

(1999) 11 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No. 19456 of 1993 and W.M.Ps No. 30319 of 1993 and 20837 of 1996

Ramiah Moopanar

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 19-11-1999

Acts Referred:

Land Acquisition Act, 1894 — Section 3A, 4(1), 5
Post Office Act, 1898 — Section 28, 29

Citation : (2000) 1 CTC 117 : (2000) 1 MLJ 385

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : Mr. A.C. Maravan Pillai for M/s P. Peppin Fernando, for the Appellant;
Mr. V. Selvanayagam, Government Advocate Writ, for the Respondent

Judgement

1. Aggrieved by the land acquisition proceedings initiated by the respondents for a public purpose, namely, for providing house-sites to house-less

Adi-Dravidars, the petitioner has filed the above writ petition.

2. It is stated that the petitioner is the owner of S.No. 142/ID to an extent of 0.25.5 Hectares in Peranoor village, Tenkasi Taluk. He came to

know that the first respondent sought to acquire the said land for provision of house-sites to Adi-Dravidars and a notification u/s 4(1) of the Land

Acquisition Act was published in the Tamil Nadu Government Gazette dated 29.9.1992. A notification u/s 6 of the Act was published in the

gazette dated 18.8.1993. The petitioner was not served with any notice u/s 4(1) or u/s 6 of the Act. He is a permanent resident of Peranoor. He

has got his permanent house at Peranoor and is residing in that house. The petitioner received a communication dated 10.12.1992 stating that

notice was not served on the petitioner because he was out of station. On receipt of section 5-A enquiry, the petitioner made a protest to the

second respondent stating that the enquiry was bad since notice was not issued to him. In spite of such protest, no fresh notice was issued and no

fresh enquiry was conducted. It is further stated that 4(1) notice said to have been published in ""Kumari Murasu"" and ""Kinnas"". Both the news-

papers are said to be Tamil Newspapers. However, both the newspapers are not circulated in the locality where the petitioner resides or where

the property situated. In the absence of any notice under the mandatory provision of the Act and there is no circulation at all of the papers in which

the notification was published, the entire acquisition proceedings are liable to be quashed.

3. On behalf of the respondents, first respondent has filed a counter affidavit disputing various averments made by the petitioner. It is stated that the

4(1) notification was published in the gazette dated 28.9.1992. Enquiry u/s 5-A of the Act was conducted by the Special Tahsildar, Tenkasi on

9.12.1992. The objection received from the land owners were properly dealt with and rejected. Thereafter final orders were passed by the

Special Tahsildar, Tenkasi on 10.12.1992. Declaration u/s 6 of the Act was published in the Government gazette dated 12.8.1993 and in the two

Tamil dailies dated 13.8.1993. The substance of the declaration was published in the locality on 23.8.1993. Award enquiry notice u/s 9(3), 10.

9(1), 10 of the said Act was sent to the land owners. They refused to receive the notice. In the meanwhile the petitioner has filed the above writ

petition. It is also stated that the said Tamil Dailies namely, Kumari Murasu and Kinnas are registered Newspapers and approved by the

Government and the published copies of the notification were published in the locality i.e., Prianoor village on 14.10.1992.

4. In the light of the above pleadings. I have heard the learned counsel for the petitioner as well as learned Government Advocate for the respondents.

5. Mr. A.C. Marava Pillai, learned counsel for the petitioner has raised the following contentions:

(i) The respondents failed to issue notice u/s 4(1) of the said Act and in any event in the absence of service on the person concerned, the method

adopted by the respondents by affixing the notice in a stick in the land in question cannot be accepted as sufficient notice;

(ii) In the absence of any circulation of the dailies namely Kumari Murasu and Kinnas in the locality where the land situate, the respondents failed to

follow the provisions contained in Section 4(1) of the Act. On the other hand, learned Government Advocate would contend that there was proper

compliance of the mandatory provisions of the Act; accordingly he prayed for dismissal of the writ petition.

6. I have carefully considered the rival submissions:

7. With regard to the first contention, even though the first respondent has filed a counter affidavit, the said position has not been properly

explained. In para 6, it is stated that ""the notice u/s 3A sent to the land owner on 19.11.1992 as per rules laid down in the said Act..." It is very

vague answer without informing particulars as regards service of notice on the petitioner. The records produced by the learned Government

Advocate show that the land owner of S.No. 142/ID, the petitioner herein, was not in the village, the said notice was affixed on a stick and the

same was fixed in the land in question. According to the learned Government Advocate, since the petitioner was not in the village, they adopted the

procedure and affixed the notice in the land itself. The procedure adopted by the respondents cannot be accepted in view of section 45 of the

Land Acquisition Act. An elaborate procedure has been prescribed in section 45 of the Land Acquisition Act (hereinafter referred to as ""the Act"").

Section.45. Service of notices, -

(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case Of a notice u/s 4, by the officer

therein mentioned and, in the case of any other notice, by or by order of the collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult

male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named

ordinarily dwells or carries on business, or by fixing a copy thereof in some

conspicuous place in the office of the officer aforesaid or of the Collector or in the court- house, and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898, and service of it may be proved by the production of the addressee's receipt.

It is clear that as per sub-section (2) of Section 45 of the Act, all notices shall be served on the person concerned. When such person cannot be found, it is open to the authorities to effect service on any adult male member of his family residing with him and if no such adult male member is not found, the notice may be served by fixing a copy on the outer door of the house in which the person ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the Land Acquisition Officer or of the Collector or in the court- house. In addition to the above mode of service, the officer is expected to affix a copy in some conspicuous part of the land to be acquired. There is no explanation either in the counter affidavit or in the records regarding compliance of such course as mentioned in sub-section (3) of section 45 of the Act. After holding that the land owner/petitioner herein was not in the village, no effort has been taken by the officer to serve a copy on the adult male member or affixed a copy on the outer door of the house in which the petitioner resides in the village. Affixing a copy in some conspicuous part of the land to be acquired is in addition to the affixture in the dwelling house or serving on the adult male member. Even otherwise, as per Proviso to sub-section (3) of Section 45, the Officer could have sent the notice by post in a letter addressed to the petitioner at his last known residence, address or place of business and registered under Sections 28 and 29 of the Indian Post Office Act, 1898. Such recourse has not been followed by the respondents. In such a circumstances, I accept the first contention raised by the learned counsel for the petitioner and I hold that there was no proper service of notice in Form 3-A on the petitioner. Accordingly, he had lost the opportunity of filing his valid objections during enquiry u/s

5A. As discussed though it is stated by the first respondent in para 3 of the

counter affidavit that they received objections from the land owners, no details have been furnished, hence the statement is not helpful to their own defence.

8. Regarding the second contention that as per section 4(1) of the Act whenever any land is needed by the Government for any public purpose, a

notification to that effect is to be published in the official gazette and in two daily news-papers circulating in that locality of which at least one shall

be in the regional language. Apart from this, the Collector shall cause public notice of the substance of such notification to be given at convenient

places in the said locality. It is clear that the preliminary notification u/s 4(1) is to be published in the Government gazette, in two daily news-papers

circulating in that locality of which one shall be in the regional language and the substance of the notification shall be published at convenient places

in the locality. The Courts have taken a view that all the three modes of publications are mandatory. There is no dispute with regard to the

publication of 4(1) notification in the gazette as well as in the locality. In so far as the dailies are concerned, it is specifically stated in the affidavit

that ""Kumari Murasu"" ""Kinnas"" are not circulated in the locality where the petitioner resides or where the property situated. This aspect has been

specifically pleaded by the petitioner in para 4 of the affidavit. In the counter affidavit of the first respondent, it is stated that ""the notification u/s

4(1) of the Act are published in the two Tamil dailies i.e., Kumari Murasu and Kinnas on 11.9.1992 which are registered newspapers and

approved by Government and the published copies of the notification ... published in the locality i.e., Piranoor village on 14.10.1992. Hence, the

notification u/s 4(1) of the said Act published in the two tamil dailies are maintainable in law."" Here again, the respondents missed the point and

failed to answer the specific plea taken by the petitioner. In other words, it is specifically pleaded and stated that these two news-papers namely,

"Kumari Murasu" and ""Kinnas"" are not circulated either in the locality where the petitioner resides or where the property is situated. There is no

dispute that the land under acquisition forms part of Piranoor village, Tenkasi Taluk, Tirunelveli Kattabomman District. According to the petitioner,

"Kumari Murasu" and "Kinnas" both being published from Nagercoil and absolutely there is no evidence for circulation in the local area. In the

counter affidavit, the first respondent has merely stated that the published copies of notification were published in the locality, namely, Piranoor

village on 14.10.1992. The same cannot be termed as sufficient compliance in terms of section 4(1) of the Act. When the petitioner asserts that

both the dailies have no circulation at all in their local area, it is but proper for the respondents to inform and file a proof regarding the circulation of

these dailies in the said local area. Publication of copies of news- papers in the locality is not sufficient compliance of section 4(1) of the Act.

Accordingly, I accept the second contention raised by the learned counsel for the petitioner. I have already stated that the respondents failed to

serve a notice in Form 3-A and in such a circumstances, in the absence of any proof regarding the circulation of these dailies in the local area, it is a

handicapped for the petitioner to raise any objection regarding the proposed acquisition of his land in the enquiry u/s 5A. On this ground also, the

acquisition proceeding is liable to be quashed.

9. Before parting with this case, I want to point out that even though the language in section 4(1) is very clear, namely, how the notifications have to

be effected, which is un- understandable why the Government choose dailies which are not having circulation in the locality in which the land owner

resides or where the property is situated. In a matter like this, it is open to the Government to public 4(1) notification in daily news-papers which

are in circulation in that locality and they must furnish the information regarding the local circulation to this Court by placing acceptable evidence.

The publication of land acquisition proceedings in un-known dailies are not uncommon. If the Government is really interested in completing the

acquisition proceedings, it is but proper for them to comply with the mandatory provisions strictly failing which, their actions are to be interfered

with by the Court for non-compliance of mandatory provisions.

10. In the light of what is stated above, the impugned acquisition proceedings are quashed and the writ petition is allowed. No costs.

Consequently, both the miscellaneous petitions are closed. It is made clear that allowing of the writ petition will not be a bar for the respondents to

proceed afresh under the provisions of Tamil Nadu Harijan Welfare Scheme Act (Act No.31 of 1978) if they so desire.