

(1965) 07 MAD CK 0032

In the Madras High Court

Case No : Writ Appeal No. 34 of 1965 and 352 of 1964

Palaniswami Gounder and Others

APPELLANT

Vs

Special Tahsildar, Land Acquisition, Harijan Welfare Erode and Others

RESPONDENT

Date of Decision : 01-07-1965

Acts Referred:

Land Acquisition Act, 1894 — Section 5

Citation : AIR 1967 Mad 362 : (1966) ILR (Mad) 107 : (1967) 80 LW 286

Hon'ble Judges : P. Chandra Reddy, C.J.; Natesan, J

Bench : Division Bench

Judgement

P. Chandra Reddy, C.J.

(1) The subject matter of challenge in this writ appeal is the notification, dated 21-8-1962, issued u/s 60 of the Land Acquisition Act (hereinafter called the Act). An extent of one acre 31/2 cents in S. No. 50(6) belonging to the appellants was notified for acquisition for the purpose of house-sites for Harijans u/s 4 of the Land Acquisition Act. That notification also included a direction u/s 17(4) of the Act to dispense with the provisions of Section 5-A of the Act in view of the urgency of the case. This was followed up by a declaration u/s 6 of the Act. It was stated therein that possession of land should be taken immediately after the publication of the notice u/s 9(1) of the Act. The appellants attacked these proceedings on various grounds but they need not be set out here, as they have confined themselves in this appeal to one objection. The notification u/s 6 of the Act is assailed on the ground that the prior notification issued u/s 4(1) of the Act was contrary to the relevant provisions of the Act, and this has affected the validity of the notification u/s 6. They claim that at the stage when Section 4(1) notification is issued the question of acquisition is still in the investigatory stage and so the appropriate Government could not reach any conclusion as to the applicability of the urgency provisions contained in Section 17 of the Act. Though it will be open to the Government after considering all the matters relevant

thereto to decide whether the acquisition should be proceeded with expeditiously, it would be premature to arrive at any opinion in relation to the applicability of Section 5-A at the stage of Section 4(1) notification.

This argument is founded on the provisions of Section 4 which commences with the words:

"Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose."

The argument based upon the language that--

"Land in any locality is needed or is likely to be needed for any public purpose"

is that the notification under the section has no relation to any specific land but bears only upon a particular locality and it is only after the preliminary investigation is carried out under that section that the land needed for a public purpose is particularized. Till the preliminaries are completed the appropriate Government does not reach any decision, as to the land to be selected for a public purpose. This result flows according to the learned counsel, from the difference in language between Section 4(1) and Section 6(1) which talks of any particular land is needed for a public purpose. Learned counsel urges that if really a specified land was within the contemplation of Section 4, it would have used the same language, namely any particular land, as in Section 6. The difference in the language in this behalf clearly indicates that at the stage of issue of notification u/s 4(1) the appropriate Government not having made up its mind as to the land to be acquired for a public purpose, it could not apply its mind to the question of the applicability of Section 5-A of the Act, urges learned counsel for the appellants. We are unable to accede to this contention.

(2) Before we deal with the validity of this contention, it is useful to refer briefly to the scheme of the Land Acquisition Act, in so far as it has a bearing on this enquiry. The proceedings for acquisition start with a preliminary notification u/s 4(1) which recites that:

"lands in any locality is needed or is likely to be needed for any public purpose".

After the notification, authority is conferred on an officer either generally or specifically by Government and on his servants and workmen to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil to do all other acts necessary to find out whether the land is suitable for such purpose, to set out boundaries of the land proposed to be taken and so on. Section 5-A enables any person interested in any land which has been notified u/s 4 to file objections to the collector to the acquisition of the land or of any land in the locality in the locality as the case may be within 30 days of the issue of that notification. The Collector has to give an opportunity to the objector of being heard and after the objections are heard and after further enquiry if necessary the Collector has to submit the case for the decision of the Government together with the record of the proceedings held by him and the report containing his

recommendations on the objections. The decision of the Government on the objections is final. This is followed up by the declaration u/s 6 that the land is needed for a public purpose. After such declaration has been made u/s 6, the Collector has to take orders for acquisition of land. It is manifest from the scheme noticed that as soon as a preliminary notification is issued u/s 4, the officer authorised by the Government may enter upon the land to survey it whether the land is adapted for the purpose for which it was sought to be acquired and this action it taken would give sufficient notice to those interested to object. If objections are made, the Collector will consider those objections and make the necessary recommendations in his report to the Government. If on the other hand, no objections are filed, the Government proceeds to issue a notification u/s 6 on the report of the Collector.

To this usual procedure there is, however, an exception u/s 17 contained in Clause (4) of that section which recites--

"In the case of any land to which in the opinion of the appropriate Government, its provisions of sub-section (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration shall be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4 sub-sec. (1)." One thing is clear from section 17(4) and that is that the direction contemplated by sec. 17(4) should precede a declaration u/s 6. There is nothing in the language of Sec 17(4) to warrant the contention that the appropriate Government has to apply its mind to the problem bearing on Section 5-A only after the issue of the preliminary notification. No such sequence is provided in that section. It does not prescribe that the appropriate Government should wait for the dispensing with the provisions of Section 5-A till after the 4(1) notification. It is one thing to say that the appropriate Government is not under an obligation to include the direction for dispensing with the provisions of Section 5-A in the preliminary notification, but a different thing to say that the Government is precluded from doing it.

(3) On the other hand, we feel that the scheme of the Act indicates that the decision as to the requirement of the land for a public purpose and the decision not to apply the provisions of Section 5-A in view of the urgency can be taken simultaneously. The authorities concerned need not wait for bringing into operation the provisions of Section 17(4) till after the issue of a preliminary notification.

(4) This conclusion of ours is strengthened by the form of notification to be issued u/s 4 of the Act, which requires a schedule to be annexed mentioning district, taluk, village, description of land, with survey or paimash member, name of the owner or occupier, boundaries of the land required to be taken up, all of which denote that Section 4 has in contemplation a specified piece of land. The absence of the word "particular" before the expression "land" in section 4 cannot lead to the inference that at the stage of the preliminary notification the

Government has in view only a particular locality and not any specified piece of land. On the other hand, all the indications in that section are that Section 4 has reference to a specified bit of land. It is true that after the notification under that Section investigation is caused to be made by the officers authorised by the Government to ascertain the adaptability of the land for a public purpose and it is only after being satisfied about the suitability thereof that the Government takes a decision on the question of acquisition of the land and then makes a declaration u/s 6 which becomes final. It is too much to contend that the legislature has invested the officers envisaged in sub-sec. (2) with enormous powers to decide as to which particular plot in a locality should be selected for a particular public purpose. In our opinion, the purpose of the section seems to be that after taking a decision as to the requirements of a particular piece of land for a public purpose the appropriate Government authorises either specifically or generally one of their officers to carry out certain tests to ascertain the adaptability of the land and if it found suitable, issues a declaration u/s 6. We are not persuaded that section 6 declaration could have relation to a land that is not the subject matter of a preliminary notification. The land that is sought to be acquired should be involved in the preliminary notification. It may be that a larger extent of land is indicated in Section 4 notification than the land finally decided upon to be acquired; or it may be that after the notification the land may be abandoned if found to be unsuitable. We have already stated that Section 17(4) of the Act does not require that the issue of a preliminary notification and the direction to dispense with the provisions of Section 5-A should be in two stages. There can be a simultaneous decision in regard to both the matters.

(5) This conclusion of ours is reinforced by decided cases. In *Ramabrahamam v. State of Andhra*, AIR 1957 Andhra Pra 450, a Division Bench of the Andhra Pradesh High Court has held that there is nothing illegal if the Government by the same order directs the officer concerned to issue the notification under Sec. 4 and also to dispense with the procedure laid down u/s 5-A of the Act. In the same trend of thought is the ruling of the Madhya Pradesh High Court in *Dr. Rambihari Misra Vs. The State of M.P. and Others*, . It was decided in that case that it was within the competency of the Government to order that in any particular case coming under sub-section (1) of Section 17, the provisions of Section 5-A shall not apply in the preliminary notification u/s 4.

(6) Support is sought by Sri Vendantachari for the proposition advanced by him from a judgment of the Supreme Court in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, . The passage which is pressed into service in this behalf and occurring at page 822 (of SCR): (at p. 171 of AIR) is:

"If the Government, therefore, takes a decision to make such a notification, and, thereafter takes two further decisions, that is, to dispense with compliance with the provisions of Section 5-A and also to declare that the land comprised in the notification is in fact needed for a public purpose, there is no departure from any provision of the law even though the two notifications are published on the same

day".

(7) We are not convinced that these observations lend any colour to the contention of the learned counsel. It is clear from the extracted sentences that the decision to make a notification u/s 4 should be followed by two further decisions, namely, to dispense with compliance of the provisions of Sec. 5-A and to make the declaration u/s 6. It is significant that the expression used is--takes a decision to make a notification. It does not talk of issuing a notification and then taking a decision. That the Supreme Court did not intend to lay down the proposition contended for by Sri Vendantachari is clear from the earlier passage in the same page--

"But it seems to us that there is an emergency by reason of which the State Government directs under sub-sec. (4) of Section 17 of the Act that the provisions of Section 5-A need not be complied with, the whole matter, that is, the actual requirement of the land for a public purpose must necessarily have been considered at the earliest stage itself that is when it was decided that compliance with the provisions of Section 5-A be dispensed with".

It is manifest from this sentence that the two decisions are parts of the same process, namely, the acquisition of a particular piece of land and dispensing with the provisions of Section 5-A. It may be mentioned here that in the case under citation the direction not to apply the provisions of Section 5-A was contained in the preliminary notification u/s 4 and that both the notifications u/s 4 and 6 were published simultaneously. Notwithstanding this, the objections of the owner of the land were overruled. Thus Smt. Somavanti and Others Vs. The State of Punjab and Others, far from lending any support to the case of the appellants militates against it.

Nor is Nandeshwar Prasad and Another Vs. The State of Uttar Pradesh and Others, of any avail to the learned counsel. Nowhere in the whole of the judgment has it been even suggested that the two things, namely, issue of preliminary notification and the direction contemplated in Section 17(4), should be done at different stages. In our opinion, neither the decided cases nor the language of the relevant provisions of the Act render any assistance or even colour to the contentions raised by the learned counsel for the appellants. We feel that this argument is devoid of substance. Even otherwise, we do not see how the appellants have been prejudiced by the inclusion of this direction in the preliminary notification. We fail to see how the decision not to apply the provisions of Section 5-A taken some time after the preliminary notification puts them in a better or more advantageous position. We are satisfied that the ground of attack is inadmissible and the writ appeal has to be dismissed with costs.

(8) The judgment in W. A. 34 of 1965 applies to W. A. 352 of 1964 as the same point is raised therein. This appeal is also dismissed with costs.