
(1967) 03 MAD CK 0054
In the Madras High Court

Muthu Gounder

APPELLANT

Vs

The Government of Madras and Another

RESPONDENT

Date of Decision : 27-03-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) ILR (Mad) 358 : (1969) 82 LW 21 : (1969) 82 LW 1 : (1968) 2 MLJ 349

Hon'ble Judges : K. Veeraswami, J

Bench : Single Bench

Judgement

K. Veeraswami, J.—The petition under Article 226 of the Constitution is to restrain the respondents from taking possession of land of an extent of 58 cents comprised in S. No. 400/13 and another extent of 52 cents bearing S. No. 400/14-A under the provisions of the Land Acquisition Act. The grounds of the petitioner are that the State was not justified in invoking the urgency provisions in the Land Acquisition Act and there was failure to specify in the notification u/s 4(1) whether the urgency was invoked under Sub-section (1) or Sub-section (2) of Section 17. As early as 20th December, 1961 the Collector made an inspection of the site but it is said that his inspection notes were dated only 20th February, 1963. On 12th June, 1963, a provisional conclusion was reached to acquire the lands, the public purpose being to provide house-sites for Harijans in the village. The notification u/s 4(1) was made ready on 23rd March, 1964, and it was actually published in the Fort St. George Gazette, on 17th June, 1964. This notification stated that the lands specified in the schedule thereto were needed for a public purpose, to wit, for the provision of house-sites for Harijans and that under Sub-section (4) of Section 17, the Governor directed that, in view of the urgency of the case, the provisions of Section 5-A should not be applied. This was followed by a declaration, dated 2nd September, 1964, u/s 6, in which reference to Section 17(1) was made as the provision under which emergency existed.

2. It is contended that ex facie there was and there could be no emergency to invoke Section 17(1) or (2). The purpose of the acquisition, as we mentioned, was to provide sites for houses for Harijans. If emergency exists the State would be justified in invoking Section 17(4). But what kind of urgency is contemplated u/s 17 that will justify its application has to be examined. It is apparent from Section 4(1), Section 5-A and Section 17(1),(2) and (4) that the effect of the application of Section 17(4) would be to dispense with the necessity for an enquiry u/s 5-A. Even in case of emergency, possession before an award is made can only be taken after issue of Section 9(1) notice. If the provision applied is Sub-section (1) of Section 17, possession could be taken on the expiration of 15 days from publication of the notice mentioned in Section 9(1). But if it is Sub-section (2) of Section 17 that is invoked, possession could be taken immediately after the publication of the notice mentioned in Sub-section (1) of Section 9. An award also could follow only after proceedings u/s 9. Section 5-A is to the effect that within thirty days after the issue of the notification u/s 4(1), objections to the acquisition of the land proposed to be acquired could be made by any person interested in such land and notified u/s 4(1). The scope of the enquiry would be as to whether there is a public purpose and in connection therewith there is necessity to acquire more or less extent of the land notified u/s 4(1). Possibly some time may be consumed in considering the objections after their receipt and in making a report on the basis of which and upon a consideration of which the Government declaration u/s 6(1) will follow. The dispensation of an enquiry u/s 5-A can, therefore, mean only avoidance of the delay in waiting for objections and considering the same and making a report thereon and the Government finally deciding to make a declaration u/s 6 (1). Such a delay may roughly extend to about a couple of months at the most, a little more or less. The question in each case for the Government to consider when it desires to invoke Section 17(4) would be whether facts and conditions exist or require that would not brook the delay which would be caused by applying Section 5-A. A decision on that question will have to be taken on proper material and in an objective manner, neither "Capriciously nor whimsically. In no case the decision can be arbitrary. The question of urgency, of course, is always for the Government to decide and will not ordinarily be justiciable. But when the Court is called upon to see whether the power in invoking urgency provisions has been properly exercised, it has necessarily to examine whether the decision to invoke the provisions was based on material and was neither arbitrary nor capricious nor mala fide. That proposition was laid down by one of us in *Periyathambi v. Special Tahsildar* ILR (1965) Mad. 416 and we think that this principle should invariably be followed when the urgency provisions are invoked and the Court is called upon to examine whether the power u/s 17(4) has been properly invoked.

3. So far as we are able to find from the records of the acquisition sent up to this Court in obedience to the rule nisi, on a requisition from the State Government the Collector of Salem made a report, dated 3rd February, 1964 which is:

The Harijan colony is congested. The houseless families are suffering much for

want of sufficient accommodation. They should be given immediate relief in view of the unhygienic condition of their living. Therefore the enquiry u/s 5-A may be dispensed with in this case.

The Collector did not stop there. In his communication he made it clear why he thought that he should take that view. He said:

Further, the Government in their Memo. No. 50721/A.H.W. IV/63, dated 17th July, 1963 have specifically ordered that in all acquisition proposals for house sites etc., the provisions of urgency clause should be invoked.

It is obvious that the Collector must have been, as in fact he indicates in his communication, weighed and influenced by the omnibus general direction of the Government that wherever there was a proposal to acquire land for house sites, it should be treated as urgent. It is hardly necessary to say that such a direction of a general kind will on the face of it be arbitrary and if such a direction is taken as a guide and the Collector recommended invoking of urgency provisions and the Government thereupon applied the urgency provisions, the validity of this action can hardly be supported as being in compliance with the terms of Section 17(1) read with (4).

4. Whether there is urgency or not in order to invoke the urgency provisions of Section 17 will depend upon the facts in each case and have to be specifically examined and in the light of which a decision should be taken and not with reference to general decision that wherever house sites have got to be acquired, it should, as a matter of course, be treated as an urgent case for acquisition and the emergency provisions invoked. It is material to remember that the right of owners whose lands are proposed to be acquired to prefer their objections u/s 5-A is a valuable right. Before a decision is taken by the Government for the purpose of Section 6, the direction of the Legislature u/s 5-A is that objections should be received within of course a prescribed time from such owners and the same be considered after giving them an opportunity of being heard either in person or by pleader. In such an enquiry it would be possible for the owners to show that there was no public purpose, or that there was no necessity to acquire the proposed land, or that it would be proper and desirable to resort to acquisition of some other land and so on. could it be said in the present case that the acquisition could not brook the delay that would be caused by applying Section 5-A? If there were facts on which a fair and reasonable conclusion can be formed this Court will decline to interfere, though it may take a different view on the question of urgency. But whereas we said *ex facie* the decision is arbitrary, as the facts cannot possibly furnish a basis for any conclusion to invoke the urgency provisions, this Court has to step in and declare the action to be illegal. We have no doubt that in this case the application of the emergency provisions was not warranted and was not a fair and reasonable exercise of the power u/s 17.

5. The other point for the petitioner is that the State Government failed to specify in Section 4(1) notification whether the urgency invoked was under Sub-

section (1) or Sub-section (2) of Section 17. On the view we have taken on the first point, it is unnecessary to decide this question. Even so, we may express our view that it is imperative that Section 4(1) notification should indicate if urgency provision was to be invoked. But in the case the notification did mention Section 17(4). We do not, however, think it necessary for the State Government to go further and specify in the Section 4(1) notification whether the urgency was under Sub-section (1) or Sub-section (2). It would be open to the State Government to specify the particular provision for urgency for the first time in Section 6 declaration. We do not, therefore, see much force in the second point.

6. The petition is allowed with costs. The result is that the proceedings after the stage of the notification u/s 4(1) will stand quashed.