

(2005) 02 MAD CK 0048

In the Madras High Court

Case No : W.A. No. 28 of 2000 and C.M.P. No. 292 of 2000

Raju Chettiar

APPELLANT

Vs

The District Collector and The Special Tahsildar (ADW)

RESPONDENT

Date of Decision : 21-02-2005

Acts Referred:

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 11, 22, 22(1), 4(1), 4(2)

Citation : (2005) 1 LW 803

Hon'ble Judges : Markandey Katju, C.J;D. Murugesan, J

Bench : Division Bench

Advocate : S. Balasubramanian, for the Appellant; S. Kandaswamy, Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, C.J.—This writ appeal has been filed against the impugned order of the learned single Judge dated 17.12.1999 passed in

W.P.No.4420 of 1996.

2. Heard learned counsel for the parties and perused the records.

3. The petitioner/appellant has challenged the notification dated 09.01.1996 issued u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan

Welfare Schemes Act, 1978 (hereinafter referred to as the T.N. Act 31 of 1978) published in the District Gazette on 31.01.1996 pertaining to the

land in Survey Nos.280/3, 280/6 and 282/1 to an extent of 0.92.5 Hectares in Silukkuvarpatti Village, Nilakkottai Taluk, Dindigul Anna District

for providing house sites to the Adi-Dravidars of old Silukkuvarpatti Village.

4. It appears that initially the land was sought to be acquired by invoking the provisions of the Land Acquisition Act, 1894, which is a Central Act.

After completing the enquiry u/s 5A of the Central Act, but before passing an award u/s 11 of the Central Act, the respondents switched over to

the provisions of T.N. Act 31 of 1978. It appears that the District Collector authorised the Special Tahsildar, the 2nd respondent herein, u/s 4(2)

of the T.N. Act 31 of 1978 to conduct an enquiry, and the Special Tahsildar had also conducted the enquiry in which he afforded an opportunity

of hearing to the appellant, who submitted his objections to the acquisition of land on 03.11.1995. It is alleged that thereafter the declaration u/s

4(1) of the T.N. Act for acquisition of the said land was issued on 09.01.1996 and published in the District Gazette Extraordinary Issue of No.1 of

the Dindigul Anna District on 31.1.1996.

5. It is alleged by the appellant that before issuing the declaration u/s 4(1) of the T.N. Act the District Collector should have given an opportunity

of hearing to the appellant and should have supplied a copy of the Special Tahsildar's Report on the basis of which he issued the declaration u/s

4(1) of the T.N. Act.

6. However, the learned single Judge has in our opinion rightly held that in view of Section 22 of the T.N. Act there is no need to conduct a further

enquiry u/s 4(2) of the T.N. Act.

7. The learned counsel for the appellant relied on the decision of a Division Bench of this Court in Thirumathi Pushpa Bai Bainsingh Vs. District

Collector Tirunelveli Kattabamman District and others, , wherein the acquisition was set aside on the ground that the District Collector did not give

an opportunity of hearing to the petitioner therein after receiving the report of the Tahsildar. In our opinion, the said decision is distinguishable

because in that case no proceedings under the Land Acquisition Act, 1894 (Central Act) had been taken, but in the present case it is not disputed

that initially the proceedings were commenced under the Land Acquisition Act, 1894 (Central Act). Hence, in view of Section 22 of the T.N. Act

31 of 1978 no further opportunity of hearing by the District Collector is required. Section 22 of the T.N. Act 31 of 1978 states

Sec-22(1) The provisions of this Act shall apply also to any case or cases in which proceedings have been started before the commencement of

this Act for the acquisition of any land for the Harijan Welfare Scheme under the Land Acquisition Act, 1894 (Central Act I of 1894) (hereinafter

in this section referred to as the said Act) but no award has been made by the Collector u/s 11 of the said Act before such commencement, as if -

(i) The notification published under sub-Section (1) of Section 4 of the said Act, or

(ii) The declaration made u/s 6 of the said Act, or

(iii) The notice given under sub-Section (1) of Section 9 of the said Act,

were a notice to show-cause against the acquisition of the land served under sub-Section (2) of Section 4 of this Act.

(2) Nothing contained in sub-Section (1) shall apply in relation to any land unless and until after the District Collector has published a notice in the

District Gazette to the effect that the said land is required for the purpose specified in sub-Section (1) of Section 4 of this Act.

8. A perusal of Section 22 of the T.N. Act makes it clear that where the proceedings for land acquisition have been started under the Land

Acquisition Act, 1894 (Central Act) before the commencement of the T.N. Act, but no award has been passed u/s 11 of the Central Act, if

notification u/s 4(1) or declaration u/s 6 of the Central Act have been published then it will be deemed that this will amount to a show cause notice

u/s 4(2) of the Tamil Nadu Act. Thus, Section 22(1) incorporates a deeming provision, or a legal fiction which cannot be ignored by the Court.

Legal fictions are well known in law.

9. In *The Commissioner of Commercial Tax, Ranchi and Another Vs. Swarn Rekha Cokes and Coals Pvt. Ltd. and Others*, the Supreme Court

has followed the oft-quoted passage of Lord Asquith in *East Dwellings Co. Ltd. v. Finsbury Borough Council*, (1951) 2 All ER 587

If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the

consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute

says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when

it comes to the inevitable corollaries of that state of affairs".

10. Thus, a notification u/s 4(1) of the Land Acquisition Act, 1894 must be treated as a show cause notice u/s 4(2) of the Tamil Nadu Act. Hence,

it cannot be said that no notice was given by the District Collector u/s 4(2) of the

Tamil Nadu Act.

11. Since, we hold that there is no requirement on the District Collector to give a fresh show cause notice in view of the Section 22 of the T.N.

Act, consequently, there is also no requirement for him to furnish a copy of the report of the Special Tahsildar to the petitioner/appellant before

issuing the declaration u/s 4(1) of the T.N. Act.

12. Apart from the above, we may further mention that the decision of the Division Bench of this Court in Thirumathi Pushpa Bai Bainsingh Vs.

District Collector Tirunelveli Kattabamman District and others, has been considered by a learned single Judge of this Court in S. Sannasi and 2

Others v. Abdul Waheed and 6 Others, 2000 WLR 559 and it has been held therein that the decision in Tmt.Pushpa Bai Bainsingh's Case

(Supra) is confined to the facts of that case. We agree with the said view of the learned single Judge.

13. In our opinion, if the District Collector has authorised some other officer u/s 4(2) of the Tamil Nadu Act and that officer has given an

opportunity of hearing to the land holder, then it is not necessary that the District Collector must again given an opportunity of hearing to the said

land holder. In our opinion, it is not the requirement of law that two opportunities of hearing should be given before the land can be acquired u/s

4(1) of the T.N.Act. In our opinion, if the District Collector has authorised some other officer to issue a show cause notice to the owner or to any

other person u/s 4(2) of the T.N. Act and that officer authorised by the District Collector has held the enquiry and submitted a report to the District

Collector, then it is not necessary for the District Collector to issue a second show cause notice or to furnish a copy of the report of that officer to

the owner or other person concerned. All that is required is the District Collector should be satisfied u/s 4(1) of the T.N. Act that it is necessary to

acquire the land for the purpose of Harijan Welfare Scheme. Thus, all that is required is that the District Collector's satisfaction should be based

on perusal of the report of such other officer who was authorised by him u/s 4(2) of the T.N. Act, and it is not the requirement of law that the

District Collector should issue a second show cause notice to the land owner and to furnish a copy of the report of the officer authorised by him to

hold the enquiry u/s 4(2) of the T.N. Act. There is no allegation in the

petitioner's affidavit filed in support of the writ petition that the District Collector's satisfaction was not based on the report of the Special Tahsildar.

14. It may be mentioned that the judgment of the Division bench in Thirumathi Pushpa Bai Bainsingh Vs. District Collector Tirunelveli

Kattabamman District and others, is a very cryptic judgment of only one paragraph and the only reasoning given therein is as follows:-

Considering the fact that the appellant herein was not given an opportunity before passing the order by the Collector we set aside the order dated

17.2.1997 passed by the first respondent and direct the District Collector, first respondent herein, to pass an order in the above matter, after giving

an opportunity of being heard to the appellant herein/petitioner in the writ petition.

15. Thus, there is no discussion at all in the aforesaid Division Bench judgment whether opportunity of hearing was again required to be given by

the District Collector if it had already been given by the Tahsildar or other officer nominated by the District Collector u/s 4(2) of the T. N. Act.

Hence, the aforesaid decision of the Division Bench in Tmt.Pushpa Bai Bainsingh's Case (supra) cannot operate as a precedent, and we agree

with the learned single Judge that it was confined to the facts of that case.

16. In result, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.