
(1994) 02 MAD CK 0064

In the Madras High Court

Case No : Writ Petition No. 12759 of 1988

S. Nachimuthu Mudaliar and another

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 09-02-1994

Acts Referred:

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

Citation : (1994) 02 MAD CK 0064

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : V. Bharathidasan, for the Appellant; V.P. Sengottuvel, Government Advocate, for the Respondent

Judgement

Kanakaraj, J.—The first petitioner and his three sons namely, the second petitioner, one Angappan and one Subramaniam claimed to be the joint owners of the land bearing S.F.No.691 of the extent of 6.87 acres in Nelali village, Kangayam Taluk. In a partition arrangement dated 8.10.1980 the petitioners became the owners of an extent of 1.70 acres. Out of this extent of 1.70 acres the respondents are proposing to clear an extent of 1.25 acres for the alleged purpose of providing house sites to the Harijans of Pullakalipalayam village. A Notification under S.4(1) of the Land Acquisition Act (hereinafter called "the Act") was issued in G.O.Ms.No.1906, Social Welfare, dated 13.9.1985 and published in the Gazette dated 9.10.1985. After the conduct of an enquiry under S.5A of the Act, on 28.11.1985, the Declaration under S.6 was issued on 8.1.88. The grievance of the petitioners is, that their objections were not properly considered. They found their objections had been un-tenably rejected by the second respondent on 8.3.1986. Therefore, they filed a suit O.S.No.848 of 1985 on the file of the District Munsif, Kangeyam. The prayer in the suit was for a permanent injunction restraining the second respondent and the District Collector, Periyar District, from proceeding with the acquisition proceedings without holding a proper enquiry and without considering the documents relied on by the petitioners at the enquiry under S.5A of the Act. The suit was filed on

18.11.1985. Pending disposal of the suit in I.A.No.1018 of 1985 an injunction was sought for restraining the respondents from issuing notices and proceeding with further enquiries, in any way prejudicing possession of the lands by the petitioners. In this application notice was ordered to the respondents on 18.11.1985 and time was taken for filing a counter affidavit. Ultimately on 24.3.1986 the learned District Munsif granted an interim injunction because no counter affidavit was filed. Later the suit was decreed on 2.2.1987 upholding the Notification under S.4(1) of the Act, but forbearing the respondents from proceeding with the acquisition without conducting a proper enquiry. Thereafter a fresh enquiry was conducted on 22.5.1987. A declaration under S.6 of the Act was issued in G.O.Ms.No. 33 Social Welfare dated 8.1.1988 and published in the Gazette dated 8.1.1988. When notices were issued for the conduct of an award of enquiry the petitioners have come up with this writ petition seeking a writ of certiorarified mandamus to quash the Notification issued under S.4(1) of the Act dated 13.9.1985 and the Declaration under S.6 of the Act, dated 8.1.1988 and to forbear the respondent from acquiring the lands. A counter affidavit has been filed by the respondents. In the forefront it is stated that the award was passed in Award No.5/88 on 7.10.1988. The petitioners were requested to surrender possession of the lands and receive the compensation. Since they refused to hand- over possession, the Tahsildar and the Revenue Inspector were directed to take possession. Accordingly, possession of the lands was taken from the petitioners and handed over to the Special Revenue Inspector. Thereafter a lay out was prepared and house site pattas were issued to the beneficiaries on 10.10.1988. It is also stated that the petitioners had interfered with the possession of the lands by the Adi Dravidars and a complaint was lodged on 2.11.1988 regarding the removal of the Survey stones. So far as the relevant dates regarding the acquisition proceedings, it is not disputed that the Notification under S.4(1) of the Act was published in the Gazette on 9,10.1985. and the notification was published in the locality on 22.10.1985. The decree in O.S.No.848 of 1985 is referred to and obeying that decree a fresh enquiry under S.5A of the Act was conducted on 22.5.1987. The factum of the Declaration under S.6 of the Act, having been issued in G.O.Ms.No.33, Social Welfare, dated 8.1.1988, is not disputed.

2. Though several points are raised in the affidavit filed in support of the writ petition, the only point pressed before me is the failure to comply with the second part of the first Proviso to S.6(1) of the Act. The said Proviso clause is as follows:-

Provided that no declaration in respect of any particular land covered by Notification under S.4, sub-S.7(1),

(1) (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.

There is a further Explanation regarding exclusion" of certain period covered by

stay orders of Court That Explanation is as follows:-

Explanation: - In computing any of the periods referred to in the first Proviso, the period during which any action or proceeding to be taken in pursuance of the Notification issued under S.4, sub-S.(1), is stayed by an order of a court shall be excluded.

The answer of the respondents to get away from the bar of limitation is contained in the counter affidavit in the following terms:-

The Notification under S.4(1) of the Act was published in the locality on 29.10.1985. Due to the injunction obtained by the petitioners in O.S.848/85 dated 18.11.85 further action could not be taken till 2.2.87. Hence taking into consideration the period covered by injunction was to be excluded the publication of Draft Direction under S.6 on 8.1.88 is within the time.

3. It is argued on behalf of the petitioner that the Respondents cannot exclude the time commencing from 18.11.1985 till the date of the decree namely, 2.2.1987. According to the petitioners, the injunction was granted only on 24.3.1986 and therefore, only the period from 24.3.1986 till 2.2.1987 can be excluded under the Explanation referred to above. It is not disputed that if the period from 24.3.1986 till 2.2.1987 is excluded, then the Declaration under S.6 of the Act on 8.1.1988 is beyond the period of one year from the date of 4(1) notification. However, if the period from the date of the suit namely 18.11.1985 till 2.2.1987 is excluded, then the declaration under S.6 of the Act, is within one year from 4(1) Notification. A plain reading of the Explanation clearly suggests that it is only the period of stay or injunction that can be excluded. I do not think that there is any doubt or difficulty in understanding the Explanation. Learned counsel for the respondents has relied on the judgment of the Supreme Court in Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, That judgment of the Apex Court only lays down that the Explanation is of the widest amplitude and even a stay of the mere dispossession of the lands will come within the Explanation, This is because, the words used are, "the period during which any action or proceedings to be taken in pursuance of the said Declaration is stayed by an order by a Court." (underlining by me). This judgment certainly will not help the respondents because in this case on the date when the suit was filed namely, on 18.11.1985 there was neither a stay order nor an, order of injunction. Therefore, I have no difficulty in holding that the Declaration under S.6 dated 8.1.1988 is clearly hit by the second part of the first Proviso to S.6(1) of the Act and accordingly, it is quashed. Necessarily I have to sustain the Notification under S.4(1) of the Act. It is at this stage I will have to refer to the fact that possession has been taken and handed over to the beneficiaries. If the beneficiaries are in possession of the lands it is up to the accordance with law. If however, the beneficiaries have not put up any construction on the subject lands, it is for the respondents to consider and decide whether fresh proceedings should be initiated or not. If no fresh proceedings are initiated within six weeks from today, the respondents are directed to handover the lands back to the

petitioners. Certainly the petitioners cannot be dispossessed by virtue of illegal declaration under S.6 of the Land Acquisition Act. The writ petition is allowed in the above terms. There will however, be no order as to costs.