

(2001) 09 MAD CK 0143

In the Madras High Court

Case No : Writ Petition No"s. 16204, 17605 and 17837 of 1994 and W.M.P. No"s. 24506, 26775, 27128 of 1994, 22838 of 1995 and 12261 of 1996

S. Muthurajan and 3 others

APPELLANT

Vs

The State of Tamil Nadu and another

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

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

Citation : (2001) 3 MLJ 357

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

Advocate : Mr. M. Kandasamy, for the Appellant; Mr. M.G.H. Varadarajan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. In all the writ petitions, the issue involved is one and the same. Hence, all the writ petitions are dealt with by this common order.

2. The petitioners have challenged the land acquisition proceedings initiated by the respondents issued u/s 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") in G.O.Ms. No. 879, Housing and Urban Development Department dated 28.5.91 and published in Tamil Nadu Government Gazette dated 19.6.91. According to the petitioners, they have purchased the lands by registered sale deeds on 8.2.89 and the mutation was effected on 30.3.89 and pattas also were granted. However, in the said notification, the names of the petitioners have not been shown and they were not given opportunity to participate in the enquiry conducted u/s 5-A of "the Act" by issuing notice of Section 5-A enquiry. They came to know of the land acquisition proceedings only when they were served with the notice dated 21.7.94 u/s 12(2) of "the Act". Hence, they pray for quashing of the land acquisition proceedings.

3. Mr. M. Kandasamy, learned counsel for the petitioners would contend that in

the absence of the names of the petitioners shown in the notification issued u/s 4(1) of "the Act" and the failure of the respondents to give opportunity to the petitioners to participate in the 5-A enquiry, the entire land acquisition proceedings are vitiated.

4. On the other hand, the learned Additional Government Pleader on the basis of the additional counter affidavit filed by the 1st. respondent submitted that the land acquisition proceedings were initiated in the year 1988 when the proposal was forwarded to the 1st respondent for acquiring the land. The name of Thiru. Perumal Gounder was found in the revenue records on the date of the proposals as owner and his name was shown in the notification issued u/s 4(1) of "the Act". Since the petitioners purchased the lands during February, 1989 and obtained pattas only during March, 1989, their names have not been included in the Section 4(1) notification and they have not been served with Section 5-A enquiry notice. According to the learned Additional Government Pleader, the relevant date for the purpose of ascertaining as to the owner of the land and to include the name in the Section 4(1) notification and to provide subsequent opportunity to participate in the Section 5-A enquiry is the date when proposal was made by the respondents for acquiring the lands. Therefore, on the date when the proposal was sent, the lands in question were in the name of one Thiru. Perumal Gounder and his name was shown in Section 4(1) notification. Hence, the learned Additional Government Pleader submitted that the non inclusion of the names of the petitioners in Section 4(1) notification does not vitiate the land acquisition proceedings.

5. In view of the above rival submissions, it is to be seen as to the relevant date which is to be taken for determining the ownership of the land for the purpose of Section 4(1) notification and for further opportunities to be given u/s 5-A. In order to appreciate and decide the above, it would be relevant to extract the provisions of Section 4 of "the Act" which reads as under:

"4. 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 publication of the notification.)..."

As per Section 4(1) of "the Act", when it appears to the appropriate Government that the land in any locality is needed or is likely to be needed for any public purpose, the following shall be followed namely,

(1) A notification to the effect that the land in any locality is likely to be needed for any public purpose or for a company, shall be published in the Official Gazette.

(2) Such notification shall also be published in two daily newspapers circulating in that locality of which at least one shall be in the regional language.

(3) The Collector shall pass public notice of the substance of such notification to be given at the convenient places in the said locality.

While considering the scope of Section 4, the Supreme Court in the judgment reported in *Ajay Krishan Shinghal, etc. etc. Vs. Union of India and Others*, held that the publication of 4(1) notification in the Gazette and the substance of it in the locality is mandatory. This Court in the judgment reported in *Kumar Naicker v. State of Tamil Nadu, 1998 (II) MLJ 533* has also held that the substance of the notification if not published at convenient places in the locality, the notification is liable to be quashed as the substance of the notification at convenient places is mandatory. The object of publication of Section 4(1) notification is to enable the people interested to be aware of the land acquisition proceedings and on the basis of the said object, Section 4 of "the Act" contemplates publication of notification in two daily newspapers circulating in that locality of which one shall be in the regional language. In addition to the said publication, the other mode of publication namely public notice of the substance of the notification in that locality is also contemplated. There must be also continuity of action in publishing Section 4(1) notification in the Gazette, newspapers and public notice of the substance at convenient places in the locality. On a combined reading of the above provisions would indicate that the proceedings under land acquisition starts with the publication of notification u/s 4(1) of "the Act" since by the said notification only, public are informed about the proposal to acquire the lands mentioned therein and that any one dealing with that lands will be doing it at their own risk. The Act does not contain any provision in regard to the proposals being forwarded to the Government for the purpose of acquiring any land. If the matter is looked at the above angle, it would be clear that the person interested in the notification shall be the owner of the land on the date of the publication of Section 4(1) notification. Further, it is to be seen that even at the time of enquiry u/s 5-A, even if the name of a person interested in the land is left out in Section 4(1) notification and in the event the same is brought to the notice of the enquiry officer u/s 5-A, such person also shall be given an opportunity to participate in the 5-A enquiry since a person interested in the land is also entitled to submit his objections. Therefore, the relevant date to ascertain the owner of the land is the date when Section 4(1) notification is issued. The proposals forwarded by the officers proposing the acquisition of lands to the Government would be only a inter-departmental communication for which the owner of the lands is not put on notice and the owner had no opportunity or any say to put forth his objection to the proposals. It is also to be seen that proposal forwarded to the Government for acquiring the lands need not necessarily be accepted. The proposal forwarded to the Government is for the purpose of approving the acquisition proceedings as to the necessity of the purpose for which the lands is sought to be acquired, more particularly, with reference to the financial implications. The said proceeding prior to Section 4(1) notification cannot be

construed as the land acquisition proceedings started under "the Act" at least in so far as the owners of the lands whose lands are sought to be acquired. Hence, the relevant date as to the commencement of the land acquisition proceedings as far as the owners are concerned, is the date when Section 4(1) notification is approved by the Government.

6. Coming to the facts of this case, it is not in dispute that the petitioners have purchased the lands sought to be acquired under the land acquisition proceedings under challenge as early as on 8.2.89 and the mutation also was effected and pattas also granted on 30.3.89 much prior to Section 4(1) notification, which was notified in the Government Gazette on 19.6.91. The only contention of the learned Additional Government Pleader is that, on the date when the proposal was sent to the Government during the year 1988, the petitioners were not the owners and hence they are not entitled to be heard in the 5-A enquiry nor their names be included in Section 4(1) notification. In view of the discussion above, the said contention of the learned Additional Government Pleader cannot be accepted. It would be relevant to refer to the judgment of Mohan, J. reported in *Bhama Ramamoorthy Vs. The State of Tamil Nadu and Another*, wherein the learned Judge has held that when the name of the owner was not included in Section 4(1) notification even though there was a change in-the revenue registry and the corresponding entry of the name of the owner much prior to the 4(1) notification, the land acquisition proceedings are vitiated. In view of the above, the land acquisition proceedings are set aside and the writ petitions are allowed. No costs. Consequently, connected W.M.Ps. are closed.