

(1991) 02 MAD CK 0014
In the Madras High Court

S. Jayaraman

APPELLANT

Vs

The Government of Tamil Nadu and Another

RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

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

Citation : (1991) 1 LW 660 : (1991) 1 MLJ 589

Hon'ble Judges : Mishra, J

Bench : Single Bench

Judgement

Mishra, J.—The petitioner herein has challenged the acquisition of land on the ground inter alia that the declaration made u/s 6 of the Land

Acquisition Act on 3.7.1990 was beyond the period of one year from the date of publication of the preliminary notification of the intention to

acquire the land u/s 4(1) of the Act. The statement in this behalf is available in paragraph 14 of the affidavit filed in support of the writ petition. It is

said:

It is respectfully submitted that the Section 4(1) Notification was issued on 21.4.1989 and published in the Government Gazette on 17.5.1989.

However a declaration u/s 6 of the Act in G.O. Ms. No. 1135, Adi Dravidar and Tribal Welfare, dated 3.7.1990 was published only on

3.7.1990, beyond the period of one year.

This fact is not in dispute. According to the learned Counsel for the petitioner, the declaration being bad in law, the acquisition cannot proceed.

According to the learned Counsel for the respondents, however, counted from the date of the publication of the substance of the notification in the

locality u/s 4 of the Act, the declaration made u/s 6 of the Act is not beyond the

period of one year introduced by the Proviso to Section 6 of the Act, by Act 68 of 1984.

2. Section 4 of the Act reads:

Publication of preliminary notification, and powers of officers thereupon: - (1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a Company a notification to that effect shall be published in the Official Gazette, and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality, the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.

Section 6 of the Act reads:

Declaration that land is required for a public purpose: - (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made u/s 5-A, Sub-Section (2), that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary, to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification u/s 4, Sub-Section (1), irrespective of whether one report or different reports has or have been made whenever required u/s 5-A, Sub-section (2).

Provided that no declaration in respect of any particular land covered by notification u/s 4, Sub-section (1),

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before

the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication

of the notification; or (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one

year from the date of the publication of the notification: Provided further that no such declaration shall be made unless the compensation to be

awarded for such property is to be paid by a Company or wholly or partly out of public revenues or some fund controlled or managed by local authority.

3. The date of the declaration and its publication is not in dispute. Since we know firmly that the declaration was made on 3.7.1990 followed by its

publication on the same date, we have to find out whether the publication of the preliminary notification u/s 4(1) of the Act was made more than

one year prior to the declaration dated 3.7.1990 or not. I have already pointed out that the date of the publication of 4(1) notification in the

Government Gazette i.e., 17.5.1989 is firmly established. It is beyond a period of one year if we retrace back from 3.7.1990. Coming to the

language of Section 4 of the Act however I find that while it has clearly stipulated publication of the preliminary notification in the official Gazette

and in two daily newspapers circulating in the locality, it says that the Collector shall cause public notice of the substance of such notification. While

the contemplated publication in the official Gazette and in two daily newspapers is the publication of the text of the notification, only substance of

the notification is required to be given at convenient places in the locality. It is clear therefore that publication of the notification must in the

circumstances of the case means publication in the Official Gazette and in two daily newspapers circulating in the locality. The words the last of the

dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification, are

meant for the actions that the officers may take with respect to the land proposed to be acquired. Sub-Section (2) of Section 4 says:

Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf and for his servants and

workmen,-

to enter upon and survey and take levels of any land in such locality; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adopted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work if any proposed to be made thereon; to make such

levels, boundaries and line by placing marks and cutting trenches; and, where

otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house unless with the consent of the occupier thereof without previously giving such occupier at least seven days' notice in writing of his intention to do so.

4. Obviously without due notice of the proposed acquisition, no person can be authorised to enter upon and survey and do all that has been contemplated in Sub-Section (2) of Section 4. It is in that context that the requirement of such publication and the giving of such public notice being hereinafter referred to as the date of the publication of the notification has to be understood. Clause (ii) to Proviso to Sub-section (1) of Section 6 quoted above says that the declaration shall not be published after the expiry of one year from the date of publication of the notification. The word "publication" in Clause (ii) to proviso to Sub-Section (1) of Section 6 when read in the context should carry the same meaning as the words "published in the Official Gazette and in two daily newspapers circulating in that locality" carry. If publication in the Official Gazette and in daily newspapers on the one hand and notice of the substance of the notification on the other hand are made on different dates and there is a long gap of time between the two, will it be open to the State Government and/or officers to say that they would treat the public notice of the substance of the notification as the date of the publication and ignore the publication in the Official Gazette and in the daily newspapers for the purpose of Clause (ii) to Proviso to Sub-Section (1) of Section 6 of the Act? This question has become relevant because the learned Counsel for the State has derived strength from the words "hereinafter referred to as the date of the publication of the notification" in Sub-section (1) of Section 4 of the Act and from some observations in a judgment of this Court in the case of Kadirvelu Mudaliar v. State of Tamil Nadu 1987 W.L.R. 182. Considering a case in which it was urged on behalf of the petitioner whose land had been acquired that the acquisition, for the reason that there was a long gap between the publication of the notification in the Official Gazette and the newspapers and the public notice of the substance of the notification, was

bad, this Court observed:

However, learned Counsel for the petitioner would attack the notification u/s 4(1) on the ground that there had been no contemporaneous local

publication of the substance of the notification u/s 4(1). Here, there has been a delay of 63 days alone. The petitioner was not disabled from

making his objections and participating in the enquiry u/s 5-A on this ground though the said enquiry has got to be frowned upon on the other

ground. The delay on the facts of the case could not be said to be extraordinary so as to take notice of the same of say that there was no due

compliance with the provisions of the Act and the Rules framed thereunder in this behalf. Each case has got to be dealt with on its own facts and

no hard and fast rule should be laid down. Hence, the attack on the notification u/s 4(1) stands eschewed.

Reliance on the judgment of this Court by the learned Counsel for the respondents in my opinion is misconceived. Framers of law must be deemed

to have been bestowed with the wisdom that they never contemplated a mischief to exist in a provision of law that someone some day would come

and say that he would divide the publication in the Official Gazette and the newspapers and the public notice of the substance of the notification to

read, for the purpose of the application of Clause (ii) to proviso to Sub-section (1) of Section 6 of the Act, such date of the publication of the

substance of the notification as the date of publication and thus to contend that even though the declaration u/s 6 was made after the expiry of one

year from the date of the publication of the preliminary notification u/s 4(1) of the Act in the Official Gazette, since it was within one year from the

date of the public notice of the substance, there is no infirmity in the declaration. The Legislature has said "the last of the dates of such publication

and the giving of such public notice" evidently to indicate that there may be some gap between the publication in the Official Gazette and the

newspapers and the public notice. The last date of such publication in the said expression must in the context confine to the purpose u/s 4(2) of the

Act and not extend to the purpose of the declaration u/s 6 of the Act. The proviso to Section 6(1) of the Act has been introduced to ensure that

there is no undue delay made in carrying out the purpose of the Act. In fact, in cases where after publication in the Official Gazette and the daily

newspapers of the preliminary notification u/s 4(1) of the Act, there has been inordinate delay in the public notice, Courts have found the delay as

an act of malice in law and interfered with the acquisition. On my reading of the law as above, I have no hesitation in holding that the declaration

dated 3.7.1990 being beyond a period of one year from the date of the publication of the preliminary notification u/s 4(1) of the Act, is invalid. The

acquisition cannot on the said basis proceed.

5. In the result, the application is allowed. The declaration u/s 6 of the Act in G.O. Ms. No. 1135, Adi Dravidar and Tribal Welfare, dated

3.7.1990 and consequently the Section 4(1) notification in G.O. Ms. No. 588, Adi Dravidar and Tribal Welfare, dated 21.4.1989 are quashed.

The respondents are restrained from proceeding with the acquisition of the land covered by the said declaration. No costs.