

(1993) 11 MAD CK 0022
In the Madras High Court

Muthukaruppan and Others

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 19-11-1993

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1994) 1 MLJ 303

Hon'ble Judges : Ar. Lakshmanan, J

Bench : Division Bench

Judgement

AR. Lakshmanan, J.—By consent of both parties, the main writ petition itself is taken up for final hearing.

2. I have heard Mr. K. Govindarajan for petitioners and Mr. V.P. Sengottuvelan for respondents. The writ petition has been filed by the petitioners

to call for the records of the first respondent relating to the Notification u/s 4(1) of the Land Acquisition Act in G.O.(3-D) 175, Adi Dravidar and

Tribal Welfare Department, dated 11.2.1991 and Declaration u/s 6 issued in G.O. (3-D) No. 288, Adi Dravidar and Tribal Welfare Department,

dated 12.4.1992.

3. According to Mr. K Govindarajan, learned Counsel for the petitioners, the respondents have not followed the procedures contemplated u/s

4(1) of the Act and that admittedly, the Notification u/s 4(1) was published in the Government Gazette dated 18.3.1991, but the Notification was

published earlier in the newspapers on 14.3.1991 itself. It is further contended that the decision of the Government will come into effect only from

the date of publication of the notification in the Gazette and hence the publication in the newspapers, is contrary to the procedures prescribed

under the Act. Mr. K. Govindarajan would further submit that the procedures followed in this case cannot be sustained in view of the judgment of

this Court in W.P. No. 9163,12529 of 1990 etc., dated 29th April, 1992 in the case of M. Rajagopal and Others Vs. The Government of Tamil

Nadu and Another, .

4. The respondents have also filed a counter- affidavit. It is seen from para. 2 of page. 2 of the counter-affidavit sworn to by the Special Tahsildar

(Land Acquisition) Adi Dravidar and Tribal Welfare, Tiruppur, who is well acquainted with the facts of the case from the records that the

notification u/s 4(1) was published in the Tamil Nadu Government Gazette, on 18.3.1991 and in the two Tamil dailies, viz., "Pirpagal" on

14.3.1991 and "Malai Murasu" on 14.3.1991 and the substance of the Notification was published in the locality on 23.4.1991. As rightly held by

my learned Brother K.S. Bakthavatsalam, J., in the judgment above referred, the procedure followed by the respondents in this case, cannot be

sustained. It is useful to reproduce the relevant passage from the judgment of my learned Brother K.S. Bakthavatsalam, J., in M. Rajagopal and

Others Vs. The Government of Tamil Nadu and Another, , which runs thus:

A reading of the judgment clearly shows that the publication u/s 4(1) in the Gazette is a preliminary step. Though the modes of publication are

prescribed in Section 4(1), after the amending Act, 1984, the publication has to be made first only in the Gazette and then only the other

publications are to follow. It is settled law that when a power is given to do a certain thing, that thing must be done in that way or not at all and the

other order of performance are necessarily forbidden. These principles would apply when the question is considered with regard to notification in a

newspaper earlier than the publication is made in the gazette. The power given u/s 4(1) has to be followed strictly by the State, and the publication

has to be made only in the seriatim as given in the section itself. In this case, the paper notification has been made prior to the notification has been

made prior to the publication of the notification made in the Official Gazette. The notification has been published in the gazette on 2.11.1988

whereas in the newspaper it was on 27.10.1988. On this score alone without going into the other contentions, the acquisition proceedings have got

to be set aside.

5. Thus it is seen that the respondents have not followed the power given to them u/s 4(1) of the said Act strictly and the publication has to be made only in the seriatim as given in the section itself. In this case, the paper notification has been made prior to the publication of the notification made in the Official Gazette. On this short ground, without going into the other contentions raised in the writ petition, the acquisition proceedings, in my opinion, have got to be set aside. Accordingly, as no other points were argued by both parties, this writ petition is allowed on the above short ground. There will be, however, no order as to costs.