
(2005) 03 MAD CK 0106
In the Madras High Court
Case No : Writ Appeal No. 2023 of 1999

Nataraja Gounder

APPELLANT

Vs

The Slate of Tamil Nadu

RESPONDENT

Date of Decision : 22-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 11, 17, 4, 4(1), 5A
Tamil Nadu Land Acquisition Rules — Rule 1

Citation : (2005) 03 MAD CK 0106

Hon'ble Judges : Markandey Katju, C.J.;Prabha Sridevan, J

Bench : Division Bench

Advocate : K. Mohanram, for the Appellant; S. Gomathinayagam, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The Appellant challenged the land acquisition proceedings on the ground that the notification issued u/s 4(1) of the Land Acquisition Act, 1894 was vague as there was no local publication of the same in terms of Section 4(1) of the Act, that the Appellant's offer of alternate site must have been considered, and that the proper authority did not take possession of his land and therefore, no possession was taken in accordance with law.

2. The learned single Judge rejected the objection of the Appellant regarding vagueness on the ground that the Appellant understood the purpose for which his lands were acquired and had effectively raised his objection before the Land Acquisition Officer. As regards the publication of the notice u/s 4(1) of the Act, the learned single Judge sustained the contention that there was no proper publication as mandated by the Act. The other two objections were also rejected. The learned single Judge, however, refused to set aside the acquisition proceedings on the ground of non-compliance of Section 4(1) of the Act, since on facts, the learned single Judge was satisfied that after 1994, possession was not

with the Appellant and the lands had been distributed to the Adi Dravidars for whose benefit the lands were acquired.

3. Before us, the Appellant mainly reiterated the objection with reference to the non-compliance of the mandatory provisions relating to notice. Written submissions were also filed by the learned Counsel for the Appellant the learned Special Government Pleader.

4. Learned Counsel for the Appellant contended that the substance of the notification u/s 4(1) of the Act was not published in the locality and in the manner prescribed in Rule 1 of the Land Acquisition (Tamil Nadu) Rules. Rule 1 of the Land Acquisition (Tamil Nadu) Rules reads as follows:

Issue and publication of notice by the Collector -

Immediately after the publication of the notification u/s 4(1), the Collector shall issue a notice stating that the land is needed or is likely to be needed, as the case may be. for a public purpose and requiring all persons interested in the land to lodge before the Collector within thirty days after the issue of the notification, a statement in writing of their objections, if any. to the proposed acquisition. This notice should be published at convenient places in the locality, and copies thereof fixed up in the office of the Collector, the Tahsildar, and the nearest police station.

It was also submitted that the finding of the learned single Judge that publication was not effected in accordance with law has not been challenged by the Respondents.

5. Learned Counsel for the Appellant referred to the following judgments:

(a) Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, , wherein it was held that publication of the substance of the notification is mandatory.

(b) Thiruvaleeswarar Temple Vs. The State of Tamil Nadu and Another, wherein the above said view was taken by a Division Bench of this Court.

(c) C. Sargunam Vs. The State of Tamil Nadu and Others, , wherein it was held as follows:

There could be no legal impediment in re-vesting, because in such of those instances wherein the acquisition proceedings are declared illegal by Courts, it would result in the title to the property reverting to the erstwhile owner.

(d) Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others, , wherein it has been held as follows:

It is futile to reiterate the settled legal position that the publication of the Notification u/s 4(1) in the Gazette and substance from thereof in the locality are mandatory requirements and the omission thereof renders the Notification void.

According to the learned Counsel, since there was interim stay of dispossession,

possession was still with the Appellant.

6. The learned Special Government Pleader would, however, submit that Rule 1 of the Land Acquisition (Tamil Nadu) Rules was amended by G.O. Ms. No. 892, Revenue, dated 11.6.1991, while in the instant case, the notification u/s 4(1) was published in the Gazette on 26.12.1990, the paper publication was effected on 29.12.1990 and locality publication was effected by the beat of "Tom Tom" on 31.12.1990. Therefore, according to him, the present Rule 1 can have no application to the proceedings on hand; so also, the judgment of the Division Bench in 1990 (I) M.L.J. 142 cited supra is not applicable to the present case, since the judgment in the above cited case was rendered on 26.2.1990, prior to the amendment of Rule 1 and while no counter was filed in that case, in the instant case, a detailed counter has been filed and the averments made therein regarding the manner in which publication was effected were also accepted by the learned single Judge.

7. The learned Special Government Pleader relied on the following judgments:

(a) State of Karnataka and Another Vs. T. Venkataramanappa, , where the question that was considered by the Supreme Court was whether the absence of publication of the substance of the notification in the locality rendered the entire procedure void. The Supreme Court had held therein that even if the mandatory provisions have been violated, the acquisition need not necessarily be set at naught in all events and when the acquisition has become final, possession had been taken and reference has also been sought for, interference with, and quashing of the notification issued u/s 4(1) was not justified.

(b) State of Haryana and Another Vs. Raghubir Dayal, , where the Supreme Court observed as follows:

It is the function of the court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and that consequences that would flow from the construction to be placed thereon. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or general public without very much furthering the object of the act, the same would be construed as Directory.

For instance, in rural areas, most agriculturists may not even read vernacular newspapers. Their fields are their world and work therein is their bread winner. They would come to know only if the substance of the notification is published (announced) in the village by beat of drum. Therefore, the publication of the substance of the notification u/s 4(1) in the locality is mandatory.

There is an opportunity already given to the owner of the land (or person having interest in the land) to raise their objection during the enquiry u/s 5(A) or otherwise, in case of dispensing with the enquiry u/s 5(A), unless they show any grave prejudice caused to them in causing publication of the substance of the declaration u/s 6(1), the meaning to publish the substance of the declaration u/s

6(1) of the locality would not render the declaration u/s 6 invalid.

(c) Mohan Singh and Others Vs. International Airport Authority of India and Others, , where the Supreme Court held thus:

In the light of the above law, we have no hesitation to hold, that though compliance with publication of 3 steps required u/s 4(1) is mandatory while expressing the power of eminent domain u/s 4(1), when the appropriate Government exercise their power u/s 4(1), Section 17, dispensing with the enquiry u/s 5(A) and directs the Collector to take possession of the land before making the award as the lands are needed rightly either under Sub-Section 1 or 2 thereof which is not mandatory to publish notification u/s 4(1) and in the newspapers and giving of notice of substance thereof in the locality.

(d) Babu Barkya Thakur Vs. The State of Bombay and Others, , wherein it was held as follows:

The purpose of Notification u/s 4(1) is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels and if necessary, digging or boring in the sub soil to see whether the land was adapted for the purpose for which it was sought to be acquired.

What was on mere proposal u/s 4 becomes the subject matter of a land acquisition proceedings for acquisition under the Act. Hence, a defect in the Notification u/s 4(1) is not fatal to the validity of the proceedings.

(e) Ramniklal N. Bhutta and another Vs. State of Maharashtra and others, , wherein it was held as follows:

The Courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 - indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some local requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.

(f) 2001 (Supreme) 146 [Municipal Council of Ahmednagar v. Shah Hyder Beig and Ors.], it was held as follows:

After the award is passed, no writ petition can be filed challenging the acquisition notice or against any proceedings thereunder.

8. In the present case, the Appellant participated in the enquiry u/s 5-A conducted on 21.3.1991, received the remarks of the requisitioning body on

19.4.1991 and submitted his further objections on 29.4.1991. The declaration u/s 6 was published on 17.12.1991. Notice in the award proceedings was given on 17.3.1992 and the award enquiry was conducted on 24.3.1992 after observing the required formalities. Though the Appellant did not appear for the enquiry, he submitted his petition through the counsel on 24.3.1992. It is at this stage that he had also filed the writ petition.

9. Prior to the amendment on 11.6.1991, Rule 1 required the Collector to issue a notice stating that the land is needed and the notice should be published at convenient places in the locality. In the present case, a notice was published in the village by the beat of "Tom Tom" on 24.12.1991. Section 4(1) of the Act requires the Collector to cause public notice of the substance of such notification to be given at convenient places in the said locality.

10. In *Bahori Lal Vs. Land Acquisition Officer and Others*, a Full Bench of the Allahabad High Court considered the purpose of the notification u/s 4(1) of the Act. It held that the notification is intended to give a notice of warning to all persons interested in the land notified and that the notice of warning is given for two purposes - one, to enable the persons interested to file objections against the acquisition and two, to fix the date with reference to which ultimately possession is to be awarded of the land acquired. In *State of Haryana and Another Vs. Raghubir Dayal*, referred to above, the Supreme Court considered the effect of the word "shall" in Section 4(1) of the Act with regard to publication of the notification in the Gazette and observed, "In rural areas, most people may not read even the vernacular newspapers and they would come to know of the substance of notification only if it is published (announced in the village by beat of drum".

11. In this case, the Respondents have shown that the purpose for which the notification u/s 4(1) of the Act is effected is satisfied both on the ground of informing the land owners that they are entitled to give their objections and also for fixing the date for the purpose of awarding the compensation. The fact that the substance of the notification was published in the locality at convenient places by the beat of "Tom Tom" has not been rebutted. The Appellant has participated in the enquiry u/s 5-A in person and through his counsel, in the award enquiry u/s 11, and it is only thereafter that he has chosen to file the writ petition. The possession of the lands has also been taken and the lands have been distributed to the Adi Dravidars who are the beneficiaries.

12. Applying the decisions cited above and also keeping in mind public interest, we are of the opinion that the learned single Judge was perfectly right in refusing to quash the acquisition proceedings and we do not find any ground to interfere with the same. The writ appeal must fail and it is accordingly dismissed. Consequently, C.M.P. No. 16931 of 1999 and W.A.M.P. No. 390 of 2004 are closed.