

(2010) 02 MAD CK 0257

In the Madras High Court

Case No : W.A. No. 1499 of 2007 M.P. No. 1 of 2007

Muthusamy

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 16-02-2010

Acts Referred:

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

Citation : (2010) 02 MAD CK 0257

Hon'ble Judges : N. Paul Vasanthakumar, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : V. Bharathidasan, for the Appellant; G. Desingu, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—This writ appeal is directed against the order made in W.P. No. 2416 of 1998 dated 21.9.2006, dismissing the writ petition filed by the appellant, questioning the land acquisition proceedings, viz., notification u/s 4(1) of the Land Acquisition Act, 1894 issued under G.O.Ms. No. 171 dated 10.2.1995 and the declaration made u/s 6 under G.O.Ms. No. 185, dated 26.3.1996, insofar as the appellant's land with an extent of 0.52 Hectares in S. No. 502/4 situated in Kasipalayam Village, Erode Circle, Erode District.

2. The case of the appellant is that he is an agriculturist, owning the above said land, which is his ancestral property and according to him it is his only agricultural property. There are standing crops and trees, apart from a temple by name Kuppusamy Koil existing in the said land, where poojas are being conducted. The first respondent issued G.O.Ms. No. 171 dated 10.2.1995 u/s 4(1) of the Land Acquisition Act, 1894, proposing to acquire the said land for the purpose of constructing houses by the Tamil Nadu Housing Board. The said land was originally owned by the appellant's grandfather by name Vadamalai Gounder, who died 40 years ago and after his demise, the father of the appellant by name Ramasamy Gounder enjoyed the property till the year 1985 and after

his demise, the appellant being the only legal heir, became the absolute owner of the property.

3. The notification u/s 4(1) of the Act was issued in the name of the appellant's grandfather, who died long ago and the appellant having come to know about the acquisition proceedings, submitted his objection and opposed the said acquisition of the land before the second respondent contending that there is a Temple, where worship is being made not only by his family members, but also by the villagers and claimed that he being a small farmer, the said land can be excluded from the acquisition proceeding. The objection raised by the appellant was overruled by the second respondent during Section 5A enquiry and acquisition of the subject matter of the land was recommended. According to the appellant, the first respondent mechanically accepted the recommendations and chosen to pass declaration u/s 6 by issuing G.O.Ms. No. 185 dated 26.3.1996. It is also contended in the writ petition that the existence of the Temple and the objections raised by the appellant have not been specifically considered by the first respondent while issuing declaration u/s 6 of the Act.

4. The learned single Judge dismissed the writ petition holding that the appellant's name does not reflect in the revenue records and consequently Section 4(1) notification issued in the name of the grandfather of the appellant cannot be found fault with and the appellant having submitted objection and the same having been considered, Section 6 declaration was made in the name of the appellant and the same is just and proper. The learned Judge also observed that the objections raised by the appellant with regard to the existence of the Temple was considered and the same having been overruled by accepting the recommendations made by the second respondent, there is no illegality in the order acquiring the land of the appellant. It is against this order, the present writ appeal has been preferred.

5. The learned Counsel for the appellant argued only with regard to the non-consideration of the objections raised relating to the existence of the Temple, and not pressed the other points urged before the learned single Judge. In view of the said submission of the learned Counsel for the appellant, we have called for the records relating to the acquisition proceedings for perusal. Accordingly the records were produced before us by the learned Special Government Pleader and we perused the same.

6. The learned Counsel for the appellant relied on the judgment of the Supreme Court reported in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, in support of his contention, wherein it is held that the State Government is required to apply its mind not only on the objections filed by the owner of the land, but also on the report, submitted by the Collector, and if the same is not adequate, it may further enquire into the matter for arriving at its own satisfaction.

7. The learned Special Government Pleader on the other hand submitted that the

Collector's report along with the objection filed by the appellant was considered by the Special Commissioner, Land Administration, Chennai-5, who in his report dated 15.3.1996 recommended to overrule the objections and submitted the papers to the first respondent which was accepted by the Government and therefore there is no illegality in the order.

8. We have considered the rival submissions of the learned Counsel for the appellant as well as the learned Special Government Pleader appearing for the respondents.

9. From the file we have to ascertain whether the contention of the appellant that the Government has not considered the objection filed by the appellant can be sustained. In page 221 of the file produced before us, the report of the Special Commissioner, Land Administration, Chennai-5, submitted to the first respondent dated 15.3.1996 is available. In the said report a specific finding is given with regard to the existence of the Temple and no pooja is being conducted, and the said finding is recorded based on the spot inspection made by the Land Acquisition Officer. The Land Acquisition Officer further found that there is no burial ground, place of worship, pit for burial, ancient symbols, etc., and therefore the site is suitable for putting up houses and recommended to reject the objections of the appellant. The said report was relied by the first respondent while issuing G.O.Ms. No. 185 dated 26.3.1996 u/s 6 of the Land Acquisition Act, by recording that the recommendations of the Special Commissioner and Commissioner, Land Administration, and overruled the objections raised by the land owners. Thus, there is application of mind on the part of the first respondent and there is no illegality in the procedure adopted in the land acquisition proceedings.

10. The first respondent having accepted the recommendations and overruled the objections based on the reasons stated by the Special Commissioner and Commissioner of Land Administration in his report dated 15.3.1996, no separate reason need be recorded in the impugned order dated 26.3.1996.

11. In the decision reported in Delhi Administration Vs. Gurdip Singh Uban and Others, the Supreme Court in paragraphs 49 to 51 considered similar contention with regard to recording of satisfaction by the Government while finalising the acquisition proceedings. Paragraphs 49 to 51 read as follows:

49. In our view, the above observations of the Division Bench do not lay down the law correctly and in fact run counter to earlier decisions of this Court. In Ganga Bishnu Swaika v. Calcutta Pinjrapole Society the words used were that the "Governor is satisfied that the land is needed for a public purpose". It was argued that the said words did not ex facie show satisfaction of the Government which was a condition precedent. It was argued that the amendment by Act 38 of 1923 omitted the word "appears" and used the word "satisfied" instead. Even so, this Court held that the law before the amendment, and thereafter was the same. It was held that Section 6 specified the manner in which the declaration

should be made and if it was so made, it was conclusive. It was held that it was not necessary that the notification should even refer to the "satisfaction". If the satisfaction was challenged, it would be sufficient if such satisfaction is proved by producing the record on the basis of which the Section 6 declaration was issued. Therefore, the argument that Section 6 declaration must contain reasons or refer to the objections for every particular land, is not correct. Again in *Ratilal Shakarabhai v. State of Gujarat* the plea that the Government had not applied its mind was rejected by this Court in the following circumstances. The Court observed: (SCC p.266, para 9)

Before issuing that notification (i.e. Section 6), there was an inquiry u/s 5A. The Government had issued that notification after examining the report submitted by the officer concerned. There is no material on record from which we can reasonably come to the conclusion that the Government had acted blindly in issuing that notification.

50. No reasons or other facts need be mentioned in the Section 6 declaration on its face. If the satisfaction is challenged in the court, the Government can show the record upon which the Government acted and justify the satisfaction expressed in the Section 6 declaration.

51. It is true that Section 6 uses the words "particular land" but in our view while referring to its satisfaction in regard to the need to acquire the entire land, the Government need not refer to every piece of particular land. It is sufficient if the authority which conducts the Section 5A inquiry has considered the objections raised in relation to any particular land. Even where the said authority accepts the objections, that is not binding on the Government which can take a different view for good reasons. Where the Government agrees with the report u/s 5A, the declaration u/s 6 need not advert to the reasons or facts concerning each piece of land. Hence, the wide observations made in *Balak Ram Gupta* case cannot be accepted.

Applying the above decision of the Supreme Court to the facts in this case, we are satisfied that the final notification issued by the Government on 26.3.1996 is in compliance with Section 6 of the Land Acquisition Act, 1894, and no exception could be taken for not recording detailed reasons for overruling the objections of the appellant, particularly when the recommendations made by the Special Commissioner and Commissioner of Land Administration, to overrule the objections contain specific reasons and the same are accepted by the Government.

12. The decision cited by the learned Counsel for the appellant reported in *Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others*, is factually distinguishable as admittedly in the said case the file relating to the acquisition proceedings was not produced before the Court for perusal to satisfy recording of satisfaction in compliance of Section 6. In such context the decision of the High Court in quashing the proceedings was upheld by the Supreme Court.

It is also held therein that if the report is found to be not adequate, Government may further enquire into the matter for arriving at its own satisfaction. In the case on hand, the Government is satisfied with the reports. The file relating to the acquisition was produced by the respondents before the learned single Judge as well as before us. Hence the said judgment cannot be relied upon by the appellant to sustain his contention.

13. In view of the above said findings, we find no infirmity in the order passed by the learned single Judge and the writ appeal deserves to be dismissed and the same is accordingly dismissed as devoid of merits. No costs. Connected miscellaneous petition is also dismissed.