
(1967) 08 MAD CK 0003
In the Madras High Court

P.N. Ganesan

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 31-08-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) 1 MLJ 444

Hon'ble Judges : P. Ramakrishnan, J

Bench : Single Bench

Judgement

P. Ramakrishnan, J.—The petitioner who is the owner of three survey numbers, R.S. Nos 185/6B, 185/8B and 185/15B, in Pinnathur

village, is aggrieved against the acquisition of 19 cents out of the above three survey numbers by the respondent, State of Madras, for the purpose

of opening a pathway to the Harijan colony. The respondent issued Section 4(1) notification, and along with it, it was also announced that as the

matter was one of urgency, the enquiry u/s 5-A would be dispensed with. Thereafter, the declaration u/s 6 was notified on 20th March, 1963. The

petitioner contends that he came to know of these acquisition proceedings only a long time later in 1965 when he found people attempting to plant

stones for marking the pathway and that thereafter he filed the present writ petition under Article 226 of the Constitution seeking for the issue of a

Writ of certiorari questioning the land acquisition proceedings.

2. The petitioner's contentions, on which he seeks relief are three-fold: (1) Before a declaration of intended acquisition is made u/s 4(1), it is

obligatory that individual notice is given to the land-owners. That was not done in this case. (2) The application of the urgency clause, Which will

have the effect of dispensing with the enquiry u/s 5-A, in the present case, is improper because there are casuarina trees on the land and

consequently the land is not arable land or waste land; only under the latter condition does Section 17(4) of the Act read with Section 17(1) permit

the invoking of the urgency clause dispensing with the Section 5-A enquiry. (3) There are no adequate reasons at all for resorting to the urgency-

clause, because the Harijans have been in occupation of the village for a long time using the existing pathway facilities, and there was no urgency in

the above circumstances for acquiring the lands after dispensing with the enquiry u/s 5-A. It is urged that the urgency clause was applied in this

case without the authorities applying their mind at all to the question, and without any evidence to justify the application of the urgency clause.

3. Regarding the first objection, decisions of this Court have held repeatedly that individual notice to the owners of the land proposed to be

acquired of the notification u/s 4(1) of the Act is not obligatory. In fact, Section 4(1) only requires that the notification should be published in the

Official Gazette and the Collector is required to give public notice of the substance of the notification at convenient places in the locality. The

counter has stated that notice was published by beat of tom-tom in the village and was also published in the village. In the decision in Krishna

Reddiar v. State of Madras W.P. No. 2077 of 1964 which follows two earlier unreported decisions in W.P. No. 219 of 1963 and W.P. No.

1846 of 1965, it has been held that individual notice is not obligatory of the notification u/s 4(1) of the Act, to the owners of the land. Therefore,

this objection is without substance.

4. It is alleged that there are casuarina trees on the land and that therefore this would not make the land arable or waste land, and therefore the

application of the urgency clause is improper. Section 17(4) read with Section 17(1) requires that the urgency clause shall be applied only when the

land proposed to be acquired is waste or arable, in Muthuswami Servai v. State of Madras W.A. No. 86 of 1967, a Bench of this Court has held

that the dictionary meaning of "arable" is land fit for tillage and the word is derived from a Latin word arare, meaning plough, and that wet

lands, even though under paddy cultivation, are obviously fit for tillage or plough. Even assuming that lands planted with casuarina trees may not fall

within the meaning of a land cultivated with annual crops (casuarina is usually cut after six or seven years of growth), still the lands, in my opinion,

will satisfy the definition of "arable". In *E.K. Pattabirama Reddiar v. Special Deputy Collector for Land Acquisition, Madras W.P. No. 322 of*

1963. *Srinivasan, J.*, held that a land upon which fruit bearing trees had been exclusively raised will still be arable land, and he observed that it was

not unusual to have cultivation in the open spaces between the trees in a thope, and, to say therefore, that a land upon which trees stand is not

arable or cultivable land does not appear to accord with any sense of the term. I am of the opinion that the existence of casuarina trees on the land

would still bring the land under the classification of arable and.

5. On the third point about urgency, the counter-affidavit of the Government states that the Harijan families living in the Harijan colony do not have

the benefit of a regular pathway from their houses to the adjacent road and that till now there are only the ridges of the fields which could not be

used at all during rainy seasons and at the time of the standing crops. The connected file also shows that the Collector had reported, after

necessary enquiry, that harijans were experiencing difficulties for want of a proper pathway and that consequently the urgency provision was being

resorted to. Learned Counsel for the petitioner urges that these difficulties were not suddenly discovered, but must have been in existence for a long

time and consequently the application of the urgency clause by reason of these difficulties must be considered to be justified. As against this it is

pointed out that the question of urgency is for the subjective satisfaction of the Government: vide the Bench decision in *The President, Nagamalai*

Colony Formation Association v. State of Madras (1965) L.R.1 Mad. 741, and the Court dealing with the matter under Article 226 of the

Constitution cannot substitute its own opinion for that of the Government in the matter. It can only interfere where the reasons relied on by the

Government are entirely irrelevant for the purpose, so as to constitute no reasons at all, or where there is mala fides. But it cannot be held that the

reasons stated above to the effect that the Harijans have no pathway to reach the road from their village and that they are experiencing great

difficulties on that account, are either unrelated to the purpose in view or mala fide. In the above circumstances, I am of the opinion that the resort

to the urgency clause cannot be considered to be without jurisdiction in the present case.

6. For the foregoing reasons the writ petition is dismissed. There will be no order as to costs.