

(1930) 11 MAD CK 0002
In the Madras High Court

Ramaswami Ayyar

APPELLANT

Vs

Secretary of State for India

RESPONDENT

Date of Decision : 25-11-1930

Acts Referred:

Citation : 131 Ind. Cas. 647

Hon'ble Judges : Sundaram Chetty, J

Bench : Single Bench

Judgement

Sundaram Chetty, J.—This second appeal arises out of a suit filed by the deceased father of the appellant in respect of the proposed

acquisition of a plot of land be-longing to him by the Government under the provisions of the Land Acquisition Act I of 1894. The plaintiff was

served with notice as required by the Act and a notification to the effect that the land is needed for a public purpose was also published in the

Official Gazette. Alleging that the proposed acquisition is illegal, the plaintiff filed the suit for a declaration and for an injunction restraining defendant

No. 1 (the Government) from acquiring the suit land. Both the lower Courts have held that the proposed acquisition is for a public purpose and it is

legal and valid. The contentions put forward by the plaintiff in the lower Courts are also pressed in this second appeal.

2. On the report of the Deputy Collector on special duty, who was ordered to examine the subject of providing the Pan-chamas of the Tanjore

District with house sites and on the recommendation of the Board of Revenue, the Government issued an order dated 10th November, 1917,

sanctioning the acquisition of sites for the benefit of the Panchamas: vide Ex. 1. In the present case, it is found by both the Courts below that the

site in question was acquired for providing house sites to Panchamas and also a school for them. This acquisition seems to have been intended for

the benefit of defendants Nos. 5 to 23 who are poor Panchamas labourers suffering inconveniences without permanent dwelling houses. As to the

question whether an acquisition for such a purpose is really one for a public purpose within the meaning of the Act, it has been held by Devadoss,

J., in *Veeraraghavachariar v. Secretary of State* 86 Ind. Cas 485 : AIR 1925 Mad. 837 : 49 M. 237 : 48 M.L.J. 204, that in accordance with

Section 3, Clause (f), Land Acquisition Act, the Government of Madras declared by a notification in 1895 in favour of acquisition of village sites in

the Tanjore District and that the acquisition of house sites for Panchamas is a public purpose within the meaning of Section 3 (f) of the Act. Even if

only a section of the public is benefited by this acquisition, the purpose would still be a public purpose as held by Venkatasubba Rao, J., in a

recent case reported as *Secretary of State v. Gopal Ayyar* 127 Ind. Cas. 609 : AIR 1930 Mad. 798 : 59 M.L.J. 274 : 32 L.W. 179.

3. The facts of the present case are exactly on all fours with the facts of the case decided by me in *Secy. of State Vs. T.S. Murugesan Pillai and*

Others, and the facts of the case in *Secretary of State v. Gopala Ayyar* 127 Ind. Cas. 609 : AIR 1930 Mad. 798 : 59 M.L.J. 274 : 32 L.W. 179,

decided by Venkatasubba Rao, J. Objections now raised against the validity of the acquisition are almost similar to those raised in the said two

cases. The conclusions arrived at in those decisions after a due consideration of these objections, should, in my opinion, govern the present case

also.

4. Mr. Varadachariar for the appellant concedes that if the declaration made u/s 6 of the Act is valid, it would then be conclusive evidence that the

land is needed for a public purpose. But what he is trying to urge is that the Court should be satisfied as to the validity of the steps leading up to the

recommendation for the acquisition and that the acquisition itself is within the scope of the real object which the Legislature had in view for the

passing of this Act. He relied on the decision of the Calcutta High Court reported in *Raghunath Das v. Collector of Dacca* 6 Ind. Cas. 457, in

which the learned Judges have observed that when statutory rights of an exceptional character have been created, the conditions prescribed by the

Statute for the exercise of such rights must be strictly fulfilled, and if a mere nominal compliance with the provisions of the Statute was made, the

Civil Courts can afford relief to a person who is aggrieved by the adoption of such a course. The question for consideration is, whether in the

present case there was only a nominal compliance with any vital provision of the Act.

5. The proviso to Section 6 (1) of the Act lays down that no such declaration shall be made unless the compensation to be awarded for such

property is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority. In the present case, the

proposal of the Government is that 20 per cent of the cost of the acquisition should be levied in the first instance from the applicants for the grant of

house sites after the acquisition and the remaining cost, namely, 80 per cent, should be paid out of the public revenues by the Government which

should subsequently be recouped from the persons to whom the sites are assigned in instalments to be spread over a period of 20 years. It is

contended that this course is not a real or substantial compliance with the direction in the aforesaid proviso and therefore the declaration u/s 6 is

not legal and valid. There is no doubt that four-fifths of the compensation to be awarded for the acquisition of the property is first paid out of the

public revenues. It is conceded, that if soon after the payment by the Government for the acquisition without any such previous understanding, they

recoup the same by collecting it from the assignees of the several parcels of land in proportion to their shares, there would be no violation of the

proviso. Does such payment out of public revenues when made on an understanding with the applicants or future grantees that they should repay

the same in the course of 20 years in certain instalments, become only a nominal compliance with the proviso as contended for by the appellant? I

think not. In *Secretary of State v, Gopala Ayyar* 127 Ind. Cas. 609 : AIR 1930 Mad. 798 : 59 M.L.J. 274 : 32 L.W. 179 Venkatasubba Rao, J.,

has also observed that the validity of the declaration u/s 6 cannot be made to depend upon some future contingent event, and what the section says

is that some portion of the cost must be paid out of the public revenue and that condition is literally complied with by the payment in question.

When, as a matter of fact, the Government pays 80 per cent of the cost from the public revenue, the provision of the Act is complied with and it is

not correct to say that what the Government has paid is only a loan to the Panchamas. Reliance is placed upon the decision of Greaves, J., in *In re*

Manick Chand Mahata v. Corporation of Calcutta 66 Ind. Cas. 600 : AIR 1921 Cal. 159 : 48 C. 916 and also the decision in *J.L. Denman and*

Co. Ltd. v. Westminster Corporation (1906) 1 Ch. 464 : 75 L.J. Ch. 272 : 22 T.L.R. 270 : 54 W.R. 345 : 4 L.G.R. 442 : 78 J.P. 185 : 94 L.T.

379.

6. In the former case, it has been held that though the notification u/s 6, Land Acquisition Act, is conclusive for showing that the land is needed for

public purpose, yet the Court is entitled to enquire into the validity of the steps leading up to the recommendation. In that case, it was found that the

acquisition by the Corporation was not really for purposes for which the power to acquire was vested in it by the Legislature, but it was made

merely to enable another body to acquire land through the medium of the Corporation. In the latter case also, it was found that though the

acquisition of land necessarily required for the purpose of the widening of the thoroughfare would be within the scope of the powers conferred by

the Act, the statutory authority was misused for the purpose of acquiring other and additional land in order to benefit the syndicate. They are cases

where the acquisitions have been proved to have been made with an indirect or ulterior object, extraneous to the scope of the Acts conferring

powers of acquisition on those bodies and such acquisitions were held to be outside the scope of those Acts and therefore illegal. In the present

case, there is absolutely nothing to show that the acquisition in question is not one contemplated by the Land Acquisition Act. On the other hand

the purpose for which this acquisition is made is a public purpose within the meaning of the Act and there is also a substantial compliance with the

requisites laid down in the Act for making the declaration u/s 6. An enforcement of the powers vested in the Government under the Act for the

purpose of securing benefit to the public or a section of the public, may be felt as a hardship by an individual who is affected by the acquisition, but

the very scheme of the Act in providing for compulsory acquisition is based on the principle that individual interest should give way to the general

interests of the public or a section of the public.

7. For the foregoing reasons, I have no hesitation in holding that the acquisition

in question is in accordance with the scheme of the Act and the requisites laid down by the Act for the acquisition have also been substantially complied with. In the result, the second appeal fails and is dismissed with costs.