No. 966, Housing and Urban Development, dated 20.9.1985 and subsequently it was got published in the

Government Gazette dated 23.9.1985 confirming the proposal of the acquisition of the aforesaid lands belonging to the petitioners. After receipt of

the petitioners" objections, the first respondent should have referred the same to the requisitioning authority, viz. the Housing Board and its remarks

on the petitioners" objections should have been communicated to them only after observing the above procedure it could be said that a valid

enquiry u/s 5-A of the Act was conducted. No comments from the requisitioning authority were forwarded to the petitioners. Though the

respondents without considering the petitioners" objections issued the declaration, the Special Tahsildar, (Land Acquisition), Highways, World

Bank Project, Madras, issued a notice under Sections 9(3) and 10 of the Act in his Na.Ka.No. 383/81 dated 29.11.1987 regarding S.Nos.205

and 208/2. In the above enquiry notice, the purpose of acquisition of the lands was stated as, ""for the formation of Inner Ring Road under the World Bank Project Scheme"". This is contrary to Section 4(1) Notification and Section 6 declaration wherein it was stated that the lands were needed for extension of Ambattur Neighbourhood Scheme. The purpose of acquisition cannot be changed. As regards the other survey numbers the petitioners were not served with any notice.

As per Section 11-A of the Act, the Collector should make an Award u/s 1 within a period of two years from the date of publication of Section 6 declaration and if no Award is made within that period, the entire proceedings of such acquisition of lands should lapse. In the instant case, the date of publication of Section 6 declaration was 23.9.1985. The respondents should have passed the Award on or before 22.9.1987. Till the filing of the writ petition no Award had been passed. Only Sections 9(3) and 10 notice regarding S.Nos. 205 and 208/2 was served on the petitioners and that was also done after 29.11.1987 and the Award enquiry was fixed on 31.12.1987, but no such enquiry was conducted. Since the Award had not been passed within the mandatory period of two years from the date of publication of declaration, the entire acquisition proceedings lapsed.

The non-compliance of the mandatory provisions of Section 11-A vitiated the entire proceedings. The petitioners learned on enquiry that the

Government had so far excluded the lands measuring 9.50 acres in S.Nos.196, 215 to 219, 272 and 273 in that area in and by its Letter No.

3986/A-2/88-4 dated 6.6.1988. Another land belonging to Tmt. Sarojini Ammal in S.No. 213/1 to an extent of 56 cents had also been excluded

from acquisition. Only the petitioners' lands are being proceeded with for acquisition. The respondents cannot promote a scheme in a small extent

of 2.16 acres. The petitioners approached the authorities for excluding the lands in question and since the authorities refused to consider their

request, the present writ petition had to be filed.

2. No counter has been filed on behalf of the respondents. However, the learned Government Pleader sought to support the decision on the materials available. He has produced the relevant files.

3. Mr. R. Krishnamurthy, learned Senior Counsel appearing for Mr.S.T.S. Murthi for the petitioners, contended as follows:

The non-mentioning of the petitioners' names in Section 4(1) Notification is fatal to the case of the respondents and renders the entire proceedings invalid. After inviting objections to Section 4(1) Notification, the third respondent ought to have referred the same to the requisitioning authority and remarks by the requisitioning authority should have been communicated to the petitioners and only thereafter an enquiry u/s 5-A of the Act could be validly held. There is thus a failure to satisfy the mandatory provisions u/s 5-A and Rule 3(b) framed u/s 55 of the Act. When the power of eminent domain is sought to be used against a citizen, proper care should be taken to comply with every provisions of the Act in effect and reality. The proceeding were conducted in a hurried manner and there was no proper enquiry u/s 5-A of the Act. The acquisition proceedings taken in 1982 were not proceeded with for a long time and that it would itself show that there was no real necessity for the proposed acquisition. Section 6 declaration also did not disclose the names of the petitioners correctly and they bore the names of dead persons. As per Section 11-A of the Act the respondents should pass Award within two years from the date of publication of Section 6 declaration and failure to do so had vitiated the entire proceedings rendering the same to lapse. Section 6 declaration was passed on 23.9.1985. The Award should have been passed on or before 22.9.1987. This had not been done. The proceedings were also discriminatory in nature, in that lands belonging to several other persons had been excluded and the petitioners' lands had alone been singled out for proceeding in the acquisition.

4. As against these contentions the learned Government Pleader submitted as follows:

So far as the Government is concerned, they are guided only by the records available. In the records the persons shown as owners of the properties were served with copies of Section 4(1) Notification and enquiry notice u/s 5-A and their names were shown as the owners in the publications effected as required under the Act. The comments from the requisitioning body were made available to the interested persons at the time of Section 5-A enquiry and the objections raised by them were over-ruled. Therefore, it was not necessary to have a separate enquiry after service of notice under Rule 3(b). So far as Section 11-A is concerned, the proceedings had been stayed by owners of other survey numbers and

this point is covered by the decision reported in Shri Abhey Ram (dead) by L.Rs. and Ors. v. Union of India and Ors. 1997 (2) UJ. (S.C.) 230.

5. In that decision it was held that the stay granted in favour of some persons in respect of some of the items covered by the land acquisition

proceedings would be applicable to others also, who had not obtained stay in that behalf. Therefore, according to the learned Government Pleader,

the statutory period of two years between Section 6 Declaration and Section 11-A Award would get automatically extended and therefore, in the

instant case, there was no violation of Section 11-A at all.

6. From the records it is seen that in respect of S.Nos. 205, 235/1 and 208/2 the chitta stood in the names of M.J. Nandagopal, Saravanaperumal

and Manavalan. So far as S.No. 207/2 is concerned, the chitta stood in the name of Perundevi Ammal and S.No. 207/3 chitta was in the name of

M. Natesa Mudaliar. It is specifically alleged in the affidavit filed in support of the writ petition that 12 cents in S.No. 207/2 was purchased from

Perundevi Ammal by the petitioners and their late brother Nandagopal even in the year 1963 and patta also stands in their names and so far as

S.No. 207/3 12 cents are concerned, this extent was settled by the legal heirs of Natesa Mudaliar in favour of the petitioners and their brother late

Nandagopal. In respect of this item also patta had been transferred in the names of the settlers, viz. the petitioners and their elder brother

Nandagopal. It is also specifically stated in the affidavit that Perundevi Ammal and Natesa Mudaliar were no more.

7. I had occasion to consider a similar situation in W.P.No. 15173/88. In that case also, Section 4(1) Notification has been issued in the name of a

dead person. Relying on Bhamu Ramamoorthy v. The State of Tamil Nadu rep. by the Secretary to Government Industries, Labour and Housing,

Madras and Anr. 90 L.W. 320 and the decision dated 25.1.1994 in W.P.Nos. 202/84 etc. I quashed the proceedings. In the decision reported in

Bhamu Ramamurthy etc. 90 L.W. 320 Mohan, J. as he then was, held that.

it was the duty of the officers in charge of land acquisition proceedings to verify the registry and incorporate the name of the petitioner u/s 4(1)

notification. In matters like this, where the lands were sought to be acquired, exercising the power of eminent domain, the minimum that could be

expected of the Government would be to follow the procedure strictly.

In the other decision, Raju, J. held as follows:

In my view, such a contention does not appear to be a responsible one to be put forward by the authorities of the* State Government. It is one

thing to say that the entry in the village accounts continued in the name of erstwhile holder notwithstanding a change in the ownership and the

default on the part of the successor in not bringing the records upto date disables such a person from pleading that he has not been given any notice

and the same principle cannot be applied in the case of notice issued in favour of a dead person.

8. On the short ground that Section 4(1) Notification had been issued in the names of dead persons, the proceedings have to be quashed. Even

otherwise, if we take note of the subsequent developments in the matte, it will be seen that there was no enquiry under Rule 3(b) of the Rules after

the comments from the aquisitioning body were obtained by the authorities. The records do not disclose whether there was any further enquiry

after receipt of the comments from the requisitioning body.

9. In Kannammal (deceased) V.N. Devadoss v. State of Tamil Nadu and Ors. 1990 W.L.R. 439 Kanakaraj, J. held that.

remarks of the requisitioning authority should be available to the owner/claimant whose land is acquired at the time of the enquiry u/s 5-A. As the

remarks of the Tamil Nadu Housing Board in that case had been communicated to the petitioner therein nearly two years after the enquiry u/s 5-A,

it was held that it vitiated the entire enquiry u/s 5-A of the Act.

The learned Judge held that in many cases, the Land Acquisition Offices held a second enquiry after the remarks were obtained by issuing notices

to the land owners as well as to the requisitioning body and in the opinion of the learned Judge, such a procedure will alone conform to the

requirements of Rule 3(b)/(c) of the Rules. The learned Judge held that the enquiry u/s 5-A of the Act was vitiated.

10. In Kadirvelu Mudaliar v. State of Tamil Nadu and Anr. 1987 W.L.R. 182, Nainar Sundaram, J. as he then was, held that if remarks of the

requisitioning body had not been obtained when the enquiry u/s 5-A was held, much less furnished to the owner of the land, it would vitiate the

proceedings.

11. To the same effect are the following decisions:

(1) C. Ponnusamy and Others Vs. Govt. of Tamil Nadu and Another, ; (2) Balkis Ammal by power of Attorney Agent K.P.M. Abdul Gafor Vs.

The State of Tamil Nadu and Another, ; (3) Tube Suppliers Limited Vs. Govt. of Tamil Nadu and Another, , and (4) N.D. Ramanujam v.

Collector of Madras, Madras City 1994 (I) L.W. 519 .

12. I have already referred to the fact that there was no further enquiry after communication of the remarks of the requisitioning body to the interested persons.

13. No doubt, the learned Government Pleader relied on the decision in Shri Abhey Ram (dead) by L.Rs. and Ors. etc., 1997 (2) U.J. (S.C.)

230, in which the Supreme Court held as follows:

When the action of conducting an enquiry u/s 5-A was put in issue and the declaration u/s 6 was questioned, necessarily unless the Court holds

that enquiry u/s 5-A was properly conducted the declaration published u/s 6 to be valid, it would not be open to the officers to proceed further into

the matter. As a consequence, the stay granted in respect of some would be applicable to others also who had not obtained stay in that behalf.

14. However, since I have already found that there has been serious violation of the rules and the procedure under the Land Acquisition Act and

that the proceedings have to be quashed, it will be only academic to say anything as to whether the Award was passed within the time stipulated

u/s 11-A of the Act.

15. In the result, the writ petition succeeds and the Rule NISI already issued is made absolute. There will, however, be no order as to costs.