

(1987) 11 MAD CK 0024
In the Madras High Court

Mymon Bi and Another

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 19-11-1987

Acts Referred:

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

Citation : (1988) 1 LW 257 : (1987) 2 MLJ 280

Hon'ble Judges : Ratnavel Pandian, J

Bench : Division Bench

Judgement

Ratnavel Pandian, J.—These two appeals are preferred against the order of Mohan, J., made in W.P. Nos. 8586 and 8587 of 1987

dismissing those writ petitions which were filed challenging the validity, of the land acquisition proceedings taken out for public purpose, viz. for the

creation of a new neighbourhood known as Kalaighar Karunanidhi Nagar.

2. The brief facts of the case are as follows : A notification u/s 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) was made on

29.8.1975, and it was published in the Gazette on 1.10.1975. The property was originally owned by one Noorudeen and Saradambal. The

daughters of Noorudeen are the petitioners in W.P. Nos. 8586 and 8587 of 1987 (which were heard by the learned single Judge). On 4.3.1975,

the daughters of Noorudeen entered into an agreement for sale of the property to one Sundaram. After the publication of the notification u/s 4(1)

of the Act, the said Sundaram and the petitioners in the two writ petitions executed an agreement for sale in favour of Selliamman Koil Co-

operative House Site Society Ltd., which was the petitioner in W.P. No. 2344 of 1983. The daughters of Noorudeen filed their objections,

objecting to the acquisition during the enquiry u/s 5-A of the Act. Overruling the objections, the Collector recommended the acquisition to be

proceeded with. Thereupon, the Government accepted the recommendation of the Collector and issued a declaration u/s 6 of the Act on

29.9.1978. After the proceedings under Sections 9(2) and 10, the awards had been passed on 28.2.1983 and 30.5.1983 in respect of parcels of

the lands under acquisition. Mohan, J., who heard the writ petitions along with W.P. No. 2344 of 1986 filed by Selliamman Koil Co-operative

House Site Society Ltd., after elaborately considering all the contentions raised before him, has dismissed these two writ petitions. Hence, these

appeals. It cannot be gainsaid that these appellants have preferred the two writ petitions after a delay of 12 years reckoned from the date of the

notification u/s 4(1) of the Act or 9 years reckoned from the date of the declaration u/s 6 of the Act. They have not made any statement as to why

they had approached this Court after such a long delay. As rightly pointed out by the learned single Judge, the appellants might have thought that;

they having agreed to sell the property in favour of the Society, the Society would fight against the acquisition proceedings.

3. Mr. K. Ramamurthi, learned Counsel for the appellants, contending that the Court should take a liberal attitude in condonation of the delay and

that this delay in the appellants approaching the Court should not stand in the way of granting the relief sought for by them, relied upon a decision

of the Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , In that case, there was a delay of four

days, and the said delay had not been condoned by the High Court. While dealing with such a situation, the Supreme Court has stated thus:

"Every day's delay must be explained does not mean that a pedantic approach should be made xxx xxx xxx

When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the

other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

In our view, the principle laid down by the Supreme Court in that case having regard to the facts of the case cannot be made applicable to the facts

of the present case in which, as pointed out earlier, there is a long delay of 12 years from the date of the notification u/s 4(1) of the Act and 9 years

from the date of the declaration u/s 6 of the Act.

4. In this connection, we would like to point out that the Supreme Court in Hari Singh and Others Vs. State of U.P. and Others, , has dismissed

the appeal on the ground of delay of 2-1/2 years. In the present case, the appellants had every knowledge of the acquisition since they admittedly

filed their objections during the enquiry u/s 5-A of the Act which was held on 10.12.1975 and 12.12.1975. Yet it did not occur to them that they

should question the acquisition. As rightly pointed out by the learned Judge, probably these two appellants wanted somebody else to fight the

battle.

5. Learned Counsel now states that the land acquired is proposed to be used for some purpose other than the one for which it was acquired. But

he would fairly concede that there is no notification to that effect. The decision cited by the learned Counsel in Special Deputy Collector and Land

Acquisition Officer, Salem Steel Plant, Salem v. Kuppu Gounder 1985 T.L.N.J. 284, in support of his contention cannot be of any help in this

case since admittedly there is no notification that this land is going to be utilised for a purpose other than the one for which it was acquired. Under

these circumstances, we see no merit in these appeals. These writ appeals are dismissed.