

(1997) 08 MAD CK 0025
In the Madras High Court

Mrs. Marayee Ammal

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 08-08-1997

Acts Referred:

Citation : (1998) 1 MLJ 687

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—Aggrieved against the land acquisition proceedings, the petitioner has filed the writ petition to quash the acquisition

proceedings on various grounds.

2. In order to provide house sites to Navidars of Chinnasalem village on the recommendation of the third respondent, the first respondent initiated

acquisition proceedings. The proposals u/s 4(1) of the Land Acquisition Act, 1894 (Central Act I of 1894) for acquisition of land in R.S. No.

339/1 to an extent of 0.93.5 Hectare out of 1.87.0 Hectares of dry land of Chinnasalem village, belonging to Marayee Ammal (petitioner herein),

for provision of house sites to Navidars of Chinnasalem village were submitted to the Collector, South Arcot District and the same was approved

on 30.7.1987. Notification u/s 4(1) of the Act was published in the Government Gazette on 9.9.1987 and the said notification have also been

published in two tamil dailies on 10.9.1987. The substance of the notification was published in the locality on 25.9.1987. Enquiry u/s 5-A of the

Act was conducted by the third respondent on 12.11.1987 at Chinnasalem. The petitioner submitted her objection.

3. The objection of the petitioner was considered during the 5-A enquiry. A copy

of the 5-A enquiry proceedings have been served on the land owner. Declaration u/s 6 of the Act was published in the gazette on 21.9.1988. The said notification has also been published in two Tamil dailies on 22.9.1988. The substance of the notification was published in the locality on 23.9.1988. At this stage the land owner has filed the above writ petition in this Court. Subsequently, it is informed that on 25.10.1994 the third respondent has passed an award.

4. Mr. K. Doraisami learned senior counsel appearing for the petitioner raised the following contentions:

(i) There is a delay between notification u/s 4(1) in the gazette and in the locality, (ii) The objection of the petitioner has not been forwarded to the requisitioning Department, hence there is a violation of Rule 3-B of Land Acquisition Rules,

(iii) The award was passed beyond the prescribed period, hence the entire acquisition proceedings has to be quashed.

5. The respondents filed a counter affidavit wherein they have furnished the particulars commencing from Section 4(1) notification ending with

award passed by the third respondent. In the light of the details furnished in the counter affidavit, learned Government Advocate contended that

there is no delay between 4(1) notification in the gazette and in the locality, the third respondent complied with the mandatory provision u/s 5-A of

the Act, in as much as award was passed on 25.10.1994 taking into consideration of the pendency of the writ petition the same is well within time and prayed for dismissal of the writ petition.

6. I have carefully considered the rival submissions.

7. With regard to the first submission of the learned senior counsel for the petitioner, there is no dispute that the notification u/s 4(1) was published

in the Tamil Nadu Government Gazette on 9.9.1987, the substance of the said notification was published in the two Tamil dailies on 10.9.1987

and in the locality on 25.9.1987. In other words within a period of 16 days, the substance of the 4(1) notification has been published in the locality.

In such circumstance, the first objection of the learned senior counsel cannot be accepted.

8. Regarding the second objection, viz., violation of Rule 3-B of Tamilnadu Land Acquisition Rules, it is seen that the petitioner has received notice

on 25.9.1987 for the enquiry u/s 5-A dated 12.11.1987. According to him, the petitioner has submitted her objection on 29.9.1987 that means

within the time prescribed. In the absence of forwarding the objections of the petitioner to the requisitioning body the enquiry u/s 5-A cannot said

to be in order. It is seen that as per the explanation to Rule 3(b) if the requisitioning department is a Harijan Welfare Department or Backward

Class Department, there is no need to give notice to them. The said explanation was added by G.O. Ms. No. 996, Revenue, dated 19.5.1976.

Admittedly in this case, the acquisition is for Backward Class Department, In those circumstances, there is no need to send notice or forward the

objection of the petitioner to the Backward Class Department, which is a requisitioning. Department, Hence, there is no violation of Rule 3-B of

the Tamilnadu Land Acquisition Rules.

9. Regarding the third submission viz., that the award passed by the third respondent on 25.10.1994 is beyond the period prescribed u/s 11-A of

the Act. According to the learned senior counsel in this case, the last publication of the 6 declaration was effected in the locality on 23.9.1988.

According to him, even though this Court has granted stay on 28.9.1988, on 19.8.1993 the said interim order is restricted only for dispossession.

In such circumstances, according to him the award passed on 25.10.1994 is beyond the period prescribed under the Act. I am unable to accept

the above submission also, since as per Section 11-A of the Act the Collector has to pass an award u/s 11 within a period of two years from the

date of publication of the declaration and if no award is made within that period the entire acquisition proceedings shall lapse.

10. Explanation to Section 11-A of the Act read as follows:

In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the

said declaration is stayed by an order of a court shall be excluded.

Even if there is any bar as per the earlier order of the court in view of the restricted stay as granted by this Court on 19.8.1993 the award passed

on 25.10.1994 is well within time. Apart from the above position, it is settled law that even if stay is restricted to dispossession alone, it will amount

to stay of the acquisition proceedings with the result the period during which the proceedings are pending shall be excluded from the computation

of the period prescribed u/s 11-A of the Act- vide in Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, , (ii) Sangappa

Gurulingappa Sajjan Vs. State of Karnataka and Others, and in Government of Tamil Nadu and another Vs. Vasantha Bai, .

11. In view of the statutory provision Section 11-A of the Act as well as the law laid down by the Apex Court in the above referred decisions, the

third submission of the learned senior counsel for the petitioner also deserves to be rejected.

12. One more faint argument is advanced stating that the lands sought to be acquired are agricultural lands, hence, the same has to be excluded as

per G.O. Ms. No. 1949, Labour Employees Co-operative Department, dated 3.4.1964 and G.O. Ms. No. 2135, Revenue, dated 21.9.1979.

When a similar contentions were raised, relying on various Government Orders with regard to exemption of agricultural wet lands coconut

thoppou, small farmer etc., Division Bench of this Court in Writ Appeal No. 657 of 1990 dated 25.11.1991 has rejected the same, stating that

those executive instructions cannot override the statutory rules. In other words, the Bench has observed that the parties to the proceedings are

concerned with the provisions of Land Acquisition Act and Rules made thereunder and nothing more. In view of the above categorical decision of

the Bench of this Court, I am unable to sustain even the above argument also.

13. Net result, the writ petition fails and same is dismissed. No order as to costs.