
(1964) 08 MAD CK 0036
In the Madras High Court
Case No : Writ Petition No. 825 of 1962

Periathambi Mudaliar

APPELLANT

Vs

Special Tahsildar (L.A.) Planning Scheme, Coimbatore and
Another

RESPONDENT

Date of Decision : 18-08-1964

Acts Referred:

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

Citation : AIR 1965 Mad 328 : (1965) ILR (Mad) 416

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Judgement

Veeraswami, J.—The petition is to quash the proceedings taken by the respondent for compulsory acquisition of one acre and 75 cents out

of two acres 86 cents comprised in S. No. 577/1 in Kumarapalayam village Coimbatore Taluk. It appears that the notification under S. 4(1) of the

Land Acquisition Act was published on 2-5-1962. A declaration under S. 6 was published on 23-5-1962. The acquisition was said to be for the

purpose of rehabilitation of slum dwellers in slaughter house area and certain other areas. The main ground on which the validity of the proceedings

is questioned is that the respondent arbitrarily invoked the power to dispense with the application of S. 5-A. If this contention is well founded,

there is not doubt the land-acquisition proceedings upto the stage of the notification under S. 4(1) should be quashed.

2. This court has repeatedly held that, if the Collector or the Government opined that the matter was urgent, the position cannot be reviewed as is

an appeal. But where a party alleges that the emergency powers have been arbitrarily invoked, the court will have to satisfy itself with reference to

the materials on record as to whether the contention is well founded. Section 17(2)(b), which is the provision involved in the instant case, states

that whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land, application of S. 5-A could be

dispensed with. Nowhere in the record of the Collector does it appear how he came to form the opinion that it became necessary to acquire

immediate possessions of the land. The acquisition would appear to have been started in view of a resolution of the Coimbatore Municipality in

October 1960 to acquire lands for the purpose of a scheme to provide rehabilitation of slum dwellers. But the notification under S. 4(1)(a) was

only published nearly 18 months later. In his report to the Government dated 28-12-1961, the Collector merely stated :

As the lands are required urgently for slum clearance purposes, it is proposed to apply urgency clauses under S. 17(2) of the Land Acquisition

Act.

On that report the State Government in its order dated 17-4-1962, merely stated :

The Government accept the view that the acquisition is an urgent one under S. 17(4) of the Land Acquisition Act, and direct that the provisions of

S. 5-A of the Act shall not apply to this case.

Beyond the passages I have extracted the record throws no light whatever on the circumstances constituting the urgency and on the basis of which

he Collector and the Government formed their opinion.

3. The use of the emergency powers cannot be lightly resorted to and can be applied only in cases of real urgency, for their application would

mean that the person whose land is acquired is deprived of an opportunity to make his representations in respect of the existence of public purpose

or the need to acquire a particular land or to suggest an alternative land for acquisition. That is a valuable right of the owner. That right can only be

deprived of for proper reasons. That does not mean that in forming opinion the Collector or the Government are expected to give elaborate

reasons. But there must be something on the record to show that the opinion of the Collector or the Government has been reasonably and fairly

formed and neither arbitrarily or capriciously. As I said, this court will look to such material so as to satisfy itself as to the proper exercise of the

power.

4. In this case, there is no doubt, at any rate so far as the record sent up to this court disclosed, there as no material or circumstance appearing in

the record on he basis of which the Collector could he formed the opinion that his was an urgent matter. Even looking at the purpose of acquisition

and the surrounding circumstances I am not satisfied that here was any real urgency for acquisition in order to take possession of the land

immediately. It follows that the power u/s 17(4) has not been validly exercised. The result is the petition is allowed and the land acquisition

proceedings except the first notification u/s 4(1) but excluding the application of the urgency provision are hereby quashed. In view of this, the land

acquisition authority will fix a time and notify the same to the petitioner for forwarding his objections to him under S. 5A of the Act. No costs.

5. Order accordingly.