
(1990) 09 MAD CK 0005
In the Madras High Court

Palani Naicker and Another		APPELLANT
	Vs	
State of Tamil Nadu and Others		RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A, 6

Citation : (1991) 2 MLJ 14

Hon'ble Judges : A.S. Anand, C.J

Bench : Single Bench

Judgement

A.S. Anand, C.J.—These writ appeals are directed against the common judgment of a learned Judge of this Court by which writ petition

Nos. 4839, 4840 and 4841 of 1982 were dismissed. We are concerned with writ appeal Nos. 157 and 158 of 1984 which are directed against

writ petition Nos. 4839 and 4840 of 1982.

2. The respondents proceeded to acquire certain land avowedly for a public purpose. The appellants have their lands in Survey Nos. 63/1 of

Koyambedu village. The appellant in W.A. No. 157 of 1984 has his holdings to the extent of 20 cents while the appellant in W.A. No. 158 of

1984 has his holdings to the extent of 60 cents. Section 4(1) Notification under the Land Acquisition Act was issued on 21.6.1975. The substance

of the notification was admittedly published between 4.6.1975 and 6.6.1975. The appellant in both the appeals filed their objections by 30th June,

1975 and this fact is borne out from the records produced by the learned Special Government Pleader. The competent authority forwarded the

objections raised by the appellants to the requisitioning authority as required by Rule 3(b) of the Rules framed under the Act. Enquiry u/s 5-A was

held and concluded on 20.6.1976, where after on 13.5.1978 Section 6 declaration was issued.

3. Learned Counsel for the appellants submits that at the time when the enquiry u/s 5-A was held, the authorities were not in possession of the

remarks of the requisitioning department and, therefore, the enquiry u/s 5-A was vitiated because of non-compliance with the mandatory

requirements of Rule 3(b). From the record produced by the learned Special Government Pleader, we find that the remarks of the requisitioning

department were made on 24.1.1978 and received by the competent authority on 30th of January, 1978. Admittedly no enquiry was held u/s 5-A

after the remarks had been received from the requisitioning authority and the enquiry u/s 5-A was held on 30th June, 1975 almost three years

before the remarks were received from the requisitioning authority, and, as such this cannot be held to be a valid enquiry as contemplated by law.

The requirements of Rule 3(b) of the Rules are mandatory. Non-compliance with the same vitiates the proceedings. Since admittedly in this case

the enquiry which was held u/s 5-A was held in breach of the mandatory requirements of Rule 3(b), it stood vitiated. Consequently the declaration

made u/s 6 on 15.5.1978 after the objections were received from the requisitioning authority but without holding any enquiry at that point of time

u/s 5-A also stand vitiated. We are not impressed with the submission of the learned Special Government Pleader that since the declaration u/s 6

was published on 15.5.1978 and the writ petitions were filed in 1982, they should be dismissed as being hit by laches. Since the authorities did not

comply with the mandatory requirements of the law and held an enquiry u/s 5-A in breach of the mandatory requirements of Rule 3(b) it is obvious

that the proceedings as also the declaration u/s 6 are vitiated, and we cannot, therefore non-suit the appellants only on the ground of laches. The

learned single Judge, in our opinion, did not notice these dates and because of the omission to notice the various dates as we have given

hereinabove, he fell into error in holding that there was no procedural flaw in the acquisition proceedings. The procedural flaw in the facts and

circumstances of the case is writ at large and has vitiated the declaration made under u/s 6 of the Act and we set it aside.

4. The learned single Judge also non-suited the appellants on the ground that they had asked for enhanced compensation and in taking that view

relied upon a Division Bench judgment reported in Mohammed Habibullah Sahib v. Special Deputy Collector for Land Acquisition (1967) 2

M.L.J. 531. We have gone through the judgment and in our opinion that judgment has no application whatsoever to the facts of the present case.

In the Division Bench judgment of Md. Habibullah Sahib, (1967) 2 M.L.J. 531, enhanced compensation has been asked for after an award had

been made. That is not the position in the present case. Admittedly no award has been made in the present case. The question of asking for

enhanced compensation, therefore, in terms of the judgment of the Division Bench did not arise. That judgment, therefore, cannot be put against

the appellants in these writ appeals.

5. Thus, for what we have said above, we find that the judgment of the learned single Judge cannot be sustained and we accordingly set it aside.

6. Since we have found that the enquiry u/s 5-A of the Act was not held in accordance with law and have also set aside the declaration made u/s 6

on that account, we clarify at the request of the learned Special Government Pleader that it shall be open to the respondents, if so advised, to take

further steps in the acquisition proceedings from the stage of the enquiry u/s 5-A onwards in accordance with law.

7. In view of the above discussion, the judgment of the learned single Judge is set aside. The writ petitions would consequently stand allowed to the

extent we have indicated hereinabove. The writ appeals are allowed. There shall, however, be no order as to costs.