

(1978) 01 MAD CK 0046
In the Madras High Court
Case No : Writ App. No. 592 of 1977

P.V. Mohammed Ghouse

APPELLANT

Vs

State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 05-01-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17, 17(1), 17(4), 4(1), 5A

Citation : AIR 1978 Mad 277 : (1983) 96 LW 207 : (1978) 91 LW 175 : (1977) 90 LW 175 : (1978) 1 MLJ 339

Hon'ble Judges : P. Govindan Nair, C.J.; V. Ramaswami, J

Bench : Division Bench

Advocate : G. Gopalaswami and R. Sukantharaj, for the Appellant; C. Chinnaswami, for Govt. Pleader, for the Respondent

Judgement

P. Govindan Nair, C.J.—This appeal is against the order in W. P. No. 3281 of 1977 dismissing the writ petition in limine. The prayer in the writ petition is to call for the records of the respondents in their proceedings in Roc. in G. O. Ms No. 989 P. W. General dated 28-6-1977 of the second respondent and quash the same as illegal and direct the respondents to conduct proceedings u/s 5-A of the Land Acquisition Act (Act I of 1894) by issue of a writ of certiorari or mandamus or any other appropriate writ direction or order as this Hon"ble Court may deem fit and proper in the interests of justice."

2. The notification referred to is seen at page 7 of the typed set of papers. In the third para it states:--

"Whereas it has become necessary to acquire the immediate possession of the land specified in the schedule below, the Government of Tamil Nadu hereby directs that the land be acquired under the provisions of Sub-section (2) of Section 17 of the said Act."

The notification u/s 4(1) is dated 22-3-1977. The declaration which also contains

the dispensation of the enquiry, which we have just now read, is dated 28-6-1977. The notification u/s 4(1) and declaration u/s 6 were published in the Gazette on 20-7-1977.

2. Counsel on behalf of the appellant contended before us that the facts as indicated by the dates of the notification and the declaration and the publication thereof clearly belies any urgency or emergency which would justify the application of Section 17(2) of the Act. Section 17(2) of the Land Acquisition Act 1894 (Act I of 1894) has been amended by the State Legislature by Madras Act XXI of 1948. The following Sub-section (2) has been substituted in the first para of Sub-section (2). The amended section reads as follows:--

"(2) In the following cases, that is to say -- (a) whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a riverside or ghat section, or of providing a convenient connection with or access to any such station.

(b) Whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land --(i) for the purpose of any library or educational institution, or (ii) for the construction, extension or improvement, of

(A) any building or other structure in any village for the common use of the inhabitants of such village, or (B) any godown for any society registered or deemed to be registered under the Madras Co-operative Societies Act 1932, or

(C) any dwelling house for the poor, or

(D) any irrigation work, irrigation or drainage channel or any well, or (E) any road, the Collector may, immediately after the publication of the notice mentioned in Sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of such land, which shall thereupon vest absolutely in the Government free from all encumbrances."

3. The question that had often arisen in what circumstances the power u/s 17(4) can be applied legitimately had come up for consideration in a number of decisions. Sub-section (4) states that "in the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4 Sub-section. (1)."

4. Though the working of the section gives a power to the appropriate Government to direct that the provisions of Section 5-A shall not apply in cases where Sub-section (1) of Section 17 is attracted, it has to be borne in mind that that power can be exercised "only in cases of urgency." The words in quotation are the words with which Sub-section (1) of Section 17 commences. The power

under Sub-section (1) of Section 17 cannot, therefore, be applied when there is no urgency. Secondly, it is necessary to apply the mind to the question whether in a given case the power u/s 17(4) can appropriately be applied and reasonably be applied, for whenever the power under Sub-section (4) of Section 17 is applied, the right given u/s 5-A of Act I of 1894 to the owner of the land to make representation against the proposed acquisition, is taken away. That such a right is a very valuable right has also been laid down in a number of judicial decisions. It is unnecessary to refer to them, for, the principles is very well established.

The application of the mind, therefore, must be to the various aspects as to whether it is just and proper that such a right should be taken away and further whether it is necessary to take away that right in order that the urgency may be satisfied. It is reasonably possible to give a right to the owner of the land to state his case and to consider the same and then to decide whether the land should be acquired and thereafter the declaration u/s 6 made, then in such circumstances there will be no justification whatever in pressing into service the extraordinary powers under Sub-section (4) of Section 17. As we understand the provisions of Section 17 the power is given for rare use in circumstances where, without the use of that power, the purpose of public need cannot be met. The procedure adopted would indicate whether there was any such extreme or dire need for dispensing with the right of the owner of the land and in proceeding with the declaration containing dispensation of the enquiry u/s 5-A.

5. The matter has been dealt with elaborately in a judgment of Kerala High Court in the decision reported in Damodara Menon v. P. A. (L. A.) to Dy. Collector, 1975 Ker LT 537. After a review of the relevant authorities the principle has been laid down that if the procedure adopted belies the story of an extreme urgency as the foundation for the action for dispensing with the enquiry, then the procedure would not be justified under the statute and the court sitting under Article 226 of the Constitution can set aside the proceedings by appropriate directions or orders.

6. We have already adverted to the date of the notification u/s 4(1) and the date of publication of that notification. We shall repeat that the notification is dated 22-3-1977, whereas it was published only on 20-7-1977. Sub-section (4) of Section 17, which we have referred to in detail, clearly states that the appropriate Government may direct that the provisions of Section 5A shall not apply and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section (1).

In this case, the notification u/s 4(1) the direction and the declaration have all been simultaneously published on 20-7-1977. This is scant respect to the statutory provisions and the rule of law as embodied therein. Apart from the consideration there is another fundamental aspect. Section 17(2) does not contemplate the application of Section 17(4) for purposes of the acquisition as stated in the notification u/s 4(1) in this case. This merely indicates that there has been no application of the mind to Section 17 at all, before wielding the

heavy weapon given to the authority u/s 17(4). Such an action borders on arbitrariness if not on perversity. In such circumstances.

we are constrained to interfere by issue of necessary directions. We consider that interests of justice demand that the notification dated 28-6-1977, which is at page 7 of the typed set of papers must be quashed in toto, that is, as far as the declaration portion is concerned and so also the dispensing with the enquiry u/s 5A is concerned. We do so.

7. We are informed by the learned counsel on behalf of the State that possession had already been taken pursuant to these proceedings on 31-8-1977. In view of the quashing of the declaration, it is necessary that possession must be handed over to the appellant, we direct that this should be done immediately.

8. Before parting with this case, we would like to record that counsel for the appellant stated that he has no objection to 75 cents of land being taken from the portion of the land lying away from the road and that he has no objection to the whole of that 75 cents being taken and he only wants his interest being safeguarded. The portion lying adjacent to the road it is said is necessary for the purpose of opening a cinema theatre which he proposes to do so. It is not disputed that only 75 cents is required for the purpose for which public acquisition was resorted to. In the light of these statements made by counsel on behalf of the appellant. It seems to us to be possible to have the enquiry concluded without any delay, because the land is available to the Government and only its location need be determined.

9. We direct that notice be given of the enquiry and the appellant given an opportunity to state his case and his claim that the acquisition be confined to the back portion, that is, the portion lying away from the road be considered. The authority conducting the enquiry should apply his mind to this question and pass proper orders before proceeding further with the acquisition proposed.

10. The writ appeal is disposed of on the above terms. We direct the parties to bear their respective costs.