
(1966) 06 MAD CK 0002
In the Madras High Court

N. Varadappa Naicker

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 21-06-1966

Acts Referred:

Constitution of India, 1950 — Article 19(1)(f)
Land Acquisition Act, 1894 — Section 4(1), 5A

Citation : (1966) 79 LW 668 : (1966) 2 MLJ 438

Hon'ble Judges : M. Anantanarayanan, C.J

Bench : Single Bench

Judgement

M. Anantanarayanan, C.J.—This is an appeal from the judgment of Kailasam, J., in W.P. No. 918 of 1966, which related to the acquisition

of certain lands of the petitioner (appellant) in S.P. Nos. 72 and 82 in S. No. 145 of Vehyoor Village, Kancheepuram Taluk, for the declared

public purpose of an extension to a Harijan Colony. In seeking the interference of this Court in exercise of its powers in writ jurisdiction, the

petitioner (Appellant) affirmed in an affidavit that (1) the acquisition was not a "public purpose" within the meaning of Section 4(1) of the Land

Acquisition Act, (2) that it was an infringement of the fundamental right of the petitioner under Article 19(1)(f) of the Constitution, and (3) that, in

any event, the acquisition was mala fide, being a colourable exercise of power the land was not :suitable for the public purpose, as it was lower in

level than the existing colony, and separated therefrom by a channel. There were alternative sites that were even more suitable for the same

purpose, and extraneous and irrelevant factors had influenced the authorities in the initiation of proceedings. The learned Judge (Kailasam, J.) was

of the view that there was not a single tenable ground upon which the

proceedings of acquisition could be fairly impugned. In effect he dismissed the writ proceeding in limine.

2. We have carefully considered the arguments of the learned Counsel for the appellant, who has attempted to persuade us into admitting this appeal and we are equally unable to see any valid basis for a conceivable interference in writ jurisdiction. As is well known, the exercise of the power of Eminent Domain by the State is a discretion vested in the State, which has to be used bona fide and in the public interest. But once that decision has been taken it is not the province of the Courts to canvass the purpose of the acquisition, as a " public purpose " or otherwise, unless prima facie, there is some strong ground for holding that the particular acquisition is outside the power of Eminent Domain.

3. Equally, a ground of attack such as "mala fides" or a colourable exercise of power by the concerned authorities, is not a mere formula which can be used by the affected party because he finds the acquisition inconvenient or one which Courts will accept on such an imputation being advanced with no other support. On the contrary, these are very specific grounds of attack, and facts must be alleged which will at least render it likely or probable that the exercise of the power has been mala fide or colourable " vide the observation of this Court in Gangadara Mudaliar v. State of Madras (1965) 1 M.L.J. 374 a Judgment to which one of us was a party. Precisely as in that case, here also, the words of that decision are strictly applicable:

There is no colourable exercise of power for the simple reason that there is nothing to show the intrusion of any ulterior object.

4. Learned Counsel has pressed before us the difference in levels between the proposed site and the existing colony, and also the availability of alternative sites. These matters were before the authorities, in the form of objections urged by the party at stage of the enquiry u/s 5-A of the Act and, presumably, they have been fully considered. The authorities, have been satisfied, after such consideration, that it is essential to acquire the land of the petitioner for the purpose of the Marijan Colony It is indisputable that these lands, practically adjoin the existing colony, with only a channel separating them, and we must assume that if alternative sites elsewhere had been more suitable, the authorities would have decided

differently. On these grounds there is no room for interference.

5. Finally, it is strenuously contended that the existing user of these lands, namely, for agriculture, is far more valuable than the use to which the lands are intended to be put by the acquisition; hence it is argued that in the prevailing economic situation, the Court should interfere to preserve the present user of the land. This is eminently a matter for the revenue authorities to decide and, indeed, it is not the province of the Court to decide upon the question whether the acquisition should be proceeded with, or should be abandoned, because in a time of economic stress the land proposed to be acquired is already devoted to agriculture. Even now, if that factor should weigh with the authorities, they may consider the abandonment of this acquisition, and the acquisition of some alternative site. But this is a matter within their discretion, and the judgment of the Court cannot dictate the choice. With these observations and agreeing with the learned Judge in his view that there is no room for interference in writ jurisdiction we dismiss the appeal.