
(1999) 02 MAD CK 0056

In the Madras High Court

Case No : W.P.No. 14595 of 1991 and W.M.P.No. 21885 of 1991

P. Tamilarasan

APPELLANT

Vs

State of Tamil Nadu and two Others

RESPONDENT

Date of Decision : 16-02-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5

Citation : AIR 1999 Mad 282 : (1999) 1 CTC 586 : (1999) WritLR 706

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mr. V. Sairam, for the Appellant; Mr. S. Gopinathan, Government Advocate, for the Respondent

Judgement

1. Aggrieved by the land acquisition proceedings initiated by the respondents, the petitioner has filed the above writ petition.

2. The case of the petitioner is as follows:

He purchased under Registered Sale Deed dated 31.12.1986 agricultural lands in Survey No. 332/1 from M/s. Subramaniam, Paramasivam and

Kannan situated in Pernampet Village, Gudiattam Taluk, North Arcot District. Subsequent to the purchase of the said land's he had effected

change in all the Revenue Records and other authorities. He is in possession and enjoyment of the said lands right from the date of his purchase.

While so, he received a notice from the third respondent herein dated 20.9.1991 inter alia stating that the award under the Land Acquisition Act

has been wrongly given to his vendors and petitioner was directed to meet him to collect the amount which has been refunded by the vendors. It is

further stated that only when he received the above mentioned notice on 22.9.1991 he came to know that proceedings by the respondents under

Land Acquisition Act. The entire proceedings have been initiated behind his back. Even though the lands under acquisition are under his enjoyment

and possession right from 1986, the respondents failed to follow the mandatory provisions of the Act by issuing notice to the petitioner and hearing

his objections. In such circumstance, having no other remedy has filed the above writ petition.

3. None of the respondents have chosen to file counter affidavit disputing various averments made by the petitioner. However relevant records

have been placed for perusal of the Court.

4. In the light of the above factual position I have heard the learned counsel for the petitioner as well as learned Government advocate for

respondents.

5. There is no dispute that petitioner purchased the lands under acquisition in Survey No. 332/1 by way of registered sale deed dated 31.12.1986

from M/s. Subramaniam, Paramasivam and Kannan. According to Mr.V. Sairam, learned counsel appearing for the petitioner the registration has

been completed on 16.4.1987 and from that date onwards the petitioner is the owner of the lands in Survey No. 332 / 1 , Pernampet Village,

Gudiatham Taluk. He also would contend that in view of Section 60 and 66 of the Registration Act from the date of registration in all purposes

petitioner became the owner of the said land.

6. 4(1) Notification was published in the Tamil Nadu Government gazette in respect of the lands in Survey No. 332 / 1 on 23.2.1990 wherein the

name of the vendors alone were mentioned. Likewise, all subsequent notices were issued only to his vendors and petitioner was not given any

notice till passing of an award u/s 12(2) of the Act. There is no dispute that in all land acquisition matters the name of the owner of the land has to

be mentioned and individual notice has to be served on the person concerned. Even though respondents did not file any counter affidavit, on the

basis of the records, learned Government advocate strenuously contended that, based on the entries in the revenue records notices had been

served on the vendors of the petitioner. Before considering the conduct of the erstwhile owners in not contesting the acquisition proceedings and

receiving compensation in the year 1991 after disposing of the same by way of proper sale deed dated 31.12.1986, I shall refer the legal position

on this aspect.

7. In *Bhama Ramamoorthy Vs. The State of Tamil Nadu and Another*, , Mohan, J. (as His Lordship then was) in a similar circumstance has

concluded:

Certainly it was the duty of the Officer in charge to verify the registry and incorporate the name of the petitioner u/s 4(1) notification What

prevented the Government from ascertaining the correct state of affairs with reference to the change of the name in the revenue registry is not at all

made clear in the counter affidavit.

It is clear that before commencing the acquisition proceedings a duty is cast on the Land Acquisition Officer or any other officer authorised to

verify the Revenue records with regard to details of ownership, extent of land etc., and thereafter issue appropriate notices to the person

concerned as per the provisions of the Act and Rules.

8. In *P.C. Thanikavelu v. The Special Deputy Collector for Land Acquisition*, 1989 W.L.R. 89, Full Bench of this Court has answered the very

same question, the relevant conclusion are extracted hereunder:

It is not in dispute that in all cases where emergency provisions are not invoked and an enquiry under S. 5A of the Act is contemplated, the

Collector causes individual notices to be served on every person known or believed to be interested in the land to be acquired. Normally, such

notices are sent to persons whose names are found recorded in the revenue records as persons interested. But in several cases it may transpire that

persons whose names are found recorded in the revenue records as interested persons may cease to have such interest by reason of transfers of

the holding or otherwise. Nevertheless, no mutation of names in the revenue records in favour of persons who have become interested in the land

might have been effected. The result is that the Collector may cause individual notices to be served only on those persons whose names are found

in the Revenue records, but who have ceased to be interested in the land. The result is not far difficult to see. Such persons who have ceased to be

interested in the land may not respond to the notice, nor would they care to participate in the enquiry to be held under S. 5A of the Act. In such

cases, the statutory enquiry under S. 5A of the Act which has not been dispensed with, would be completed without affording a reasonable

opportunity to the persons who have an existing right in the land under acquisition. Though it is incumbent upon the Revenue to keep their records up to date by effecting mutation of names reflecting the actual state of affairs by showing the persons really interested in the land in their records, yet in a few cases it may so happen that the revenue records are not made upto date and the person who is really interested in the land may not receive any notice from the Collector for the enquiry under S. 5A of the Act. In such cases, if it is brought to the notice of the Collector by the erstwhile land owner or by any other person including the present owner thereof, of the name of interested persons, the Collector as a statutory functionary cannot decline to afford an opportunity to the person who is really interested in the land and close the enquiry. When such information is brought to the notice of the Collector, it is needless to say that the principles of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even though his name may not be found entered in the revenue records. It is true that the Government has the prerogative to acquire lands belonging to individuals for a public purpose sanctioned under the theory of "eminent domain". But the rule of law which governs and controls the executive functions in the thread that runs through the fabric of constitutional democracy. The rule of law behoves the Government to act fairly and reasonably and the principles of natural justice are the quintessence to such fair play and reasonableness. The decision reported in Padmavathi v. State of Tamil Nadu, 1978 (91) LW 80 does not reflect the true statement of law. The Supreme Court has held in Swadeshi Cotton Mills Vs. Union of India (UOI), that even in the absence of express reference to observance of principles of natural justice, such principles should be followed whenever it affects the rights of parties. It cannot be gainsaid that when the lands of an individual are acquired, albeit, he may be paid compensation, his civil rights may be affected. It is therefore elementary that, to be consistent with the principles of natural justice, such a person should be put on notice before his lands are acquired and his objection heard and considered. The enquiry contemplated under S. 5A of the Act would be full and complete only when the person who is really interested in the land is put on notice. But at the same time, it is made clear that individual notice is mandatory only to those persons whose names are found in the revenue

records or who are found in the revenue records or who are found by the Collector as persons interested in information received through reliable source"".

It is clear that a duty is cast on the Land Acquisition Officer to verify the revenue records and send individual notices to the person concerned.

However, if there is any transfer of ownership and information is furnished to the Land Acquisition Officer either during 5-A enquiry or at any stage

by the person concerned, it is mandatory on the part of the Land Acquisition Officer to afford an opportunity to the person who is really interested

in the land. It is also abundantly clear from the Full Bench decision that individual notice is mandatory only to those persons whose names are

found in the revenue records or who are found by the Collector as persons interested in information received through reliable source.

9. Now, I shall consider whether in the light of pronouncements referred to above, whether the respondents failed in their duty in not affording

opportunity to the petitioner in the land acquisition proceedings. Learned Government advocate has produced records relating to the acquisition. I

have already observed that in all proceedings, notifications the names of the vendors have been mentioned and they were duly served with notices

at every stage. In the 5-A proceedings the vendors of the petitioner after participating in the same gave their consent for the proposed acquisition.

The statement of the Land Acquisition Officer in this regard is as follows:

As regards the land in Survey No. 332/1, the joint holders viz., Tvl. Subramaniam, Kannan and Paramasivam all sons of late Deivasigamani Pillai

have appeared for the enquiry and gave their consent for the proposed acquisition."" (vide page 216 of the file)

While forwarding the particulars to the Special Commissioner and Land Administration, Chepauk, Madras-5 the Collector has submitted a

detailed report on 28.11.1989 wherein it is stated.

(vide page 526 of the file)

It is also seen from the award proceedings, notices were sent only to the above said vendors of the petitioner (vide pages 773 and 775 of the file).

After passing the award, on receipt of compensation the above said vendors made their signatures in token of receipt of the compensation as well

as handing over possession to the Land Acquisition Officer. Those particulars are

mentioned in pages 781 to 785 of the file.

10. It is clear that even though the petitioner herein became the owner of the land immediately after registration on 16.4.1987, neither the revenue

authorities nor the petitioner herein took any effective steps to get his name mutated. In other words, on the date of 4(1) notification, viz.,

23.1.1990 though the petitioner became the owner of the land in question, as per sale deed registered on 16.4.1987, his name was not included in

the revenue records in the place of his vendors. Since in all revenue records the name of the vendors alone were found, the Collector and the

persons working under him on the basis of the said entry shown their names in the 4(1) and subsequent notifications and issued individual notices to

them. Accordingly, in the light of the Full Bench decision referred to above, the Collector is bound to serve notices only on those persons whose

names are found in the revenue records. However as observed by their Lordships if information is received either from the vendors or from the

petitioner himself he has to provide opportunity to the person concerned. The particulars mentioned above from the file demonstrate that in none of

the stages the vendors have chosen to inform, the sale which took place on 31.12.1986. In such circumstances, the Collector cannot be blamed

for not sending notice to the petitioner. It is also clear that even though it is stated that the petitioner had signed all the documents at the time of

registration for mutation of records, after 16.4.1987 he had not taken any efforts to get his name entered in the Revenue records. Petitioner is also

responsible for his inaction in taking necessary steps in correcting the revenue records.

11. In the light of what is stated above, particularly in lieu of the law laid down by the Full Bench in P.C. Thanikavelu v. The Special Deputy

Collector for Land Acquisition, 1989 W.L.R. 89, as well as the conduct of the vendors in not informing the sale transaction at the appropriate

time, I do not find any error or infirmity in the acquisition proceedings initiated by the respondents. Consequently, the Writ Petition fails and the

same is dismissed. No costs. It is open to the petitioner to proceed against his vendors before the appropriate forum if he so desire.

12. In view of the dismissal of the writ petition, connected WMP., is also dismissed.