
(1955) 11 MAD CK 0029
In the Madras High Court

P.V. Lakshmi Ammal

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 30-11-1955

Acts Referred:

Land Acquisition Act, 1894 — Section 49, 49(1), 6

Citation : AIR 1956 Mad 583 : (1956) 69 LW 438 : (1956) 2 MLJ 58

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—It may not be necessary to set out all the details of the chequered history of the proceedings under the Land Acquisition Act, out of which this application to the Court under Article 226 of the Constitution has arisen.

2. On 11th June, 1952, the Government published a declaration u/s 6 of the Land Acquisition Act, to acquire 28 cents of land. The petitioner claimed that this extent of 28 cents was the backyard of her house in Tiruvaiyaru, known as Dewanvada Buildings. The award was passed on 7th November, 1953. An earlier attempt of the petitioner to move the Revenue Divisional Officer, who was the Collector for the purposes of the Act, u/s 49 of the Act failed. After the award had been passed on 22nd February, 1954, the petitioner applied afresh to the Revenue Divisional Officer u/s 49, claiming that the land acquired by the Government was part of the whole house, and expressing the petitioner's desire that the whole property, house, backyard and all could be acquired by the Government.

3. That application was rejected by the Revenue Divisional Officer on 7th April, 1954; and it is the validity of that order that has been challenged in this application preferred by the petitioner under Article 226 of the Constitution.

4. The attention of the Revenue Divisional Officer was drawn to the decision of this Court in *Secretary of State for India v. Narayanawsami Chettiar* ILR (1931)

Mad. 391 Ramesam, J., laid down,

there is nothing in Section 49 requiring the claimant to put forward this particular claim, namely, that the whole house should be acquired at any particular stage of the proceedings.

5. With that view Cornish, J., concurred. See his observations at page 406. The Revenue Divisional Officer observed that there had been considerable delay on the part of the petitioner, and that her laches should suffice to reject her application preferred long after the award itself had been passed. I am unable to see anything within the scheme of Section 49 of the Act which enables the statutory authority to dismiss an application either on the ground of delay or on the ground of delay coupled with laches on the part of the applicant.

6. The learned Government Pleader urged that the Revenue Divisional Officer had to be satisfied that the land acquired was part of the house within the meaning of Section 49(1). It was not on the ground that the land was not part of the house, that the Revenue Divisional Officer rejected the application. Even if he had done so, in my opinion, such a decision would have been without jurisdiction. The second proviso to Section 49(1) specifically directs that, if any question arises whether any land proposed to be taken under the Act does or does not form part of a house, that question has to be referred for the determination of the Court-the civil Court; and the determination of that question is left to the exclusive jurisdiction of the Court.

7. Since the petitioner satisfied the requirements of Section 49 by her application dated 22nd February, 1954, in the circumstances of this case, the Revenue Divisional Officer had no option but to refer the question to the determination of the Court as defined by the Act. His refusal to refer the question for the determination of the Court was, therefore, wrong.

8. The order of the Revenue Divisional Officer, dated 7th April, 1954, is set aside. Though it was a writ of certiorari the petitioner asked for specifically, it is really a writ of mandamus that has to issue in the circumstances of the case. A writ of mandamus will issue to direct the Revenue Divisional Officer to refer the question at issue for the determination of the civil Court as required by Section 49 of the Act. Petition allowed. No costs.