

(2000) 01 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No. 18495 of 1992

Mrs. Chinthamani and others

APPELLANT

Vs

The Special Tahsildar for Land Acquisition and another

RESPONDENT

Date of Decision : 19-01-2000

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5(A), 6

Citation : (2000) 2 CTC 21

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Advocate : Mr. S. Kanniah, for the Appellant; Mr. S. Wilson, Government Advocate, for the Respondent

Judgement

1. In this writ petition the petitioners have chosen to question the land acquisition proceedings u/s 4(1) and also u/s 6 on the ground that the person interested has not been issued any notice. Section 4(1) notification has been issued on 11.2.1991, it has been gazetted on 13.3.1991, paper publication was made on 15.3.1991, it was published in the locality on 18.3.1991. Section 5-A enquiry was conducted on 19.6.1991 and Section 6 declaration was issued on 23.6.1991. The petitioners have chosen to file this writ petition after the declaration u/s 6 on the ground that no notice has been issued to the petitioners' sister by name Mrs.Chinthamani, who has got a share in the property. Even though the Land Acquisition Officer has been informed of the above fact, the writ petition was admitted and interim stay of dispossession was ordered. However the award was passed on 25.11.1992.

2. Learned counsel for the petitioners has argued that though the name of the petitioners' sister namely, Mrs.Chinthamani is not found in the

revenue records during the course of the 5-A enquiry it has been brought to the notice of the Land Acquisition Officer that she is one of the

shareholders and she has got a share in the property. However, the Land Acquisition Officer has proceeded with the 5-A enquiry on the ground

that she has neither appeared nor given any representation with respect to her rights. Learned counsel for the petitioners has argued that the land

acquisition proceedings are vitiated on the ground that no notice has been issued to Mrs. Chinthamani. He has relied upon a Full Bench decision of

this Court in P.C.Thanikavelu v. The Special Deputy Collector for Land Acquisition, Madras-1 and another, 1989 T.L.N.J. 107 wherein it is held

as follows:

Though it is incumbent upon the Revenue to keep their records up to date by effecting mutation of names reflecting the actual state of affairs by

showing the persons really interested in the land in their records, yet in a few cases it may so happen that the revenue records are not made up to

date and the person who is really interested in the land may not receive any notice from the Collector for the enquiry under S. 5A of the Act. In

such cases, if it is brought to the notice of the Collector by the erstwhile land owner or by any other person, including the present owner thereof of

the name of the interested persons, the Collector as a statutory functionary cannot decline to afford an opportunity to the person who is really

interested in the land and close the enquiry. When such information is brought to the notice of the Collector, it is needless to say that the principles

of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even though his name

may not be found entered in the revenue records.

The learned counsel relying upon the observation made by the Full Bench has argued that there is a duty cast upon the Collector to issue a notice

to the sister of the petitioners when it was brought to the notice of the Officer that she is the person interested and he has further argued that non-

issuance of notice is "in violation of the principles of natural justice. Sufficient time has been granted to the Government-Advocate to produce the

records to verify whether notice has been issued to Mrs.Chinthamani. But no records have been produced on behalf of the respondents. Learned

Government Advocate has argued that as the name of Mrs.Chinthamani was not

found in the revenue records, it is not necessary on the part of the Land Acquisition Officer to issue a notice. In another reported judgment in P. Tamilarasan Vs. State of Tamil Nadu and two Others, , a learned single Judge of this Court, following the observation made by the Full Bench of this Court held that notice is necessary, if it is brought to the notice of the enquiring officer that the concerned person is interested and non-issuance of notice to the person interested is in violation of the principles of natural justice, when it is brought to the notice of the concerned Land Acquisition Officer during the proceedings u/s 5-A. In this case it is apparent that no notice has been issued to Mrs.Chinthamani, even though it has been brought to the notice of the Land Acquisition Officer in the course of 5-A enquiry that she is the person interested in the property.

3. Under the above circumstances I have no hesitation to hold that the Land Acquisition Officer has committed an error in not issuing the, notice to

Mrs.Chinthamani, even though it was brought to his notice that she is the person interested. Following the Full Bench decision of this court cited

supra, the land acquisition proceedings are to be vitiated. Accordingly, the land acquisition proceedings are quashed and the writ petition is

allowed. However, liberty is granted to the respondents to proceed afresh after issuing notice to Mrs.Chinthamani as per law. Consequently,

W.M.P. No.26586 of 1992 is dismissed.