

(1992) 07 MAD CK 0022
In the Madras High Court

P. Devendran

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 17-07-1992

Acts Referred:

Citation : (1992) 2 LW 617 : (1993) 1 MLJ 133

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Division Bench

Judgement

K.S. Bakthavatsalam, J.—The petitioner challenges the acquisition proceedings of certain lands in S. Nos. 85/2, 85/3 and 85/5 for an extent

of 0.27 acres, 5.26 acres and 1.90 acres respectively in Thiruvanmiyur village.

2. For the implementation of the Besant Nagar Phase II Scheme by the Tamil Nadu Housing Board, the Government sought to acquire certain

lands including the petitioner's lands by a notification u/s 4(1) of the Land Acquisition Act, (hereinafter referred to as the "Act") which was

published in the Gazette on 9.8.1978. The declaration u/s 6 of the Act was published in the Gazette on 8.8.1981. The petitioner challenged the

declaration u/s 6 of the Act by way of Writ Petition No. 10128 of 1981 in respect of those lands, mentioned above, on the ground that he has got

an approved layout in respect of S. No. 85/3 prior to the publication of notice u/s 4(1) of the Act and that he is entitled to get exclusion of layouts

approved prior to the publication of notification u/s 4(1) of the Act. Mohan, J. (as he then was) allowed the Writ Petition No. 10128 of 1981 by

order dated 23.1.1984 thereby quashing the declaration u/s 6 of the Act. The learned Judge remitted the matter back to the Government.

Subsequently the State preferred a writ appeal in W.A. No. 304 of 1985 against

this order. The First Bench of this Court dismissed the writ appeal on 1.3.1990. After the disposal of the writ appeal, the petitioner received a notice on 28.1.1991 calling upon him to appear submit his objections to the notification u/s 4(1) of the Act dated 9.8.1978. The petitioner having filed objections, has come up to this Court challenging the land acquisition proceedings issued u/s 4(1) of the Act and published on 9.8.1978. The petitioner alleges in the affidavit that the notice issued to the petitioner is not valid in law since a declaration u/s 6 of the Act cannot be made after three years after the publication of notification u/s 4(1) of the Act. It is also alleged that there has been a gross and culpable inaction on the part of the respondents in not implementing the orders of this Court within a reasonable time. It is also stated that the respondents themselves exempted the lands abutting the petitioner's lands on all the sides and that their proceeding with the petitioner's land alone is discriminatory and arbitrary and violative of Article 14 of the Constitution. It is also pointed out in the affidavit that if the acquisition is allowed to be proceeded with, the petitioner will be paid compensation at the market rate of the year 1978 whereas the lands, if acquired after 1990, the compensation will be illusory. With these allegations, the petitioner is before me with the prayer as stated above.

3. Notice of motion has been ordered by this Court on 20.2.1991.

4. A counter affidavit has been filed by respondents 1 and 2. The facts upto the disposal of the W.A. No. 304 of 1985 dated 1.3.1990 are not disputed in the counter. Subsequent to the disposal of the writ appeal, the Government was addressed by the Special Tahsildar (Land Acquisition) to inform whether any decision has been taken by the Government in the light of the judgment in W.P. No. 10128 of 1981. At that stage, the Government, it seems instructed the Special Tahsildar (Land Acquisition) to proceed with fresh enquiry u/s 5-A of the Act in respect of the lands covered in W.P. No. 10128 of 1981 and in WA No. 304 of 1985 and to submit draft declaration u/s 6 of the Act immediately. In view of that it seems that a notice has been issued to the petitioner u/s 5-A of the Act. It is contended in the counter affidavit that it is enough if the first declaration is made within three years from the date of notification u/s 4(1) of the Act and the decision in K. Chinnathambi Gounder and Another

Vs. The Government of Tamil Nadu and Another, , is relied upon in the counter-affidavit, for the proposition that if the first declaration is made within three years from the date of notification, it serves the purpose and that it cannot be contended that the second declaration should also be within a period of three years from the date of notification u/s 4(1) of the Act. It is also stated in the counter affidavit that the writ appeal filed by the Government was dismissed on 1.3.1990, that till that date the petitioner has not applied to the Government, on the basis of the abovementioned judgments for exclusion, that fresh proceedings u/s 3-A were initiated and that notice u/s 5-A of the Act was issued on 28.1.1991.

5. Mr. Raghavan, the learned Senior Counsel mainly contends that the notification u/s 4(1) of the Act, issued in the year 1978 cannot be enforced against the petitioner at this stage. The learned Counsel points out the proviso to Section 6 of the Act which has been inserted by Central Act No.

68 of 1984. Relying upon the said proviso, the learned Senior Counsel states that the State Government cannot take its own time and try to

deprive the citizens of their property rights. The learned Senior Counsel points out that the notification u/s 4(1) of the Act is dated 9.8.1978 and

the declaration u/s 6 of the Act is dated 8.8.1981 and that the same were quashed by this Court earlier. It is also pointed out by the learned Senior

Counsel that the writ appeal was filed by the State and that the petitioner has not obtained an order of stay of operation of the order in writ petition

during the period of appeal. According to the learned Senior Counsel no proceedings can be taken under the Act based upon the notification u/s

4(1) of the Act dated 9.8.1978. The learned Senior Counsel draws my attention to the decision of this Court in T. Vadadri alias Chellappa Vs.

The State of Tamil Nadu and Another, , in which a decision has been taken by this Court with regard to certain lands for the very same purpose in

the very same locality in almost similar circumstances. The learned Senior Counsel relies upon the said decision stating that the facts of the said

case are almost similar to the facts of this case and as such the notification u/s 4(1) of the Act made in this case, in so far as the petitioner's lands

are concerned, should be set aside.

6. Mrs. Kalaiselvi, the learned Government Advocate (Housing) who appears for

the respondents reiterates the contentions raised in the counter

affidavit. Further the learned Government Advocate is not able to controvert the contentions of the learned Senior counsel that the ratio in T.

Vadadri alias Chellappa Vs. The State of Tamil Nadu and Another, , would apply to the facts of this case.

7. Considering the arguments of the learned Senior Counsel appearing for the petitioner and of the learned Government Advocate (Housing), I am

of the view that the facts of the case which are placed before me, in all force are one and the same to the case decided in T. Vadadri alias

Chellappa Vs. The State of Tamil Nadu and Another, , cited supra. In my view the judgment of this Court, mentioned supra, squarely applies to

the facts of this case and the respondents cannot escape from that.

8. The reliance of the decision of a Full Bench of this Court in K. Chinnathambi Gounder and Another Vs. The Government of Tamil Nadu and

Another, , in my view, is wholly unsustainable. That was a case which arose before the Central Act 68 of 1984 came into force. After coming into

force of Act 68 of 1984, I do not think the principle laid down by the Full Bench of this Court in the above mentioned case will not hold good. The

Full Bench of this Court, in the decision cited supra, applied the maxim *actus curiae neminem gravabit* and took note of the fact that there was no

stay in that case in favour of the petitioner and observed at page 278 as follows:

...We will now proceed to consider the application of the maxim *actus curiae neminem gravabit* to the proceedings in question. This maxim ""is

founded upon justice and good sense; and affords a safe and certain guide for the administration of the law"". (Vide Broom's Legal Maxims, Page

99). We have already adverted to the period during which W.P. No. 2544 of 1970 remained pending on the file of the court. During that period

there was an order of stay in favour of the petitioners. The Government was not therefore, a free agent during that period to set right any mistakes

committed by it. In spite it, can time run out against Government so as to denude it of its full period of three years to make a declaration u/s 6(1) of

the Act for acquiring the petitioners' lands? It is this anomaly which has been pointed out by Ismail, J., in W.P. No. 642 of 1969 in the following

words:

The anomaly of the acceptance of the argument of the learned Counsel for the

petitioner in this behalf will become apparent in such a case

because, without there being any delay on the part of the Government, it will be said to have been disabled from completing that acquisition.

The Division Bench which disposed of *Lakshmi Venkatesan (Minor) v. Special Tahsildar Land Acquisition (1978)* 91 L.W. 1, has conceded, "that

the principle that an act of Court shall prejudice nobody is well established". It, however, refused to apply the principle to a case of land

acquisition, because, the period of three years specified in the proviso is absolute". The Supreme Court has however, taken a different view in *The*

Director of Inspection of Income Tax (Investigation), New Delhi and Another Vs. Pooran Mal and Sons and Another, . This decision had not

been placed for consideration by the Division Bench of this Court. At page 71, of the report their Lordships have stated as follows:

It is a well-established principle of judicial procedure that where any proceedings are stayed by an order of a Court or by an injunction issued by

any Court, that period should be excluded in computing any period of limitation laid down by law. Especially after the Limitation Act, 1963, the

provisions of which are now applicable to all proceedings, a provision like Explanation (1) to Section 132 is superfluous and no argument can be

based on it". Therefore, the view of the Division Bench that the maxim *actus curia neminem gravabit* will not apply to a specific legislative measure

providing limitation which does not except from its domain causes which are delayed by reason of issuance of a Court's order, cannot be held a

correct one. We therefore hold that as per the ratio laid down by the Supreme Court in *The Director of Inspection of Income Tax (Investigation),*

New Delhi and Another Vs. Pooran Mal and Sons and Another, , the maxim under consideration will apply to the legislative measure contained in

the first proviso to Section 6(1) of the Act notwithstanding there being no express provision in the proviso to causes which are delayed by reason

of issuance of a Court's order....

After the passing of the Central Act LXVII of 1984, an express provision has been made, regarding the period of limitation when a stay order of

the court is in operation. So, I do not think that the reliance of the learned Judge in *K. Chinnathambi Gounder and Another Vs. The Government of*

Tamil Nadu and Another, , will not apply to the facts of this case.

9. However, the learned Counsel appearing for the petitioner points out that with regard to S. No. 85/ 3 measuring about 5.26 acres, acquisition proceedings have been withdrawn by the Government on 1.7.1992. Therefore, as I have already stated the notification u/s 4(1) of the Act is quashed and the writ petition shall stand allowed in so far as S. Nos. 85/2 and 85/5 measuring about 0.27 and 1.90 acres respectively are concerned. However, there will be no order as to costs. However, it is open to the respondent State to proceed with the land acquisition proceedings a fresh if it thinks necessary as the acquisition is for the public purpose, exercising its power of eminent domain.