
(1994) 12 MAD CK 0013
In the Madras High Court

Pauline Ratchaganathan and Others

APPELLANT

Vs

Land Acquisition Officer and Sub-Collector and Others

RESPONDENT

Date of Decision : 15-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 5A

Citation : (1995) 1 MLJ 535

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—These two writ petitions are filed by the same petitioners. The first writ petition was filed on 21.12.1983 for quashing the

proceedings in reference AI 15/83 dated 12.10.1983. The said proceedings are u/s 5-A of the Land Acquisition Act. The petitioners are co-

owners along with Mrs. Jaqualin Ratchaganathan and Selvam. The first petitioner is the mother of the petitioners 2 and 3 and the said Selvam. The

said Jaqualin Ratchaganathan is the second wife of the said Ratchaganathan. Selvam and Jaqualin being away from India, they have not joined the

writ petitions. The property consists of land in R.S. No. 93/44A of Vadakailasam Village in Panruthi Taluk with a building thereon. Notification is

issued u/s 4(1) of the Act for acquisition of the property for the purpose of having Panruti Post Office in that place. On receipt of a notice u/s 5-A

of the Act, the petitioners sent through their lawyer their objections to the acquisition. One of the objections was that it should be made known

whether the building was also sought to be acquired. The petitioners also made representations to the Post Master General to drop the acquisition

proceedings but as it was not accepted, they filed the writ petitions.

2. It is seen from the report of the Revenue Divisional Officer with regard to the enquiry u/s 5-A of the Act that the objections sent by the

petitioners through their lawyer were not forwarded to the Superintendent of Post Offices and his remarks were not invited. On the other hand, the

Revenue Divisional Officer had sent the objections raised by another person with regard to another land which was also sought to be acquired.

Contending that the failure of the authority to send the objections to the Superintendent of Post Offices vitiated the enquiry u/s 5-A of the Act, the

first writ petition. (W.P. No. 12162 of 1983) was filed for quashing the entire proceedings. The writ petition was admitted by this Court and

interim order was passed in W.M.P. No. 18710 of 1983 granting interim stay. But the court confined the stay only to taking possession and

permitting the other proceedings to go on. The court said ""in doing so, respondents to take note of the points raised in the writ petition and rectify

the mistakes and omissions if any existing inspite of the pendency of the writ petition."" Thereafter the order of interim stay was made absolute by

order dated 24.6.1987.

3. However, before the interim stay became absolute, the proceedings u/s 5-A of the Act were continued by the Revenue Divisional Officer. He

issued notices to Jaqualin Ratchaganathan and Selvam and fixed the date of enquiry as 30.1.1984. The notice was received by the second

petitioner as power agent of the said Jaqualine Ratchaganathan and Selvam. According to the report u/s 5-A of the Act, the second petitioner did

not appear for the enquiry. The Revenue Divisional Officer forwarded the objections, sent by the petitioner earlier through their lawyer, to the

Superintendent of Post Offices, for his remarks. After getting the opinion of the Superintendent of Post Offices, the Revenue Divisional Officer

proceeded to pass an order u/s 5-A of the Act overruling the objections raised by the petitioners and recommending the acquisition of the

property. He also forwarded his draft declaration u/s 6 of the Act. Thereafter a declaration was made on 21.1.1986. The award proceedings were

taken and an award was passed on 21.1.1988. Thereafter, the second writ petition viz., W.P. No. 13104 of 1990 was filed by the petitioners on

10.4.1990.

4. In the affidavit filed by the petitioners in support of the petition, it is stated

that the award was passed in haste and without application of mind. It was alleged that the notice of enquiry for hearing in the award proceedings dated 20.1.1988 was served on the second petitioner in his own capacity on 19.1.1988 only and there was no notice to the other two petitioners or to the two co-Owners who are residing abroad. The affidavit proceeded to state as follows: The deponent of the affidavit attended the enquiry on 20.1.1988 and informed the authority about the pendency of the earlier Writ Petition No. 12162 of 1983 and stated that he has no further submissions. No notice of award proceedings was served on petitioners 1 and 3 and therefore, the entire enquiry was vitiated and the award was void ab initio. After passing of the award, notice was received by the deponent on 29.1.1988 and thereafter, he was advised to file the writ petition.

5. It is stated in paragraph 12 of the affidavit that the delay in filing the writ petition is neither wilful nor wanton and that the notification u/s 6 of the Act is a nullity. The award proceedings are also vitiated and the award amount is inordinately low and disproportionate to the legal claim of the petitioners. On the said allegations, the prayer is for issue of a writ of certiorarified mandamus to call for the records in award No. 1 of 1988 dated 21.1.1988 and quash the same in so far as it relates to the petitioners and direct the respondents to hold a fresh enquiry u/s 11 of the Act with due notice to all interested persons.

6. In the counter-affidavit filed by the respondents, the following averments are made: All the formalities enunciated in the Land Acquisition Act have been scrupulously followed in this case. The contention of the petitioners that the second petitioner received the notice of the award enquiry on his behalf only and that he appeared for the award enquiry only on his own behalf and not on behalf of other petitioners is not correct. He has given a clear statement during award enquiry on 20.1.1988 before the Sub-Collector, Cuddalore stating that he represented the other co-owners. The second petitioner has received the notice u/s 9(3) of the Act on behalf of himself and others viz., the other two petitioners as well as the other two co-owners who are abroad. Accordingly, he appeared in the office of the respondents along with one Krishnasamy on 19.1.1988 and gave a petition stating that he appeared for award enquiry. A memo was served on him

on 19.1.1988 asking him to appear on 20.1.1988 and he appeared for the enquiry on that date and gave a statement on his behalf and on behalf of other co-owners. The date of award enquiry was intimated to him earlier as 19.1.1988 and subsequently, the adjourned date was also intimated. Hence, the contentions in the affidavit filed in support of the writ petition are not sustainable and the writ petition is not maintainable. The award has been passed within the time prescribed by law and there is no delay in passing the same. As this Court has stayed the dispossession, the respondents could not take possession. But, the compensation amount has been deposited in Sub Court, Cuddalore u/s 31(2) of the Act. All the formalities prescribed by law have been complied with and the award is not in any manner vitiated.

7. Learned Government Pleader raises an objection that the writ petition is not sustainable inasmuch as it has been filed after a delay of two years after the passing of the award. He makes reference to certain decisions of the Supreme Court and also one judgment of this Court in support of his contention. I have already referred to the fact that the declaration u/s 6 of the Act was made on 21.1.1986 and the award was passed on 21.1.1988. The writ petition was filed on 10.4.1990 i.e. about two years and three months after the passing of the award.

8. Learned Government Pleader refers to the judgment of the Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, . Notification u/s 4(1) of the Act was issued in 1959. The validity of the same was not challenged even after the publication of declaration u/s 6 of the Act in 1966. The writ petition was filed in 1972 challenging the validity of the notification on grounds that particulars of public purpose were not specified and that the Chief Commissioner was not competent to issue notification in view of Section 15 of Delhi Development Act. The Supreme Court held that the writ petition was liable to be dismissed on the ground of laches and delay on the part of the petitioners. The Court said that it was not necessary to go into the question whether the power to acquire land u/s 15 of the Delhi Development Act was delegated by the Central Government to the Chief Commissioner of Delhi because the petitioners could not be allowed to challenge the validity of the notification. The Court observed that even assuming that the Chief Commissioner of Delhi was not

authorised to issue the notification as the petitioners were precluded by their laches and acquiescence from questioning the notification, the contention must be negated.

9. In *State of Mysore and Others Vs. V.K. Kangan and Others*, , the Supreme Court held that challenge to the validity of notification u/s 4 of the

Act for want of public notice should be made within a reasonable time of its publication and unreasonable delay in filing the petition under Article

226 of the Constitution of India disentitles the petitioner to the relief.

10. In *State of Tamil Nadu v. Rajendran* (1993) 2 L.W. 352, a Division Bench of this Court has considered the matter in detail and applied the

principle laid down in the abovesaid decisions of the Supreme Court. The Division Bench said that a writ petition challenging the proceedings

should be filed without undue delay and for that purpose, the party has to be diligent and has to approach the court immediately.

11. Referring to the above judgments and also several other judgments, a single Judge of this Court has in *Manghi Radhakrishnan Nydoo v. The*

State of Tamil Nadu, 1994 W.L.R. 577, discussed the issue at length. He has also referred to a Judgment of the Supreme Court in *The Ramjas*

Foundation v. Union of India 1993 L.A.C.C. 327, where also the Supreme Court rejected the writ petition as not maintainable on the ground of

laches. It is seen from the judgment of the learned single Judge that in the case before the Supreme Court, notification was issued on 3.11.1959

and declaration u/s 6 of the Act was issued during 1968-69 and notice under Sections 9 and 10 by the Act was issued on 27.12.1972. The

notification was not challenged till 1973 and thus, there was a delay in challenging the same. The Supreme Court rejected the plea that no award

had been made and possession of land had not been taken and, therefore, the writ petition should be considered on merits. The Supreme Court

held that the writ petition was not maintainable after rejecting the explanation offered by the petitioners as not valid for the delay. The learned Judge

proceeded to hold that when an acquisition is made for a public purpose, it is the duty of the party who wants to challenge it to approach the court

without any delay.

12. In reply to this, learned Counsel for the petitioners submits that in the present case, on account of order of stay granted in the first writ petition,

the petitioners continued to be in possession. So long as possession is not taken by the Government the property does not vest in the Government.

My attention is drawn to Section 16 of the Land Acquisition Act which provides that when the Collector has made an award u/s 11 of the Act, he

may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrances. Learned Counsel contends

that unless the property has vested in the Government, the delay in filing the writ petition cannot be put against the writ petitioner and the writ

petitions cannot be thrown out on that ground. I am unable to accept this contention in view of the pronouncements of the Supreme Court in The

Ramjas Foundation v. Union of India, 1993 L.A.C.C. 327. There, the award had not been passed and possession had not been taken. Yet the

Supreme Court dismissed the writ petition holding that there was inordinate delay in filing the same and it was not maintainable. Hence, the plea on

the ground that the property has not been vested in the Government is not available to the petitioners.

13. It is next contended that the delay is not so inordinate as to warrant the dismissal of the writ petition. According to learned Counsel, the delay

is only of a period of two years and odd and that cannot be considered to be an inordinate delay. I am unable to accept this plea also. The

declaration u/s 6 of the Act is made in 1986. Award is passed in 1988. What is challenged before me is not only the award but also the validity of

the declaration. The very basis of the challenge in the writ petition is that the declaration itself is a nullity because in the proceedings u/s 5-A of the

Act, notice was not given to the petitioners herein and notice was issued only to the persons who were abroad and who were represented by the

second petitioner as power agent. Hence, there is a delay of four years in challenging the declaration u/s 6 of the Act. There is no explanation for

this delay. No doubt the petitioners have stated in the affidavit that because of the tendency of the earlier writ petition, they thought that their rights

were quite safe and would be protected. That is hardly an explanation for the delay.

14. In the affidavit, it is stated that the deponent being a common man, he did not know what exactly he should do when he received notice. But,

admittedly the petitioners had approached a lawyer by name Thathachari of Cuddalore, even when they received notice in the enquiry proceedings

for the first time and it is only through the lawyer they had sent objections to the acquisition proceedings. It can be easily inferred that when the

further notices were received by the petitioners, they would have immediately approached the lawyer for advice. Hence, the plea that the petitioner

is a common man and he did not know what to do cannot be accepted.

15. Even the plea that the petitioners did not receive notice u/s 5-A of the Act is not acceptable. The petitioners had been served with notice in the

first instance and they had sent their objections through their lawyer. When the interim stay order was passed by this Court in W.M.P. No. 18710

of 1983, the direction was only to rectify the mistakes and omissions, if any, existing inspite of the pendency of the writ petition. At that stage, the

only mistake or omission that was pointed out in the said writ petition was that the objections sent by the petitioners through their lawyer had not

been forwarded to the Superintendent of Post Offices. That mistake was rectified by the officials by sending the objections to the Superintendent

of Post Offices at the stage of 5-A enquiry later. Apart from that, the authorities found that no notice was served earlier on the two co-owners who

were living outside India and therefore, a notice was sent to the second petitioner who is admittedly a power of attorney agent of those two co-

owners. Consequently, it follows that the notices had been served on all the co-owners and they had an opportunity to send their objections. After

the receipt of notice by the second petitioner as power agent of other two co-owners, he did not choose to send any objections to the acquisition

proceedings.

16. The statement contained in the counter-affidavit that the second petitioner gave a clear statement during the award enquiry that he represented

his mother, step-mother and brothers is not denied by any subsequent affidavit by the parties. In the course of argument, learned Counsel

contended that the second petitioner was not authorised to represent the other two petitioners and if at all he could represent only the persons who

are abroad because he was power agent of those two persons. That contention cannot be accepted. If he makes a statement before the authorities

that he represented all the petitioners as well as the other two co-owners, there is no necessity for the authorities to disbelieve the same and issue

fresh notice to the other persons. It is seen that all of them belonged to one

family and at no stage any of them claimed that each of them should be given notice independently and one of them is not entitled to represent the others. It cannot be accepted that all the co-owners should be present before the authorities at all stages of the enquiry. It is quite natural, the second petitioner represented the other petitioners as well as other persons who are living abroad.

17. I do not find any reason to disbelieve either of the statement found in the counter-affidavit or the facts stated in the report of the Revenue

Divisional Officer made at the end of enquiry u/s 5-A of the Act on 9.3.1984. As seen from the report, he sent the objections given by the petitioners to the Superintendent of Post-Offices and got his remarks.

18. It is next contended that the remarks sent by the Superintendent of Post Offices has not been forwarded to the petitioners and, therefore, Rule

33 of the Rules has not been complied with. Reliance is placed upon a judgment of this Court in Kadirvelu Mudaliar v. State of Tamil Nadu, 1987

W.L.R. 182. The learned Judge held in that case that compliance of Rule 3(b) and (c) of the Rules is mandatory and acquisition proceedings have

to be struck down for non-compliance of the same. No doubt, the learned Judge has referred to number of earlier decisions to point out that the

compliance of the rule is mandatory. But the facts of the case have also got to be kept in mind. In that case the enquiry u/s 5-A of the Act was held

on 12th December, 1975. The remarks of the requisitioning body were not obtained nor were they furnished to the petitioners. No opportunity

was given to the petitioners to make a representation with regard to the same. The remarks were obtained only on 25th March, 1978 long after the

enquiry u/s 5-A of the Act was over. After the remarks were communicated to the petitioners there was no fresh enquiry again to find out the

tenability or otherwise of the acquisition proceedings. Thereafter the declaration u/s 6 of the Act was made on 13th July, 1978 and the award was

passed eight years thereafter on 23rd September, 1987. Keeping those facts in the background, the learned Judge held that non-compliance of

Rules 3(b) and (c) of the Rules which were mandatory, vitiated the proceedings.

19. The above ruling cannot apply to the present case for the reasons already stated. In the writ petition, no ground has been taken to the effect

that Rule 3(b) of the Rules has not been complied with and the remarks of the

Superintendent of Post Offices were not forwarded to the petitioners. The only statement found in the affidavit is in paragraph 12 that the notification u/s 6 of the Act is a nullity. From that learned Counsel wants the Court to infer that the non-compliance of Rule 3(b) of the Rules has been raised as ground for invalidating the proceedings. No such inference can be drawn from that statement, Unless it has been pleaded as a matter of fact that the Rule has not been complied with, there is no opportunity to the respondents to deny the same and the court cannot be called upon to get into the question.

20. Secondly, the writ petition has to fail because of the inordinate delay on the part of the petitioners. This has not been explained at all by them.

In these circumstances, it is not necessary to consider whether there was non-compliance of Rule 3(b) of the Rules and whether such non-compliance has vitiated the enquiry.

21. The next contention urged by learned Counsel is that the question of delay cannot be raised by the respondents at the time of final disposal.

Once the Court admits the writ petitions and issues rule nisi, then the merits of the case have to be gone into and the writ petitions cannot be

dismissed on the ground of delay. I do not accept this contention. The respondents get an opportunity to contest the writ petition only after the rule

nisi is issued and notices are served on the respondents. In the counter-affidavit, the respondents have raised the plea that the writ petitions are not

sustainable in view of the inordinate delay in filing the same. Hence, it is open to the respondents to raise the plea that the writ petitions are not

sustainable and the Court is bound to consider the same.

22. Thus, all the contentions raised by the petitioners in challenge of the proceedings are negated. The writ petitions fail and they are dismissed.

No costs.