
(1986) 08 MAD CK 0009
In the Madras High Court
Case No : Writ Petition No. 2974 of 1980

Muthu

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 13-08-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 45, 45(1), 45(2), 45(3), 5A

Citation : AIR 1987 Mad 237 : (1986) 99 LW 849

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Advocate : G. Desappan, for the Appellant; Sundar Anandan, Government Advocate, for the Respondent

Judgement

Nainar Sundaram, J.

1. The challenge in the writ petition is of the declaration under S. 6 of the Land Acquisition Act, 1894 (Act 1 of 1894), hereinafter referred to as

the "Act". The main point urged by Mr. G. Desappan, learned counsel for the petitioner, relates to noncompliance with S. 45 of the Act with

regard to service of notice for the enquiry under S. 5A of the Act. According to the petitioner, he was not served with any notice for the enquiry

under Sec. 5A of the Act. In answer, what has been stated in para 5 of the counter affidavit, filed on behalf of the respondent, is that the notices for

the enquiry under S. 5A of the Act and for award enquiry were served by affixure as the petitioner was a nonresident of the village. The files

produced by the learned Government advocate show that the notice was straightway affixed in the land in question. The records do disclose that

the authorities were aware of the address of the petitioner and that is why it is not claimed before this Court that the whereabouts of the petitioner

were not known to the authorities.

2. Section 45 of the Act reads as follows : -

45(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under Sec. 4 by

the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge;

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named;

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him, and, if no such adult

male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named

ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the

Collector or in the Court house, and also in some conspicuous part of the land to be acquired :

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last

known residence address or place of business and registered under Ss. 28 and 29 of the Indian Post Office Act, 1898 and service of it may be

proved by the production of the addressee's receipt.

It is not claimed that service by delivering or tendering the copy of the notice on the petitioner in person was attempted as contemplated under sub-

secs. (1) and (2) of Sec. 45 of the Act. Sub-sec. (3) of Sec. 45 of the Act contemplates and lays down other modes of service only when such

person cannot be found. The service of any notice under the Act in the manner provided therein is a mandate of law, and the due procedure and

modalities having been evolved, there cannot be a by-passing of the same by the official, and if they do so, they will be opening the gates for

challenge of the proceedings as an illegality. It is not up to the officials to choose modes of service as suit them, if they do not conform to the

statutory norms. As contemplated in sub-secs. (1) and (2) of Sec. 45 , service on the person concerned by delivering or tendering a copy of the

notice shall be first attempted. Only when such service is not feasible, on the ground that such person cannot be found, the other modes of service

as contemplated in sub-sec. (3) of Sec. 45 should be resorted to. If the person cannot be found, service on an adult male member of the family should be attempted, and if no such adult male member can be found, then only service by affixture on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof in some conspicuous place in the office of the officer who signed the notice or in Collector's office or in the court house should be done". In such a case, in addition to the above modes, affixture of the copy of the notice in some conspicuous part of the land to be acquired should also be done. The proviso to sub-sec. (3) says that the notice may, if the Collector or the Judge so directs, be sent by registered post in a letter addressed to the person named therein at his last known residence, address or place of business. It is not the case of the authorities that there was attempt to reach and serve the petitioner at his last known address. Equally so, service by post was also not resorted to. The set of expressions "when such person cannot be found occurring in sub-sec. (3) in the context could mean only when such person cannot be found in the place where he ordinarily dwells or carries on business. Merely on the ground that such person is non-resident of the village, Sec. 45(3) does not enable the authorities to resort to a mode of service by affixture in the land" subject matter of acquisition.

3. Enquiry under S. 5A of the Act is not an empty formality and notice for such enquiry has got to be served strictly in accordance with the mandates of Sec. 45 of the Act. While discountenancing the service of notice in a casual manner without adhering to the rigor of the provisions of the Act, I have opined in *Church of South India Trust Association v. Government of Tamil Nadu*, W.P. No. 1848 of 1979 order dt. 24-9-1981 briefly reported in (1982) 95 Mad LW 87 that the prescriptions of the statute in the matter of service of notices under it should be strictly followed and carried out. It must be satisfied that the person concerned could not be found after reasonable and diligent enquiries within the meaning of the Act. The mandates of the statute stand violated in the present case. This obliges me to interfere in writ jurisdiction and accordingly the writ petition is allowed. It is for the authorities to pursue the matter from the stage of the enquiry under S. 5A of the Act and after duly satisfying the requisite

statutory formalities. I make no order as to costs.

4. Petition allowed.