
(1954) 02 MAD CK 0012
In the Madras High Court
Case No : Writ Petition No. 942 of 1953

P.V. Lakshmi Ammal

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 26-02-1954

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1), 49(1)

Citation : AIR 1955 Mad 119 : (1954) 67 LW 1115 : (1954) 2 MLJ 222

Hon'ble Judges : Rajagopala Ayyangar, J

Bench : Single Bench

Advocate : S.A. Seshadri Iyengar and G. Ramalinga Reddy, for the Appellant;
Special Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopala ayyangar, J.—The petitioner in this writ petition is the owner of a small extent of land of about 28 cents in Tiruvalyaru which is

being acquired under the Land Acquisition Act to serve as a play ground and canoe club for the Srinivasa Rao High School at that place. The

petitioner objected to the acquisition of this bit of land on the ground inter alia that the land sought to be acquired formed a portion of the backyard

of her residential house where the drain, the latrine, the cowshed and outhouse and other amenities were situated. The objection was overruled and

the necessary notification u/s 6 Land Acquisition. Act has been published and the Revenue Divisional Officer, Tanjore, has been appointed to

perform the functions of the Collector under the Act. The petitioner was served with a notice under Sections 9(1) and 10, Land Acquisition Act.

fixing 10-8-1953 for hearing her objections. The petitioner, thereupon filed an application on 1-8-1953 requesting the Government to desist from

acquiring the land u/s 48(1) of the Act and prayed for the stay of further proceedings till her petition was disposed of. The ground urged by her in

this petition was that the acquisition of this bit of land forming the backyard of her residential house would spoil the amenities, of her house and that

it would seriously prejudice her enjoyment of it.

This petition was rejected by the Government whereupon the petitioner filed another petition purporting to be u/s 49(1) of the Act requesting that

the Land Acquisition Officer, who is the 2nd respondent herein, should refer to the civil court for enquiry the question as to whether the land

proposed to be acquired under the Act does or does not form part of her house. This petition was rejected by the Land Acquisition Officer on the

ground that it did not comply with the terms of Section 49(1) of the Act and it is the validity of this order of the Land Acquisition. Officer refusing

to refer the dispute to a civil Court that is the subject-matter of this writ petition. The provisions of Section 49, Land Acquisition Act, are in these

terms:

The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory, or other building if the

owner desire that the whole of such house, manufactory or building shall be so acquired :

Provided-that the owner may, at any time before the Collector has made his award u/s 11 by-notice in writing withdraw or modify his expressed

desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that if any question shall arise as to whether any land proposed to be taken under this Act does not form part of a house,

manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the court and shall not take

possession of such land until after the question has been determined. In deciding on such a reference the court shall have regard to the question

whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

2. If in the case of any claim u/s 23, Sub-section (1), thirdly, by a person interested, on account of the severing of the land to be acquired from his

other land, the Provincial Government is of opinion that the claim is unreasonable or excessive it may at any time before the Collector has made his

award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

3. In the case last hereinbefore provided for, no fresh declaration or other proceedings under Sections 6 to 10 both inclusive shall be necessary;

but the Collector shall without delay furnish a copy of the order of the Provincial Government to the person interested, and shall thereafter proceed

to make his award u/s 11.

It will be seen from the terms of these provisions that in order to sustain a petition u/s 49(1) not merely must there be an acquisition of a part only

of a house but the owner must also express a desire that the whole of such house shall ""be acquired. In the absence of such an expression of a

desire on the part of the owner, the provisos to Section 49(1) would not come into operation. Whether the owner does not express his or her

desire to the entire property being acquired, he or she would be entitled to a payment of damages assessed under Clause (4) of Section 23 of the

Act which are in these terms:

Fourthly the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the

acquisition injuriously affecting his other property, moveable or immovable in any other manner or his earning.

Section 49(1) and Sub-section (4) of Section 23(1), Land Acquisition Act refer to two alternatives which are open to the owner of a property

which is being acquired to adopt. It is admitted in the present case that the petitioner did not express her desire that the entire building should be

acquired on the footing that it was only a part of the building that was the subject-matter of acquisition by the Government.

In these circumstances, I am clearly of the opinion that the petitioner was not entitled to have the question whether the land proposed to be

acquired was or was not part of her residential house, referred to the civil Court for adjudication. The order of the Land Acquisition Officer

refusing to refer the question to & civil Court is, therefore, correct. In the result the writ petition fails and is dismissed.