
(1976) 11 MAD CK 0043
In the Madras High Court

Nagammal

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 02-11-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1978) 1 MLJ 450

Hon'ble Judges : A.D. Koshal, J

Bench : Division Bench

Judgement

A.D. Koshal, J.—In this petition under Article 226 of the Constitution of India the challenge is to the acquisition proceedings taken in

respect of the land of the petitioner who prays that the same be quashed along with the relevant notification under Sub-section (1) of Section 4 of

the Land Acquisition Act (here in after referred to as the Act) which is claimed to be of no legal effect whatever for the reason that it was not

accompanied on immediately followed by a public notice of its substance as envisaged by that sub-section.

2. The said notification was published in the Official Gazette on the 3rd of October, 1973 and the Collector caused public notice of the substance

thereof to be given at convenient places in the locality in which the land in dispute is situated on the 25th of October, 1973 Although the case put

forward in the petition is that no such notice was given, the contention raised on behalf of the petitioner at the hearing is that the notification was

invalid by reason of the notice having been given no earlier than 22 days after its publication. This contention must be accepted in view of the dicta

of their Lordships of the Supreme Court in *State of Mysore Vs. Abdul Razak Sahib*, and *Narindrajit Singh and Ranjit Singh and Others Vs. The*

State of U.P. and Others, . In the first of those cases no notices as required by Section 4(1) of the Act were published in the locality till after a

lapse of about ten weeks. In striking down the notification as illegal their Lordships observed:

Under certain circumstances publications in the Official Gazettes are presumed to be notice to all concerned. But in the case of a notification u/s 4

of the Land Acquisition Act the law has prescribed that in addition. to the publication of the notification in the Official Gazette the Collector must

also give publicity of the substance of the notification in the concerned locality. Unless both these conditions are satisfied, Section 4 of the Land

Acquisition Act cannot be said to have been complied with. The publication of the notice in the locality is a mandatory requirement. It has an

important purpose behind it. In the absence of such publication the interested persons may not be able to file their objections about the acquisition

proceedings and they will be deprived of the right of representation provided u/s 5-A which is a very valuable right.

In Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, , the provisions of Section 5-A of the Act were dispensed

with u/s 17(4) thereof and it was urged on behalf of the State of Uttar Pradesh which had acquired the land in dispute that State of Mysore Vs.

Abdul Razak Sahib, , was distinguishable. The contention was overruled on the ground that Section 4(1) did not contemplate any distinction

between those proceedings in which in exercise of the power order Section 17(4) the appropriate Government directs that the provisions of

Section 5-A shall not apply and where such a direction has not been made dispensing with the applicability of Section 5-A. The provisions of

Section 4(1), in the opinion of their Lordships, were mandatory in either case and laid down in unequivocal clear terms that both things, viz., the

publication of a notification in the Official Gazette and notice of the substance thereof at convenient places in the locality have to be done

simultaneously.

2-A. The two cases above cited were allowed by a Full Bench in Rattan Singh and Another Vs. The State of Punjab and Others, in which the

notice of the substance of the notification was given on the 29th day of the publication of the notification itself which was quashed. It was urged

before the, Full Bench on behalf of the concerned State, that if the notice of the substance of the notification was delayed, the notification itself did

not become illegal, but that the only effect of the delayed notice would be to give to the owners of the land sought to be acquired a right to file their

objections within 30 days of such notice. The contention was repelled, and in my opinion rightly because it runs counter to the dictum of their

Lordships of the Supreme Court in *State of Mysore Vs. Abdul Razak Sahib*, , wherein as already stated, notice of the substance of the notification

was given in the locality about ten weeks after the publication of the notification which was struck down as. being illegal by reason of the delay in

giving the notice. If the only effect of such delay is that the period of 30 days mentioned in Section 5-A commences when the notice is given, then

there was no impediment in the way of this principle being applied to the facts of *State of Mysore Vs. Abdul Razak Sahib*, , and their Lordships

holding, that while the notification itself was not illegal, the effect of the delay in giving the notice of the substance thereof in the locality was that the

period of 30 days for filing objections would commence with the date when such notice was given That it was not so held clearly means, the

repudiation by their Lordships of the principle enunciated on behalf of the State.

3. In the present case, notice of the substance of the notification was caused by the Collector to be given in the locality not less than 22 days after

the publication of the notification itself. The notice and the notification are therefore not simultaneous. In fact, the notice cannot even be said to have

followed the publication of the notification shortly afterwards. In this situation, I regard the notification as falling squarely within the ambit of the

dictum in *State of Mysore Vs. Abdul Razak Sahib*, .

4. Before parting with the judgment I may notice a contention raised on behalf of the State to the effect that the petitioner should not be allowed to

raise the question of illegality of the notice because he did not do so in the petition. The question raised is a pure question of law in view of the facts

admitted at the hearing and there is no real impediment in the Way of permission being granted to the petitioner to raise it at this stage. Besides, the

petitioner can well take the stand that the notice given by the Collector in the locality not having followed the notification immediately after its

publication it is no notice in the eye of law so that his averment in the petition

that no notice had at all been given is really not incorrect from the legal point of view. In this view of the matter, I regard the contention to be without force.

5. In the result, the petition succeeds and is accepted and the impugned notification and the proceedings held in pursuance of it are quashed. The parties are however left to bear their own costs.