

(1971) 10 MAD CK 0002
In the Madras High Court

P. Chockalinga Mudaliar

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 12-10-1971

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1972) 2 MLJ 196

Hon'ble Judges : V. Ramaswami, J

Bench : Division Bench

Judgement

V. Ramaswami, J.—This is an appeal against the Order of our learned brother Kailasam, J., dismissing the Writ Petition filed by the

appellant praying for the issue of a writ of mandamus. At the instance of the Executive Engineer, Public Health Department, Madras, proceedings

were initiated for the acquisition of an extent of 2-43 ares comprised in Section Nos. 485, 436 and 957/2, in Pasumathur Village, Gudiyatham

Taluk for the construction of Headworks and forming an approach road to the Head-works of Gudiyatham Water Supply Scheme - III Stage. The

appellant is the owner of a major portion of the land comprised in Section No. 957/2 Which was notified for acquisition. The notification u/s 4(1)

of the Land Acquisition Act, 1894, was published in the Fort St. George Gazette on 12th August, 1964. Notices for an enquiry u/s 5-A of the Act

were duly issued as provided under the Act. The appellant and the other owners were also given individual notices as required by the Board

Standing Orders directing them to file objections, if any, to the proposed-acquisition within 15 days from the date of receipt of the notice and they

were informed that the objections received within the due date will be enquired into-at 11 A.M. on 26th October, 1964 at the Taluk Office,

Gudiyatham.

2. The appellant does not appear to have filed any objection petition within the said period of 15 days as required in. the notice. But he appeared

before the Assistant Collector (who was the Enquiry Officer) at the enquiry on 26th October, 1964 and gave a statement objecting to-the

acquisition which was recorded by the Enquiry Officer. During the enquiry, the Enquiry Officer also recorded statements from the other owners

and the village officer of Pasumathur pillage. He submitted the record of enquiry with his report to the Government through the District Revenue

Officer, North Arcot, Vellore. In his enquiry report he had recommended the overruling of the objections of the appellant. The District Revenue

Officer also considered the objections and recommended that they may be overruled. The Government, after consideration of the records and the

enquiry report, overruled the objections of the appellant and issued the declaration u/s 6 which was published in the Fort St. George Gazette on

17th March, 1965. Thereafter, notices under Sections 9 and 10 were issued to the appellant and others. At that stage, the jppellant filed a writ

petition praying for the issue of a writ of mandamus forbearing the respondents from proceeding further with the acquisition.

3. Before the learned single Judge who heard the writ petition, the point that was urged by the learned Counsel for the petitioner (appellant herein)

was that notices under Sections 4(1) and 5-A were issued simultaneously and that, therefore, they were illegal. This contention was not accepted

and the writ petition was dismissed. Hence this appeal.

4. In this appeal, the learned Counsel for the appellant urged a different ground which had not been taken as a ground before the learned single

Judge. It was contended by him that Rule 3(b) of the Rules framed u/s 55 of the Land Acquisition Act required that notice u/s 5-A should be given

to the Department requiring the land where such Department was not the Revenue Department and that copies of the objections filed by the

persons interested in the land should also be forwarded to the said Department concerned so that they may file their answer to the objections, that

in this case copies of the objections filed by the appellant had not been forwarded to the Department requiring the land, namely, Public Health

Department and that, therefore, the enquiry proceeding u/s 5-A is vitiated. It

was further contended that 26th October, 1964, was the date given for filing objections and that, therefore, no enquiry should have been conducted on that day itself and that the enquiry should have been adjourned to a different date. In support of this contention, the learned Counsel relied on the decision in *Sinnaiyan and Others Vs. The Union Territory of Pondicherry and Another*, .

5. There is no factual basis for this contention of the learned Counsel for the appellant. In the affidavit filed in support of the writ petition this point

had not been precisely taken nor had this point been taken in the grounds of the writ appeal. Therefore, it was contended by the learned Counsel

appearing for the State that the appellant should not be permitted to raise this contention at this stage. Apart from this, we have verified the records

which were produced by the 1st respondent, State of Madras. It is seen from the files that the petitioner-appellant had not filed any petition

objecting to the acquisition in pursuance of the notice u/s 5-A. He appeared before the enquiry officer on the date of enquiry, namely, 26th

October, 1964 and his statement objecting to the acquisition was recorded by the Enquiry Officer. In that statement he had stated that the lands

sought to be acquired are very valuable lands and that therefore they should not be acquired. He also suggested that the Headworks might be

constructed in the Palar river itself. The District Revenue Officer, North Arcot, Vellore, who forwarded the enquiry report to the Government, in

his report dated 12th February, 1965, had stated ""the lands proposed for acquisition were selected by the Superintending Engineer, Public Health,

Madras, after personal inspection. The Headwerks cannot be constructed within the river Palar, which will be unsafe. The alignment was also

proposed by the requisitioning Department"". Then as already stated, he recommended the overruling of the objections.

6. Again, after the declaration u/s 6 was published, the appellant filed petitions to the Minister for Agriculture, the Chief Minister of Madras and the

Chief Engineer, Public Health. He also filed a petition to the Minister for Food, Government of India, New Delhi, which was forwarded to the

Government of Madras. On these petitions reports were called for from the Public Health (Engineering) Department and in his letter dated 3rd

December, 1965, the Chief Engineer, Public Health, reported that-

The feasibility of locating the Head-works of the water-supply scheme in poramboke lands on the upstream side of the present site to be acquired

was also examined during the joint inspection on 17th December, 1963, by the Superintending Engineer (Public Health), Madras and the Sub-

Collector, Tirupathur (North Arcot District) and finally the alternate proposals Were dropped on technical grounds.

It may be mentioned that even before the notification u/s 4(1) was published, at the time of selecting the site the appellant Was enquired into and a

statement of the appellant was recorded on 15th January, 1964. The objection of the appellant was considered by the Superintending Engineer,

Public Health and he reported that ""it is not feasible due to technical reasons"". It is clear from the facts, therefore, that this objection of the

appellant was duly considered at all stages.

7. A similar contention was considered by Veeraswami, J. (as he then was) in W.P. Nos. 1099 and 1123 of 1961 and the learned Judge held as

follows:

The next contention urged is founded on Rule 3(b) of the Rules framed u/s 55(1) of the Land Acquisition Act. It is contended that no notice u/s 5-

A was at all given to the Telephone Department requiring the land. Reliance is placed upon Lonappan Vs. Sub-Collector, Palghat, and Ram

Chandan Lal v. State of Uttar Pradesh AIR 1959 All. 752 in support of this contention. But I do not see how even assuming that no notice Went

to the Department, the petitioners were in any way affected. The facts and circumstances of this case clearly show that the Department needed the

land with the building thereon" for the purpose of the Telephone Exchange. In my opinion, the failure to give notice to the Department -and thereby

conforming to Rule 3(b) is not such irregularity as will necessarily invalidate the acquisition. The test should in every case be whether the failure has

caused substantial prejudice to the aggrieved persons. On this view, I consider that there is no substance in this contention either.

We respectfully agree with this decision of the learned Judge that in every case the test should be whether the failure has caused substantial

prejudice to the aggrieved person. As We have already noticed, objections of the appellant were considered on two occasions by the Public

Health Department--one prior to the 5-A enquiry and the other subsequently

thereafter. Since the Enquiry Officer was aware of the opinion of the Public Health Department that the shifting of the Headworks was not feasible due to technical grounds, there was no need for him to refer the matter again for consideration by the Department. In the report of the District Revenue Officer, dated 12th February, 1965 (which has already been extracted above), while forwarding the enquiry report, this opinion of the Public Health Department has specifically been referred to. There is therefore no substance in this contention of the appellant.

8. We are also of the view that in terms. Rule 3(b) of the Rules framed u/s 55 is not applicable to the instant case. That rule reads as follows:

Rule 3(a.) - If a statement of objection is filed by a person who is not interested in the land, it shall be summarily rejected, (b) If any objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of Section 5-A, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the Department or company - requiring the land, where such Department is not the Revenue Department. Copies of the objections shall also be forwarded to such Department or company. The Department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

As could be seen from Sub-rule (b) of Rule 3, if any objection is received from the person interested in the land and within the time prescribed in

Sub-section (1) of Section 5-A, then alone copies of the same should be forwarded to the requiring Department. Section 5-A of the Act requires

that any person interested in any land which has been notified u/s 4(1) may, within 30 days after the issue of the notification, object to the

acquisition of the land. Notification u/s 4(1) was published on 12th August, 1964. Therefore, if an objection had been filed within 30 days after

12th August, 1964, then that should be forwarded to the Department concerned under this rule. It is not the case of the appellant that any

objection was filed by him within 30 days from 12th August, 1964. In our opinion, this rule is not applicable unless the objections were received

within 30 days after the issue of the notification u/s 4(1). This aspect was overlooked by the learned Judge who decided the case in Sinnaiyan and

Others Vs. The Union Territory of Pondicherry and Another, .

9. In any case, since the appellant had not filed any objection petition even within the time specified in the notice of enquiry u/s 5-A and only

appeared for enquiry on 26th October, 1964, when his statement was recorded by the Enquiry Officer, Rule 3(b) in so far as it required copies of

the objections to be forwarded to the concerned Department, was not applicable.

10. In the case decided by Palaniswamy, J., in Sinnaiyan and Others Vs. The Union Territory of Pondicherry and Another, the short facts were

these: The notification u/s 4(1) Was published on 17th January, 1969. A notice for an enquiry u/s 5-A was served on the owners on nth April,

1969, requiring them to file their objections if any within 30 days and intimating them that if such an objection was filed, an enquiry will be held on

10th May, 1969. The owners sent a memorial to the Lt.-Governor, Pondicherry on 29th April, 1969 objecting to the acquisition. They appeared

before the Enquiry Officer on. 10th May, 1969 and their statement was recorded by the Enquiry Officer. On 4th June, 1969, the Enquiry Officer

sent his report and the declaration u/s 6 was published on 12th June, 1969. In paragraph 7 of the judgment it is stated that ""no doubt, they did

appear before the Acquisition Officer on 10th May, 1969 and gave a statement reiterating their objections already filed"". Therefore, we take it that

the memorial to the Lt.-Governor was taken as an objection petition filed in pursuance of the notice u/s 5-A or a separate petition was filed prior

to the date of enquiry. If that be the case, it was possible to argue that copies of the same should have been forwarded to the concerned

Department and their answers obtained in order to satisfy the principles of natural justice and a fair enquiry though not to comply with Rule 3(b).

Even in such a case the test, as we have already stated, should be whether the failure to follow that procedure has caused substantial prejudice to

the aggrieved person. In this connection we may also notice another decision of Palaniswamy, J., in W.P. No. 841 of 1970 decided on 23rd June,

1971. In that case, the notification u/s 4(1) was published on 23rd October, 1968. Notice of enquiry u/s 5-A was issued calling for objections

within 15 days and posting the enquiry on 30th November, 1968. Notice was served on nth November, 1968, but objections were filed only on

29th November, 1968,. beyond the time granted for filing objection. The

objection petition was not forwarded to the Department concerned. In the Writ petition it was contended that since the objection petition filed was not forwarded to the Department concerned, Rule 3(b) was contravened. The learned Judge held that "there Was no duty cast on the Acquisition Officer to forward the objections to the concerned. Department and to fix another date for enquiry "" since the objections were not filed in time. A fortiori will be a case where no objections at all were filed as required by the notice.

11. We are, therefore, of opinion that the proceedings of the enquiry u/s 5-A was not vitiated on this ground.

12. Equally untenable is the contention that the enquiry should not have been conducted on 26th October, 1964. The individual notices issued to

the appellant as required by the Board's Standing Orders, required him to file the objections within 15 days of service and informed him that if an

objection was filed an enquiry would be held on 26th October, 1964. Though it is not clear from the records as to when this notice was served on

the appellant, it was not disputed by the appellant that he had the 15 days time for filing objections prior to 26th October, 1964. The learned

Counsel for the appellant did not rely on any other rule or law except Rule 3(b) for his contention that the notice of enquiry should be issued only

after the notice calling for objections were issued and after the period for filing the objections was over. If the decision in Sinnaiyan and Others Vs.

The Union Territory of Pondicherry and Another, is considered to have held that the notice of enquiry should be issued only after the time for filing

the objections expired, we respectfully differ so long as the enquiry is held after the expiry of the time given for objections or after receipt of the

objections that enquiry will be valid. In fact, the same learned Judge has held in W.P. No. 841 of 1970 that a notice calling for objections and also

intimating the date of enquiry was valid and did not vitiate the enquiry. It may also be mentioned that on the date of enquiry the appellant did not as

for any adjournment of the case. It was also not the case of the appellant that no enquiry u/s 5-A was held. We are, therefore, satisfied that none

of the provisions of the Act and the rules framed thereunder were contravened and no principle of natural justice has been violated in this case.

13. The writ appeal therefore fails and it is dismissed. But there will be no order

as to costs.