

(1997) 11 MAD CK 0132
In the Madras High Court

Padmanabhan and Others

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-11-1997

Acts Referred:

Citation : (1998) 2 MLJ 601

Hon'ble Judges : P. Sathasivam, J

Bench : Division Bench

Judgement

P. Sathasivam, J.—The Unsuccessful plaintiffs in O.S.No. 23 of 1982 on the file of the Sub Court, Pondicherry are the appellants in the above appeal.

2. The case of the plaintiffs as set out in the plaint is briefly stated herein:

They filed the said suit to set aside the notice dated 12.1.1982 issued by the second defendant expressing intendment to take possession of the suit property on 18.1.1982 and also to set aside the Notification issued by the second respondent under the authority of the first respondent issued u/s 6 of the Land Acquisition Act. Hence, the award passed by the second respondent is invalid and null and void It is further contended that a perusal of Section 4(1) notification shows that it was for the purpose of benefitting a section of the public by way of allotment of house sites to them. The plaintiffs submitted their objections and had also brought to the notice of the authority that they had no other property than the proposed one for acquisition. They also submitted that vast extent of land in Poromboke in the adjacent area which could be well utilised for the alleged purpose of allocation of house sites. However, the authorities again issued notice for their appearance u/s 5(a) of the Act. Even though the defendants received the objections from the plaintiffs they did not choose to conduct any enquiry as contemplated under the Act. All of a sudden the authorities issued notice u/s 12(2) of the Act informing that they are going to take possession of the property. In such circumstances, the plaintiffs have filed the suit as stated above.

3. The defendants filed a written statement wherein it is contended that the second defendant is implementing one of the 20 point programme scheme viz., "Assignment of free house sites to the landless labourers in rural areas" which is a public purpose of utmost importance benefitting a larger number of people who are downtrodden and economically weak. It is also contended that the statutory provisions of the Land Acquisition Act have been fully observed at all stages. The Land Acquisition Officer has fully followed the provisions, i.e., Sections 4, 5-A, 6 and award proceedings. Necessary notices have been served on all the plaintiffs. It is also contended that the suit is not maintainable and liable to be dismissed.

4. The first plaintiff was examined as P.W.1. Exs.A-1 to A-5 were marked in respect of their case. On behalf of the defendants no one was examined. However, the award dated 15.12.1981 was marked as Ex.B-1. The learned Principal Subordinate Judge, Pondicherry, after framing necessary issues after holding that the plaintiffs have not made out a case to set aside the notice dated 12.1.1982 issued by the second defendant and after reserving the right to claim higher compensation by the children of the plaintiffs partly decreed the suit as mentioned above. Not satisfied with the relief granted by the court below, the plaintiffs have filed the above appeal.

5. The learned Counsel for the appellants after taking me through the case of both the parties, contended that the conclusion arrived at by the court below cannot be sustained and she prayed for interference in this appeal. On the other hand, the learned Government Pleader appearing for the respondents submitted that in view of various provisions of the Land Acquisition Act the suit filed by the plaintiffs is not maintainable and prayed for dismissal of the appeal. In any event he also submitted that the plaintiffs have not made out a case to set aside the impugned notice. I have carefully considered the rival submissions.

6. Considering the various provisions under the Land Acquisition Act, it is settled law that the suit is not maintainable. It is not disputed that the defendants have not sent any notice with regard to the acquisition proceedings. In such circumstance, at every stage if the plaintiffs have any objection or grievance it is always open to them to raise their objection before the Land Acquisition Officer or the competent authority as provided under the Act. Even if there is any flaw or error in the proceedings initiated in the acquisition proceedings it is always open to the aggrieved persons to approach this Court exercising jurisdiction under Article 226 of Indian Constitution and thereafter further appeal to Supreme Court. In this regard the learned Government Pleader has brought to my notice the decision of the Supreme Court in *Laxmi Chand and others Vs. Gram Panchayat, Kararia and others*, . In a similar case their Lordships of the Supreme Court have observed thus:

Section 9 of the CPC gives jurisdiction to the civil court to try all civil suits, unless barred. The cognizance of a suit of civil nature may either expressly or impliedly be barred. The scheme of the Act is complete in itself and thereby the jurisdiction of the civil court to take cognizance of the cases arising under the Act

(Land Acquisition Act) by necessary implication, stood barred. The civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. The only right an aggrieved person has is to approach the plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power barring thereof, there is no power to the civil court.

Inasmuch as the said decision has been rendered with reference to the provisions of the Land Acquisition Act the same is directly applicable to our case.

7. The other decision referred to by the learned Government Pleader is in Union of India represented by The Secretary to Government, Revenue Department, Government of Union Territory of Pondicherry and Anr. v. Krishnasamy Naidu (1996)1 M.L.J. 342. In this case also the question was whether the civil court has jurisdiction to entertain the question relating to the acquisition proceedings. Subramani, J., after referring to various decisions of this Court as well as the Apex Court, came to the conclusion that the suit filed by the plaintiffs in that case is misconceived, and the suit is not maintainable. The learned Judge has also rendered categorical conclusion that the civil court has no jurisdiction to entertain the said suit.

8. Similar view has been taken by the very same learned Judge in a batch of civil revision petitions viz., C.R.P.Nos. 1975 to 1983 of 1995 by order dated 31.7.1997.

9. In view of the categorical decisions of this Court as well as the Apex Court even though maintainability of the suit was not considered by the court below, I hold that the suit filed by the plaintiffs is not maintainable. Even on merits I am not persuaded to take a different view than that of the learned Subordinate Judge. Accordingly, the appeal fails and the same is dismissed. However, in the circumstances of the case there shall be no order as to costs.

10. The learned Counsel for the appellants submitted that the dismissal of the suit as well as the appeal would not preclude them from approaching the appropriate authority including the Government in order to ventilate their claim. I make it clear that the dismissal of the suit as well as the appeal would not prevent them from pursuing their remedy if any available in law before the appropriate authority including the Government.