

(2010) 03 MAD CK 0254

In the Madras High Court

Case No : Writ Petition No. 32827 of 2004 and W.P.M.P. No. 39730 of 2004

S. Martin, Managing Director, DPF Textiles and P. John Britto APPELLANT

Vs

The District Collector, Coimbatore and Others RESPONDENT

Date of Decision : 26-03-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 3, 3(f), 3(f)(vi), 4(1)

Citation : (2010) 6 CTC 432

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : R.N. Amarnath, for the Appellant; V. Arun, Additional Government Pleader for Respondent Nos. 1, 2, 5 and 6; A. Vijayakumar, Advocate for Respondent Nos. 3 and 4., for the Respondent

Final Decision : Allowed

Judgement

K.N. Basha, J.—By mutual consent of the learned Counsel for the Petitioner and the learned Additional Government Pleader appearing for Respondents 1, 2, 5 and 6 and the learned Counsel for the Respondents 3 and 4, the main Writ Petition itself is taken up for final disposal.

(a) The case of the Petitioners is that they are the joint owners of the lands comprising in SF. Nos. 8, 9/1, 9/2 and 12 of Ganapathy village, Coimbatore North Taluk, Coimbatore. Land Acquisition proceedings were initiated for acquiring the lands from the vendors of the Petitioners in SF. Nos. 8, 9/1, 9/2 and 12 of the said lands for the neighbourhood Scheme of the Tamil Nadu Housing Board. Section 4(1) Notification was issued in G.O.Ms. No. 550, Housing and Urban Development Department on 07.03.1983 and Section 6 Declaration was issued in G.O.Ms. No. 223 dated 10.02.1986.

(b) The vendors of the Petitioners filed W.P. Nos. 12154 & 12155/1986 and this Court by the order dated 11.10.1991, allowing the Writ Petitions, quashed the acquisition proceedings. No Appeals were preferred against the order of the

learned Single Judge dated 11.10.1991. In view of such circumstances, the Petitioners under the bona fide impression that the matter reached finality, have purchased the above said lands for a valuable consideration during the month of January 1997.

(c) Subsequently, after the purchase of the said lands, the vendors of the Petitioners received notices from this Court in C.M.P. Nos. 17340 to 17344/1998 for condonation of delay of 5 years 3 months and 10 days in filing the Appeals. The vendors contested the Applications and ultimately, this Court dismissed the Petitions on 21.04.1999. Thereafter, no Special Leave Petitions [SLPs] were filed against the said order of the Division Bench. Also the vendors filed the Caveat Petitions before the Hon"ble Supreme Court and no notice was received by them.

(d) At the instance of the Petitioners, the vendors approached the 2nd Respondent with representation on 08.03.2000 to issue the "No Objection Certificate" since the Land Acquisition proceedings were no longer pending. As there was no action on the said representation dated 08.03.2000, the vendors filed a Writ Petition in W.P. No. 7603/2000 before this Court and this Court by the order dated 27.04.2000, directed the 2nd Respondent to consider and pass orders on the representation seeking the relief of "No Objection Certificate". The 2nd Respondent, thereafter, by his proceedings in No.Pe. 12154 and 12155/1996 dated 07.08.2000 issued the "No Objection Certificate" and also directed to delete the words "Tamil Nadu Housing Board" from the Revenue Records. The 2nd Respondent also issued communication to the Registering Authorities, Revenue Divisional Officer and to the vendors of the Petitioners.

(e) Thereafter, the Petitioners applied to the Commissioner, Coimbatore Corporation on 25.05.2001 for approval of the housing plan in S.F. Nos. 8, 9/1, 9/2 and 12 of the above said subject lands in this Writ Petition. The Assistant Commissioner of Coimbatore Corporation by his proceedings dated 05.09.2001 directed the Petitioners herein to pay an amount of Rs. 7.45 lakhs as Development charges. On 10.09.2001 the Petitioners paid Rs. 2,09,270/- and Rs. 5,35,730/- respectively. Thereafter, the Member Secretary/ Assistant Director, Coimbatore Rural Planning Committee, Coimbatore by his proceedings dated 25.09.2001, called upon the Petitioners to carry out certain rectifications and the Petitioners also made the said rectifications. Again the Petitioners were called upon to produce certain other documents and the said request was also complied with by the Petitioners.

(f) Thereafter, the Petitioners received a communication dated 16.11.2001 from the Assistant Commissioner, calling upon the Petitioners to produce No Objection Certificate from the Executive Engineer of Tamil Nadu Housing Board. Along with the communication, a communication from Tamil Nadu Housing Board was enclosed stating that there is a proposal to file SLP against the order of this Court dated 21.04.1999 before the Hon"ble Apex Court. The Petitioners filed W.P. No. 3839/2002 before this Court challenging the said communication of the Assistant Commissioner, Coimbatore. This Court, by the order dated 31.01.2003

passed an order to the effect that as on the said date, no Appeal proceeding is pending with reference to the Petitioners' lands and they are entitled to utilise their lands as they like. In the said order, the 6th Respondent is directed to issue such a certificate sought for by the Petitioners within one month from the date of receipt of the order or on the production of the order by the Petitioner whichever is earlier if there is no order by the Supreme Court staying the order of this Court. It is further ordered that if such a certificate is not furnished by the 6th Respondent as stated above, Respondents 2 and 3 were directed to consider the Petitioners' request to approve the plan. With that direction, the said Writ Petition was disposed of by this Court.

(g) As there was no further response, the Petitioners have been constrained to file a Contempt Application in Cont. P. No. 306/2003 and this Court ordered notice on 29.04.2003. The Respondents with a view to circumvent the order of this Court and to escape from the Contempt proceedings, the 1st Respondent herein issued a fresh 4(1) Notification dated 25.03.2003 and the same was published in Tamil dailies, viz., Thinathanthi on 30.30.2003 and Makkalkural on 31.03.2003 and Trinity Times on 07.04.2004. After issuing the 4(1) Notification, the 1st Respondent filed W.A. No. 2084/2003 against the order in W.P. No. 3839/2002 dated 31.01.2003 and an order of interim stay was granted by this Court. The Petitioners filed vacate stay Petition and submitted before this Court during the hearing on 15.04.2004 that the Petitioners are willing to give quietus to the entire land acquisition issue since the same is pending from 1983 and it is further represented that they were willing to part with the land at the prevailing market rate alternatively fair offer as also given to the Housing Board. The representations of the Petitioners were recorded by this Court and the Petitioners also filed a Modification Petition in respect of the cost of the lands on 22.04.2004.

(h) At this stage, the 1st Respondent as per the proceedings Na. Ka. No. 12553/83/F6 dated Nil. 08.2004 issued a fresh 4(1) Notification for the same subject lands of this Petition, in spite of the quashing of the earlier 4(1) Notification by this Court dated 11.10.1991 and the 2nd 4(1) Notification was issued as per the publication in the Tamil Nadu Gazette on 25.03.2003. Being aggrieved against the said 4(1) Notification dated Nil. 08.2004, the Petitioners has been constrained to approach this Court with the above said prayer.

(i) During the pendency of this Writ Petition, Declaration as per Section 6 of the Act came to be issued by the 6th Respondent herein in his proceedings dated 12.08.2005 and the same was gazetted on 24.08.2005. Pursuant to the said declaration, an award came to be passed by the 5th Respondent herein in Award No. 2/2007 dated 28.08.2007. In view of such further development, the Petitioners have been constrained to challenge Section 6 Declaration as well as the Award passed under/Section 11 of the Act, by filing the additional Affidavit and grounds and the said additional grounds was allowed in W.P.M.P. Nos. 1751 to 1754/2008 dated 27.11.2008.

2. Mr. R.N. Amarnath, the learned Counsel for the Petitioners mainly put forward

two contentions, viz.--

(1) Notification u/s 4(1) of the Land Acquisition Act issued by the District Collector on 20.08.2004 was published in the District Gazette, Coimbatore which is not the official Gazette of the State Government as the Act contemplates that 4(1) Notification shall be published in "Official Gazette". Therefore, the Notification was not issued in accordance with Section 4(1) of the Act and as such, the same is liable to be quashed.

(2) Section 3(f)(vi) of the Land Acquisition Act contemplates the grant of prior approval by the Government for the initiation of the Schemes for the purpose of Housing Board. But in the instant case, the Respondents have not obtained prior approval from the Government as contemplated u/s 3(f)(vi) of the Act.

3. In support of his contentions, the learned Counsel for the Petitioners would place reliance of the following decisions of this Court:

(1) A.S. Periasamy Vs. State of Tamil Nadu and Others,

(2) An unreported decision of this Court in A. Unnikrishnan and another v. State of Tamil Nadu, rep. by its Secretary, Housing and Urban Development Department, Fort St George, Chennai-9 and others, WP. Nos. 9241 and 9259/1998 dated 03.06.2008.

4. Per contra, Mr. V. Arun, learned Additional Government Pleader appearing for Respondents 1, 2, 5 & 6 would contend that there is no illegality or infirmity in the Land Acquisition proceedings initiated against the Petitioners. It is submitted that after the issuance of 4(1) Notification, Section 6, Declaration was made and ultimately, award was also passed and as the Petitioners did not receive the award amount, the same was deposited on the file of the Court. It is submitted that the 1st Respondent, District Collector, published 4(1) Notification in the District Gazette No. 50 dated 20.08.2004 and there is no need to publish the same in the Government Official Gazette. It is contended that the publication in the District Gazette would amount to be in compliance of the provision u/s 4(1) of the Act. In respect of the 2nd contention put forward by the learned Counsel for the Petitioners, it is contended by the learned Additional Government Pleader that prior permission of the Government is necessary only in the Land Acquisition proceedings initiated before the year 2000 and as such, prior approval is not required in the instant case. It is further contended that the Petitioners lands value was fixed and the value was arrived at below the limits fixed by the District Collector who is authorised to approve the Notification u/s 4(1) of the Act.

5. The learned Counsel appearing for the Respondents 3 and 4 would contend that 4(1) Notification was approved by the District Collector, Coimbatore, for which he is the competent authority and as such, it was rightly published in the District Gazette. It is further contended that in respect of obtaining prior approval from the Government, it is necessary only for the Land Acquisition proceedings initiated before the year 2000.

6. I have carefully considered the rival submissions made on either side and also perused the entire materials available on record.

7. The materials placed before this Court reveals that the subject lands of the Petitioners was subjected to the Land Acquisition proceedings thrice. The earlier Notification u/s 4(1) was quashed by this Court by order dated 21.04.1999. Thereafter, yet another 4(1) Notification was issued on 25.03.2003. In spite of the same, during the subsistence of the said Notification, the impugned Notification u/s 4(1) was issued by the 1st Respondent in proceedings No. 12553/83/F6 dated Nil. 08.2004. Subsequently, Section 6 Declaration was made on 12.08.2005 and the award came to be passed by the Fifth Respondent on 28.08.2007 and the proceedings was also challenged in this Writ Petition.

8. Now the crux of the question involved in this matter is to the effect that whether the Notification u/s 4(1) of the Land Acquisition Act issued by the District Collector and published in the District Gazette would amount to the compliance of Section 4(1) of the Land Acquisition Act and whether the grant of prior approval by the Government for the initiation of the Scheme for the purpose of housing board is required as per Section 3(f)(vi) of the Act.

9. At the outset, this Court is constrained to state that the above two main grounds raised by the Petitioners were not properly answered by the Respondents though they have filed a detailed Counters in this matter. Only vague statements were made in respect of the said contentions raised by the Petitioners. In respect of the above two main grounds raised by the Petitioners, the Respondents proceeded to state in both the counters, viz., the Counter filed by the Respondents 1, 2, 5 and 6 and the counter filed by the Respondents 3 and 4, by merely stating that the publication of 4(1) Notification in the District Gazette itself is sufficient and in respect of the other contention that prior permission of the Government is necessary only in the Land Acquisition proceedings initiated before the year 2000. I am unable to countenance the said contentions of the learned Additional Government Pleader and the learned Counsel appearing for the Respondents 3 and 4 for the simple reason that there is absolutely no amendment whatsoever, either in respect of the provision u/s 4(1) or in respect of Section 3(f)(vi) of the Act, is made as on date. Therefore, it goes without saying that the Respondents are expected to comply scrupulously the requirements contemplated under Sections 4(1) and 3(f)(vi) of the Act.

10. The learned Counsel for the Petitioners rightly placed reliance on the decision of this Court in A.S. Periasamy Vs. State of Tamil Nadu and Others, in respect of his first contention, viz., the publication of 4(1) Notification in the "Official Gazette", that is the Gazette published by the State Government. This Court in the said decision held as hereunder:

5. By Act 16 of the Land Acquisition [Tamil Nadu Amendment] Act, 1996 certain amendments have been effected. Section 4(1) as amended by Act 16 of 1997 would read as follows:

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).

6. The contention of the Petitioner is to the effect that as per Section 4(1) the Notification has to be published in the Official Gazette. The expressions "Official Gazette" has not been defined in the Land Acquisition Act. Therefore, the meaning has to be ascertained from the General Clauses Act.

Section 3. In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,-

(39) "Official Gazette" or "Gazette" shall mean the Gazette of India or the Official Gazette of a State;.

11. In the absence of any definition of Official Gazette in the Land Acquisition Act, the meaning ascribed to such expression in the General Clauses Act should be followed, wherein, it has been indicated that Official Gazette mean the Gazette published by the Central Government or the Official Gazette of a State. As compared to the Central Act, such provision, in Act 31 of 1978 which relates to acquisition of land for certain purposes inside the State of Tamil Nadu, provision has been made for publication in the District Gazette. Act 31 of 1978 was incorporated in the year 1978 wherein it was specifically contemplated that Notification would be published in a District Gazette. While amending the Land Acquisition Act in the year 1997, it must be deemed that the Legislature was aware of the distinction between District Gazette and the Gazette of a State and yet while amending Section 4(1) the Legislature never thought it fit to amend the expression Official Gazette as contained in Section 4(1) of the Central Act. In such view of the matter, I am inclined to hold that the expression Official Gazette in Central Act means the Official Gazette of the State and cannot mean a District Gazette. The first contention by the learned Counsel for the Petitioner is therefore accepted.

11. The principle laid down by this Court in the decision cited supra is squarely applicable to the facts of the instant case as in this case also admittedly, 4(1) Notification was published only in District Gazette No. 50 dated 20.08.2004 and the same cannot be equated with that of the Official Gazette of the State.

12. Now, coming to the 2nd contention in respect of the compliance of Section 3(f)(vi) of the Act, here again the learned Counsel placed reliance on an unreported decision of this Court 03.06.2008 in A. Unnikrishnan and another v.

State of Tamil Nadu, rep. by its Secretary, Housing and Urban Development Department, Fort St George, Chennai-9 and others, W.P. Nos. 9241 and 9259/1998, dated 03.06.2008, wherein a learned Single Judge of this Court by incorporating the relevant provision and also placing reliance on the decision of the Hon"ble Apex Court, has held as here under:

73. It is also seen that as per the requirements of Section 3(f)(vi) of the Land Acquisition Act, 1894 which states as follows:

Section 3(f) the expression "Public Purpose" includes:

(i)....

(ii)....

(iii)....

(iv)....

(v)....

(vi) the provision of land for carrying out any educational, housing, health or slum clearance Scheme sponsored by Government or by any authority established by Government for carrying out any such Scheme, or, with the prior approval of the appropriate Government, by a local authority, or a society registered under the Societies Registration Act, 1860 [XXI of 1860], or under any corresponding law for the time being in force in a State, or a Co-operative Society within the meaning of any law relating to Co-operative Societies for the time being in force in any State;

The land in this case is required for housing purpose. It is also seen that even the Award proceedings by the 2nd Respondent dated 01.07.1998, does not Appear anything about obtaining prior approval from the Government.

14. It is held in H.M.T. House Building Co-operative Society Vs. Syed Khader and others, that such prior approval of the Government u/s 3(f)(vi) of the Central Act 1 of 1894 is not a mere formality, it is a condition precedent to the exercise of power of acquisition by the Government for a housing Scheme, since it involves public interest. The Hon"ble Supreme Court has held in paragraph 14 and 19 as follows:

14. In view of the substituted definition of the expression "public purpose", in Section 3(f)(vi), the provision for carrying out any housing Scheme sponsored by the Government or by any authority established by the Government for carrying out any such Scheme shall be deemed to be a "public purpose". It further says that the provision of land for carrying out any housing Scheme with prior approval of the State Government by a cooperative society within the meaning of any law relating to cooperative societies for the time being in force in any State shall be deemed to be a "public purpose". As such, for any housing cooperative society lands can be acquired by the appropriate Government, treating the same

as acquisition for the public purpose. But, in that event, there has to be a prior approval of such Scheme by the appropriate Government. When the lands are acquired for any cooperative society with prior approval of the Scheme by the State Government, there is no question of application of the provisions of Part VII of the Act. Such acquisition shall be on the mode of acquisition by the appropriate Government for any public purpose.

19. According to us, in Section 3(f)(vi) the expression "housing" has been used along with educational and health Scheme. As such, the housing Scheme contemplated by Section 3(f)(vi) shall be such housing Scheme which shall serve the maximum number of members of the society. Such, housing Scheme should prove to be useful to the public. That is why Parliament while introducing a new definition of "public purpose", said that any Scheme submitted by any cooperative society relating to housing, must receive prior approval of the appropriate Government and then only the acquisition of the land for such Scheme can be held to be for public purpose. If requirement of Section 3(f)(vi) is not strictly enforce, every housing cooperative society shall approach the appropriate Government for acquisition by applying Section 3(f)(vi) instead of pursuing the acquisition under part VII of the Act which has become more rigorous and restrictive. In this background, it has to be held that the prior approval, required by Section 3(f)(vi), of the appropriate Government is not just a formality; it is a condition precedent to the exercise of the power of acquisition by the appropriate Government for a housing Scheme of a cooperative society.

It is also stated by the Hon"ble Apex Court that it is incumbent on the part of the Government while granting approval to examine different aspects of the matter so that it may serve the public interest and it was ultimately held in para 21 as follows:

27...That is why the framers of the Act have required the appropriate Government to grant prior approval of any housing Scheme presented by any cooperative society before the lands are acquired treating such requirement and acquisition for public purpose. It is incumbent on the part of the appropriate Government while granting approval to examine different aspects of the matter so that it may serve the public interest and not the interest of few who can as well afford to acquire such lands by negotiation in open market. According to us, the State Government has not granted the prior approval in terms of Section 3(f)(vi) of the Act to the housing Scheme in question. The power u/s 3(f)(vi) and 6(1) of the Act has been exercised for extraneous consideration and at the instance of the persons who had no role in the decision making process -whether the acquisition of the lands in question shall be for a public purpose. This itself is enough to vitiate the whole acquisition proceeding and render the same invalid.

15. In such circumstances, in the absence of any prior approval from the Government for acquiring the lands for public purpose of putting up housing sites, the subsequent proceedings initiated by the Respondents u/s 4(1) and Section 6 of the Central Act 1 of 1894 are necessarily to be held invalid....

13. The principle laid down by the learned Single Judge of this Court in the decision cited supra is also squarely applicable to the facts of the instant case as in this case also, admittedly, prior approval of the Government was not obtained by the Respondents for acquiring the subject lands of the Petitioners for public purpose for putting up housing cites.

14. It is pertinent to note the Petitioners have come forward with this Petition even before the publication of Section 6, Declaration and before passing the award. Therefore, the non-compliance of the procedure contemplated under Sections 4(1) and 3(f)(vi) of the Land Acquisition Act results in vitiating the entire proceedings.

15. Accordingly, the proceedings of the 1st Respondent in Na. Ka. No. 12 443/83/F6 dated Nil. 08.2004 issued u/s 4(1) of the Land Acquisition Act, the declaration made u/s 6 of the Land Acquisition Act by the 6th Respondent in D.Dis.H2/28453/22005 in No.VI (1)/362(a)/2005 published in the Tamil Nadu Government Gazette, dated 24.08.2005 and the award passed by the 5th Respondent in Award No. 2/2007 dated 28.08.2007 are quashed and the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed. Though the Petitioners have raised other grounds, in view of allowing the Writ Petition mainly on the above said two grounds, this Court is of the view that the remaining grounds need not be gone into.