

(1964) 11 MAD CK 0008

In the Madras High Court

Case No : Writ Petition No. 1393 of 1962

R. Nagarathinam Naidu

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 20-11-1964

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (1968) ILR (Mad) 174

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Advocate : R.D. Indrasenan, for the Appellant; S. Mohan, for V. Ramaswami, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramakrishnan, J.—R. Nagarathinam Naidu the Petitioner herein, and his undivided brother Krishna-swami Naidu belong to a joint Hindu

family, who own 2 acres 33 cents in S. No. 350/3 in Krishnampalli village, hamlet of Chandathoor, Gudiyatham taluk, North Arcot district. It is

alleged that the family of the Petitioner has no other land except this. It is an agricultural family, and their sole source of living and subsistence is this

parcel of land, where they had dug a well, and installed an electric motor pump set at a cost of Rs. 2,000, after borrowing a part of it from a co-

operative land mortgage bank. On the ground that the Harijans of the village of Krishnampalli required urgently additional house-sites for

construction of houses, the State Government issued a notification u/s 4(1) of the Land Acquisition Act on 21st September 1960 for the acquisition

of 35 cents in S. No. 350/3 along with some other lands. On the allegation that the case was one of urgency, relying upon Section 17(4) of the

Land Acquisition Act, the enquiry u/s 5A was dispensed with. Thereafter, on 4th November 1960, the State Government made a declaration u/s 6

of the Act deciding to acquire the aforesaid 35 cents and the other lands. Under the emergent provisions, they also declared that the lands would

be taken possession of within 15 days from the date of the publication of the notice u/s 9(1) of the Act. It was alleged that the proceedings of the

Government notifying their declaration u/s 4 in G.O. R. No. 3668, Home, dated 4th November 1960 were illegal, unjust, arbitrary and without

jurisdiction, null and void in law and require to be quashed by a writ of certiorari under Article 226 of the Constitution. The Petitioner alleged the

following as the principal reasons for his reliefs

(i) The land in question is the only source of livelihood for the Petitioner's family. Certain principles have been laid down by the Government in

G.O. Ms. No. 1306, dated 6th April 1957, that it would be better if Government acquired lands of the persons who own extensive extents and

that small ryots, who own one or two acres might not be deprived of their land.

(ii) The District Collector, who made the preliminary enquiry and

submitted a report to the Government in this connection after personal inspection, had recommended the acquisition of two acres in S. Nos. 326

and 336 belonging to one Venkatachalam Mudaliar. At the same time, the Collector stated that the Petitioner's lands were unsuited for house-

sites. The Government did not act upon the recommendations of the Collector and decided arbitrarily to acquire the Petitioner's land in preference

to those of Venkatachalam Mudaliar. (iii) In making the above decision the Government were influenced by improper and irrelevant

considerations, namely, that Venkatachalam Mudaliar was a man of influence and wealth and was also a prominent person in the Congress party.

the party in power. The Government's action is vitiated by mala fides is a gross abuse of statutory power and also involved unfair discrimination

between citizen and citizen.

2. The counter filed on behalf of the State of Madras represented by the Secretary, Home Department, mentioned that the Government decided to

acquire plots of land to provide house-sites for the construction of houses in the Harijan colony in Krishnampalli village, because the existing

Harijan colony was congested. On the report of the health officer about the

suitability, the Government proposed to acquire three survey numbers,
viz.,

S. No. Extent. Extent proposed for acquisition.

1. 349/4 1.04 0.90

2. 350/3 2.33 0.35

3. 350/4 2.20 0.34

3. All the pattadars of these lands objected to the acquisition and the Collector submitted his proposals on 17th July 1960 overruling their

objections. Thereupon, the Government approved the draft notification u/s 4(1) of the Land Acquisition Act submitted by the Collector of North

Arcot and decided also to resort to the urgent provisions u/s 17(4) of the Act. It was true that when further objections were sent by the Petitioner

and Ors. the Collector of North Arcot on 20th April 1962 recommended the acquisition of a portion of S. Nos. 326 and 336 in lieu of the lands

originally proposed which included the Petitioner's land. But the Government did not accept this revised recommendations of the Collector. The

Petitioner again filed objection petitions to the Government and the Government ordered stay of acquisition proceedings and called for a further

detailed report from the Collector. This time also, the Collector in his report, dated 4th July 1962 recommended the revised proposals for

acquiring S. Nos. 326 and 336 and giving up the original proposal to acquire the Petitioner's land. But the Government, after carefully considering

the matter decided to adhere to the original proposal to acquire the Petitioner's land. The allegation of mala fides was denied.

4. The records connected with the acquisition proceedings were made available to me at the time of the hearing along with the aforesaid affidavit.

The broad facts that appear from a perusal of the records can be put down.

5. At all stages, the reports indicate that the existing Harijan colony in Krishnampalli village is congested and it is very necessary for that purpose to

find additional house-sites. The view taken by the Government on these reports that the matter is one of urgency is supported by the record. No

question, therefore, arises of interfering with the Government's decision to apply the emergency provisions. In a recent decision of this Court in

Nagamali Colony Formation Association v. State of Madras ILR (1965) 1 Mad. 741

this Court adopting the view in *A. Natesa Asari Vs. State of Madras and Another*, held that the question of urgency of an acquisition under Sections 17 (1) and (4) of the Land Acquisition Act is a matter for the subjective satisfaction of the Government, and it is not open for the Court to make a scrutiny of the propriety of such satisfaction on an objective appraisal of the facts. Veeraswami J., in Writ Petition Nos. 505 and 506 of 1961, etc., while following the above view referred to certain exceptional circumstances, for example, where the opinion of the Government is mala fide or is patently based on wrong standards or irrelevant considerations, when it will be open to the Court to hold it to be non est or not in accordance with the law. Also in a case where the exercise of power by the Government was found to be a fraud or a colourable exercise of power the Court could interfere on the ground that the statutory power had been used in a manner and for a purpose different from that intended by the law. But, as already mentioned, there are no substantial grounds to interfere with the decision of the Government about the urgency in the face of the materials furnished by the record in this case to show that there was considerable congestion in the existing colony and was necessary to relieve it without delay.

6. The second and perhaps the more important circumstance is whether in selecting the Petitioner's land for acquisition in preference to that of S.

No. 326 which is alleged to be the property of Venkatachalam Mudaliar, a rich pattadar and an influential and prominent member of the Congress

party, the Government acted mala fide in the exercise of the statutory power to acquire land compulsorily. For this purpose, the learned Counsel

appearing for the Petitioner relied on the recommendations by two different Collectors of the district in their reports, dated 20th April 1962 and

4th July 1962, respectively. The learned Government Pleader supplied me with a copy of these two reports. In the first report, Sri Kelu Brady, the

then Collector, referred to the objections of the owner of S. No. 326 to the acquisition of his land and held that these objections were not sound.

The Collector also reported that the objection of the owners of the three lands originally proposed for the acquisition including the Petitioner's, on

the ground that they were small pattadars was found to be valid on inspection. The Collector recommended the withdrawal of the proposal to

acquire the three S. Nos. including the Petitioner's land, and made alternative proposals for acquiring S. No. 326. In the second report, dated 4th July 1962, another Collector, Sri S. P. Srinivasan, agreed with his predecessor's report and also pointed out that the sites proposed including the Petitioner's land formed a long narrow and inconvenient stretch of land. He also referred to the fact that the Petitioner did not enjoy any other land, that he was a small pattadar and that he had a well in the northeastern corner of his land where he had installed an electric motor pump. In this report the Collector referred to the opinion of a previous District Health Officer that S. No. 326 was not a suitable as it was on a lower level and stated that this opinion was not quite correct and that a good portion of S. No. 326 in the north was on a high level and was suitable for the purpose of extension of the Harijan colony. The Harijans apparently, under the influence of the influential owner of S. No. 326, had earlier expressed their unwillingness, to move into S. No. 326 but later on withdrew their objections and expressed their willingness to occupy it. In the second report, the Collector considered the objections of the owner of S. No. 326 and expressed his opinion that those objections were unsound. In the second report, the Collector also points out that whereas S. Nos. 326 and 336 lie close to the existing Harijan colony S. Nos. 349/4, 350/3 and 350/4, besides being in the possession of small pattadars, are situated at a distance from the said colony. This Collector also recommended the withdrawal from the proposal to acquire the Petitioner's land and acquire S. No. 326 instead. But the Government did not act upon the reports of the two District Collectors and decided to proceed with the acquisition of the three survey numbers originally proposed including the Petitioner's land. The Petitioner's learned Counsel, asserted that the action of the Government in deciding to acquire Petitioner's land and ignoring the recommendations of the two Collectors showed that they were partial to Venkatachalam Mudaliar, the owner of S. No. 326, because of his position as a prominent member of the Congress party, a contestant for the Madras Legislative Assembly in the 1957 elections as a Congress candidate, a member of the District Congress Committee and the president of the Gudiyatham Taluk Congress Committee besides being wealthy and influential. The learned Government Pleader pointed out that in the records, it was one Murugesu Mudaliar who was reported as the owner of

S. No. 326. As against this, it was submitted by the Petitioner's Counsel that Venkatachalam Mudaliar is the brother of Murugesu Mudaliar and

both of them are interested in S. No. 326.

7. The principles for deciding whether a public authority has used its statutory power as against a subject in a mala fide manner, have been

explained in several reported decisions some of which were cited at the Bar. I will refer to them briefly.

8. In *Short v. Poole Corporation* (1926) 1 Ch. 66 the Local Education Authority decided that retention of married women teachers in their public

elementary schools was inadvisable and determined to terminate the services of the Plaintiff, a married teacher. At page 87, the learned Judges

quoted Lord Cranworth's observations in *Stockton and Darlington Railway Company v. Brown* (1860) 9 H.L.C. 246, 256 viz.,

provided only that they take them", the lands, "" bona fide with the object of using them for the purposes authorised by the Legislature, and not for

any sinister or collateral purpose.

9. The same decision at page 96 points out the inherent difficulty in proving that a

public body, apparently acting in the legitimate exercise of their duty and within the ambit of their powers, have in fact been acting mala fide in the

sense of pursuing an illegitimate aim.

10. In *Valjibhai Muljibhai Soneji and Another Vs. The State of Bombay (Now Gujarat) and Others*, the Supreme Court has pointed out: that the

question whether the action of the Government in making a declaration as to the public purpose of the acquisition of the land is colourable, being

collusive or mala fide is one of fact. In *Smith v. East Elloe Rural District Council* (1956) A.C. 736 Lord Radcliffe pointed out at page 767:

It is an abuse of power to exercise it for a purpose different from that for which it is entrusted to the holder, not the less because he may be acting

ostensibly for the authorised purpose. Probably most of the recognized grounds of invalidity could be brought under this head: the introduction of

illegitimate considerations, the rejection of legitimate ones, manifest unreasonableness, arbitrary or capricious conduct, the motive of personal

advantage or the gratification of personal ill-will.

11. In *Earl Fitzwilliams Wentworth Estates Go., Ltd., v. Minister of Town and*

Country Planning (1951) 2 K.B. 284 at page 307, Denning L. J.,
observed:

If Parliament grants a power to a Government department to be used for an authorized purpose, then the power is only validly exercised when it is used by the department genuinely for that purpose as its dominant purpose. If that purpose is not the main purpose, but is subordinated to some other purpose which is not authorised by law, then the department exceeds its powers and the action is invalid. The department cannot escape from this: result by saying that its motive is immaterial. Just as its real purpose is crucial, so also is its true motive, because they are one and the same thing.

12. In *London and North Western Railway v. Westminster Corporation* (1904) 1Ch. 759 at page 767, it is observed:

You are acting mala fide if you are seeking to acquire land for a purpose not authorised by the Act and in such a case it is right to restrain the persons who are misapplying the powers given by an Act.

13. That judgment was reversed by the House of Lords in *C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport Corporation*, the Supreme Court dealt with a case arising out of the nationalisation of the road transport in the Andhra Pradesh. The gist of the allegations was that

in enforcing the scheme of nationalisation, the Chief Minister gave priority to nationalise certain private bus companies in the Kurnool district,

because the owners of some of those companies had worked against the ruling party in the recent elections. At page 972, the Supreme Court

observed:

If the Chief Minister was impelled by motives of personal ill-will against the Road Transport Operators in the western part of Kurnool and he gave

the direction to the Corporation to change the order of the districts as originally planned by them and instead take up Kurnool first in order to

prejudicially affect his political opponents and the Corporation carried out his directions it does not need much argument to show that the resultant

Scheme framed by the Corporation would also be vitiated by mala fides notwithstanding the interposition of the semi-autonomous Corporation.

14. As pointed out in one of the decisions cited above the problem of finding out whether a public authority or the Government acted mala fide will

be a matter of considerable difficulty. But where it is patent that the power has been used to subserve a different purpose from what the law

sanctioned, it is patent abuse of the power and mala fides can be readily inferred. Again, while using the power ostensibly for the purpose in view

the authority is found to have utilised the opportunity for satisfying personal ill-will or grudge or animosity that would amount to abuse of power and

will satisfy the test of mala fides.

15. Difficulty in exercising judicial control, however, arises in what can be described as marginal cases where the power has been exercised by an

administrative body for the right purpose and under the right procedure, but relying on grounds which may appear, during a judicial review, to be

wrong or inequitable or unjust, or exercised in an unreasonable manner. It would appear from English authorities that the power of judicial control

even in such cases is circumscribed. Sometimes, the things done may be unreasonable that it might almost be described as being done in bad faith.

In *Short v. Poole Corporation* (1926) Ch. 66 Warri L. J., gave for this purpose an example where a local authority might proceed to dismiss a

female teacher because she had red hair. Lord Greene M. R., in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* (1948) 1

K.B. 223 has summarised with great lucidity the approach of English decisions to this subject. According to this view, interference by judicial

control will be justified when the act of the authority is proved to be unreasonable in the sense that the Court considers it to be a decision that no

reasonable body could have come to. It is not, however, what the Court considers unreasonable, a different thing altogether. After referring to the

aforesaid principles, Wade in his book on Administrative Law, 1961 edition at page 61, observes:

The danger is that the more precise the Court attempts to be in formulating its reasons for control, the more misleading may be the result. It is the

general impression made by all the facts and all the arguments combined which is decisive.

16. In the present case, on a judicial review, the decision of the Government, which is opposed to the strongly worded recommendations of two

successive Collectors Messrs. Eradi and Srinivasan and to the Government's own directive principles laid down in G.O. Ms. No. 1306, dated 6th

April 1957, may seem to be unreasonable, inequitable and harsh. In effect, the Petitioner who has practically very little of land is being compelled to

give a substantial " portion of the little he has and which forms his sole means of livelihood, while his neighbour, who has a great deal and who can

readily surrender a part of it for the public good without feeling the pinch is being let off scot free, for the very likely reason that he is wealthy and

has influence. There is a salutary rule for adoption in such cases, laid down by the House of Lords in *Westminster Corporation v. London and*

North Western Railway Company (1905) A.C. 426, 443 viz.:

...when a public body his exercising statutory powers conferred upon it for the benefit of the public it is bound to have some regard to the interest

of those who may suffer for the good of the Community.

17. This salutary rule clearly appears to have been departed from in this case.

18. But in spite of the aforesaid unsatisfactory features of the decision of the Government in this case, I am of the opinion that it cannot be called so

perverse or unreasonable that--to adopt Lord Greene's test--no reasonable body could have come to it. After all the Harijans did express, on an

earlier occasion, their willingness to build their houses in S. No. 350. Only later on they were persuaded to change their opinion. They would not

have done so if S. No. 350 was so patently unsuitable for the purpose of their house-sites. Therefore, the order of the Government, however

much, a Court of law may be inclined to disagree with it because it is unreasonable or inequitable, falls just outside the boundary where judicial

control by way of writ can be applied for its correction. Therefore, I have to dismiss this petition and I do so accordingly.

19. But, before I part with this case, I would add a recommendation to that of the two Collectors aforementioned, that the proper thing may be

done by the Government even at this stage when it is not too late, to retrace the steps so far taken by selecting for the purpose of acquisition a part

of the land in S. No. 326, which appears to be the best fitted for the purpose, and which can be acquired with the least hardship to those who

have to suffer for the good of the community. There will be no order as to costs.