
(2001) 03 MAD CK 0098

In the Madras High Court

Case No : Writ Petition No's. 8124 to 8147 of 1994

S. Chithiravelu

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 01-03-2001

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A, 5A(1), 6

Citation : (2001) 03 MAD CK 0098

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : K.N. Pandian, for the Appellant; S. Gopinathan, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—Aggrieved by the acquisition of small extent of the respective lands of the Petitioners for a public purpose, namely, for construction of houses by Tamil Nadu Housing Board in Sakkarai-kottai Village, Ramanathapuram Taluk, pursuant to a notification issued u/s 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") made in G.O. Ms. No. 794, Housing and Urban Development Department dated 24.11.1992 and an enquiry conducted u/s 5-A of the Act which culminated into a declaration issued u/s 6 of the Act made in G.O. Ms. No. 91, Housing and Urban Development (LA II) dated 10.2.1994, the Petitioners seek to quash the said Government Orders dated 24.11.1992 and 10.2.1994 respectively, referred supra, in this batch of writ petitions.

2. Mr. K.N. Pandian, learned Counsel for the Petitioners in this batch of writ petitions, challenges the impugned Government Orders on three grounds, namely,

(i) the publication of the notification dated 24.11.1992 issued u/s 4(1) of the Act in the local dailies, namely, Dina Thoodhu dated 11.12.1992 and Kumari Murasu dated 13.12.1992 even before publication of the notification dated 24.11.1992 issued u/s 4(1) of the Act in the official gazette, which was published only on

23.12.1992, vitiates the impugned acquisition proceedings. In this regard, the learned Counsel places reliance on the decision of the Apex Court in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal,

(ii) the failure of submitting remarks by the requisition authority; namely, the Tamil Nadu Housing Board to the objections of the Petitioner dated 20.5.1993, 16.6.1993, 9.7.1993, 26.7.1993, 19.8.1993, 27.8.1993, 30.8.1993, 7.9.1993 and 22.9.1993, as admitted in the report of enquiry u/s 5-A of the Act, further vitiates the impugned proceedings; and

(iii) since the impugned lands are owned and possessed by poor persons with meagre land holding belonging to Scheduled Castes / Tribes, their lands should not have been acquired without obtaining prior permission of the Government as per G.O. Ms. No. 2078, Revenue dated 27.12.1984 read with the proceedings of the Commissioner (Land Administration) dated 17.3. 1992.

3. Per contra, Mr. S. Gopinathan, learned Government Advocate appearing for the Respondents, contends that:

(i) the publication of the notification issued u/s 4(1) of the Act in the newspapers even before the publication of the same in the official gazette, will not, in any way, vitiate the validity of the notification itself, even if the same is irregular, as held in Venkataswamappa Vs. Special Deputy Commissioner (Revenue),

(iii) the instructions of the Commissioner (Land Administration) dated 17.3.1992 are purely administrative guidelines in nature and they cannot be said to be mandatory nor can they prevail over the provisions of the Land Acquisition Act; and

(iii) the objections said to have been preferred by the Petitioners are filed beyond the time stipulated u/s 5-A(1) of the Act, and therefore, the non-furnishing of remarks by the requisition authority to the said objections would not, in any way vitiate the impugned acquisition proceedings.

4. Even though Mr. K.N. Pandian learned Counsel for the Petitioners, would reply that some of the representations were made within thirty days, he is not able to satisfy this Court that any representation has been made by the Petitioners within 30 days, as stipulated u/s 5-A(1) of the Act.

5.1. After a careful consideration of the submissions of both sides, I do not find any merit in the contentions of the learned Counsel for the Petitioners.

5.2. Even though in Collector (District Magistrate) Allahabad and Another Vs. Raja Ram Jaiswal, it is held that public notice must always follow and cannot precede the publication of notice in the official gazette, the Apex Court, in Venkataswamappa Vs. Special Deputy Commissioner (Revenue), , after referring to Raja Ram Jaiswal case, held that normally, the publication of notification u/s 4(1) of the Act in the newspaper would be preceded by a publication in the Gazette notification. But considering that the object of publication of the

notification issued u/s 4(1) of the Act in the newspaper is only to put on notice to the owners that the land is proposed to be acquired for a public purpose and that they are prevented to deal with the lands in any manner detrimental to the public purpose, such publication in the newspaper, putting the owners on notice about the proposed acquisition even prior to the actual publication, cannot be said an infraction of compliance of the requirement u/s 4(1) of the Act.

5.3. That apart, the Explanation added to Section 4(1) of the Act, as amended by the Land Acquisition (Tamil Nadu Amendment Act, 1996) (XXVI of 1997), reads as follows:

Explanation: for the purpose of this subsection, the publication of notification in the Official Gazette the publication of such notification in two daily newspapers and the giving a public notice.-

(a) may precede each other:

(b) shall be completed within a period of sixty days. The period of sixty days shall be reckoned from the date of publication of notification in the Official Gazette or the date of publication of such notification in two daily newspapers or the date of giving public notice, whichever is earlier.

The above explanation makes it clear that the publication of notification in the Official gazette, the publication of notification in the two daily newspapers and the giving of public notice may precede each other. That apart, the words "whichever is earlier" used in Clause (b) of the explanation is for the purpose of computing sixty days either from the date of publication of the notification in the Official gazette or from the date of publication of notification in two daily newspapers or from the date of giving of public notice, which further makes it clear that the newspaper publication could also precede the Gazette publication, and therefore, the contention of the learned Counsel for the Petitioners that the publication of notification u/s 4(1) of the Act in the local dailies namely, Dina Thoodhu dated 11.12.1992 and Kumari Murasu dated 13.12.1992 even before the publication of the notification issued u/s 4(1) of the Act, in the Official gazette on 23.12.1992 vitiates the proceedings, is not tenable in law.

5.4. With regard to the second contention, a reading of G.O. Ms. No. 2078 Revenue Department dated 27.12.1984 makes it clear that the Government had issued certain guidelines to the acquisition authorities while acquiring the lands that belong to poor persons with meagre land holdings and Scheduled Castes/ Tribes. Even though the Commissioner (Land Administration), in his proceedings dated 17.3.1992, required the District Collectors to get prior approval of the Government while proposing to acquire the lands that belong to poor persons with meagre land holdings and Scheduled Castes / Tribes, such instructions dated 17.3.1992 are only administrative guidelines in nature. The G.O. Ms. No. 2028, Revenue Department dated 27.12.1984 is not a rule by itself, but only a guideline ,which shall not prevail over the provisions of the Land Acquisition Act, in as much as the said G.O. dated 27.12.1984 itself is not applicable where the

acquisition becomes absolutely inevitable. It is well settled in law that administrative instructions may bind the subordinates; but any violation thereof does not constitute an infirmity in the acquisition of the land itself. The power of eminent domain of the State to acquire the land for public purpose cannot be curtailed by administrative instructions, assuming that they are intended to achieve the other objects of the Government. If administrative instructions are not given effect to by the subordinates, it is true that the Government could take disciplinary action against the officials. But it does not constitute any infirmity in the valid exercise of powers u/s 4(1) of the Act and the declaration u/s 6 of the Act, vitiating such acquisition proceedings, as held by the Apex Court in Collector Ongole and Another Vs. Narra Venkateswarlu and Others, .

5.5. With regard to the last contention of the learned Counsel for the Petitioners that the requisition authority, viz., Tamil Nadu Housing Board failed to submit the remarks to the objections of the Petitioners dated 20.5.1993, 16.6.1993, 9.7.1993, 26.7.1993, 19.8.1993, 27.8.1993, 30.8.1993, 7.9.1993 and 22.9.1993, and therefore, the impugned acquisition proceedings are vitiated, I could only observe that the very contention is not sustainable in law, as the learned Counsel for the Petitioners is not able to satisfy this Court that he had preferred his objection within 30 days from the date of notice as stipulated u/s 5-A(1) of the Act, in which event, the requisition authority is not under any obligation to submit their remarks to the objections filed beyond 30 days as stipulated u/s 5-A(1) of the Act.

Hence all the contentions raised by the learned Counsel for the Petitioners fail and these writ petitions are dismissed, however, without costs. Consequently, W.M.P. Nos. 12349, 12351, 12353, 12355, 12357, 12359, 12361, 12363, 12365, 12367, 12369, 12371, 12373, 12375, 12377, 12375, 12377, 12379, 12381, 12383, 12385, 12387, 12389, 12391, 12393, and 12395 of 1994 are also dismissed.