
(1967) 08 MAD CK 0022
In the Madras High Court

S. Krishna Reddiar and Others

APPELLANT

Vs

The State of Madras

RESPONDENT

Date of Decision : 18-08-1967

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1968) 2 MLJ 121

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—This writ petition is filed by the petitioners who are the owners of lands in R.S. No. 561/5 in Poosaripalayam, hamlet

of V. Pudhur village in Villupuram Taluk. The State of Madras represented by the Special Tahsildar, Land Acquisition (Harijan Welfare), is the

respondent. A notification u/s 4 (1), relating to the acquisition of the above lands under the provisions of the Land Acquisition Act, was published

on 2nd September, 1964, in the Fort .St. George Gazette. Since the matter was one of urgency, it was also indicated in the notification that the

enquiry u/s 5-A of the Act would be dispensed with. It was made clear in the counter affidavit supplied by the Government in this Writ Petition that

the urgency in the present case arose because the existing Harijan colony consists of 47 families, that out of them 16 families were houseless, that

there are 21 families who lived in low lying fields subject to inundation during rainy season, and consequently it was necessary to acquire the above

land by resort to the urgency clause for the provision of house sites to 37 harijan families. This is what is now stated in the counter affidavit of the

Government. Thereafter a declaration u/s 6 of the Act was published on nth November, 1964. The counter affidavit of the respondent also stated

that public notice of the Section 4 (1) notification as required in that section was also given by beat of torn tom and by affixture in the Mariamman

Temple. The petitioners have filed this writ petition under Article 226 of the Constitution seeking for the issue of a writ of mandamus restraining the

respondent from proceeding further with the acquisition.

2. The principal grounds urged by the learned Counsel for the petitioners in support of the relief are the following : It is urged in the first place that

the resort to the urgency clause was not justified at all in the circumstances of the present case. This objection is pointless because of the specific

avermment in the counter affidavit of the respondent to which I have already made reference. That clearly indicates that the existing facilities for

residence of the Harijans in the village are totally inadequate and that 16 families are left without houses, and 21 families have facilities to live only in

a land inundated with water during rains. This cannot ""be considered to be a case where the Government, for the purpose of reaching its subjective

satisfaction about the existence of urgency, proceeded on no ground at all or on grounds which could be demonstrably established to be irrelevant.

In a recent decision reported in Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, , the Supreme Court dealt with a case where

the circumstances clearly indicated that the State Government never applied its mind at all to the matter of urgency. In that case, the land in

question under acquisition was actually neither waste or arable land. In such circumstances, it was found that the State Government could not in

any View of the matter apply the urgency clause u/s 17 (4) ""which requires as a pre-requisite that the land should be arable or waste. But here the

facts are entirely different. The circumstances referred to in the counter affidavit are sufficient from which the Government could form an opinion

about the urgency.

3. The second argument was that individual notice was not given to the petitioner u/s 4(1) of the Act. Reference was made to the Board's Standing

Orders 92, paragraph 7 as well as paragraph 9. Paragraph 7 starts with the remark that the publication of a notification u/s 4 (1) of the Act is not

only a preliminary to entry on the land, but also a necessity in every case as it is a legal notice to persons interested that they may prefer objections

to the proposed acquisition. The statement thus found in the Board's Standing

Order is not authority for deducing that individual notice to the persons interested in the land proposed to be acquired is necessary. Section 4 (1) itself provides only for public notice of the substance of the notification to be given at convenient places in the locality and, that, according to the counter affidavit, had been done in the present case. Two unreported decisions of this Court referred to by the learned Government Pleader before me, one in Venkatachala Thanjirayar v. The Special Tahsildar Harijan Welfare, Thanjavur and another W.P. No. 219 of 1963 by Srinivasan, J. and the other in Meclak Nutriments and Pharmaceuticals Ltd., Madras-I v. State of Madras by the Secretary to Govt. Horns Department, Madras, and another W.P. No. 1846 of 1965 by Kailasam, J., have laid it down that it is not necessary that individual notice should be given u/s 4 (1) to the owners of the land.

4. Learned Counsel has next referred to the provision in Board's Standing Order 90, paragraph 9 read with the rules found in Appendix I of the Board's Standing Order framed by the State Government u/s 55 of the Act, and he relied upon these provisions for reinforcing the argument about individual notice. This argument appears to me to be also beside the point because both Board's Standing Order 90, paragraph 9 as well as the rules in Appendix I clearly refer to the notice for the enquiry u/s 5-A, and they cannot have application to a case where such enquiry had been dispensed with by reason of the urgency clause.

5. Learned Counsel urged as a final argument that Section 4 (1) of the Land Acquisition Act, in so far as it does not lay down the obligation to give individual notice, to the persons interested in the land under acquisition must be considered as violative of the constitutional provisions in Article 19 giving all citizens the freedom to acquire, hold and dispose of property, and in Article 31, which gives all citizens the safeguard that their properties shall not be taken away from them save ""by the authority of law. A reference to Article 31 (2) of the Constitution shows that the freedoms enunciated in Article 19, and Article 31 (1), must be considered along ""With the provision in Section 31 (2) which deals with compulsory acquisition of property for public purposes. Such acquisition can be made for a public purpose provided there is the authority of a law which contains provisions for the payment of compensation for the properties acquired.

Therefore, an enactment like the Land Acquisition Act cannot be struck down as unconstitutional, if it ensures the payment of compensation, as enunciated in Article 31 (2) of the Constitution. However, learned Counsel states that the right of the person who owns property to get prior notice of the intention of the Government to take away his property in exercise of the powers of eminent domain, is also a fundamental right and where that right is sought to be taken away, under any law that law must be deemed to be unconstitutional. As against this argument, it has to be pointed out that Section 4 (1) provides for the necessary publication in the Gazette and also a public notice. The statute appears to have deliberately restricted itself to these methods of publication (in cases where the urgency clause is applied) and has not insisted upon individual notice, because it may Very well happen that the service of individual notices may take a prolonged period of time and thereby defeat the very purpose for which the urgency which had been invoked. In such cases the individual affected should be deemed to have received constructive notice of the acquisition both by the publication in the Gazette as well as by the notice published in the locality. Further as mentioned already, the prior decisions of this Court have clearly laid it down that Section 4 (1) cannot be construed as conferring upon the owner of the land a right to obtain individual notice. Section 4 (1) must be considered as affording the affected persons constructive notice by the publication of the notification both in the Gazette and in convenient places in the locality. In cases of urgency such notice must be deemed as sufficient for the purpose of ensuring to the affected individual an opportunity of knowing about the factum of acquisition and of making such representations as he feels it necessary. I am of the opinion that there are no valid. grounds for interfering with the notification in this case and dismiss the writ petition. There will be no order as to costs.