

(1963) 04 MAD CK 0014
In the Madras High Court
Case No : Writ appeal No. 302 of 1962

S. Sivaprakasa Mudaliar

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 25-04-1963

Acts Referred:

Land Acquisition Act, 1894 — Section 17(4), 4, 4(1), 5A, 6

Citation : AIR 1964 Mad 115 : (1963) 76 LW 625

Hon'ble Judges : S. Ramachandra Iyer, C.J.; Venkataraman, J

Bench : Division Bench

Advocate : N. Arunachalam and T.S. Rangarajan, for the Appellant; Spl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

S. Ramachandra Iyer, C.J.—On 17th September 1958, the State Government by a u/s 4(1) of the Land Acquisition act to acquire a large

tract of land measuring about acres in Kodambakkam area for the purpose of rehabilitation of the slum dwellers in Kanniappanagar and other slum

areas in the City of Madras. By the same notification and indeed as part of it, the Government in exercise of their powers u/s 17(4) of the Act,

dispensed with the provision of Section 5-A of the Act as the proposed acquisition, their opinion was an urgent one. The notification mentioned

above was in due course followed by publication u/s 6. that was on 26th November 19bb. sometime later notices were issued to the various

owners u/s 9(3) calling upon them, to file their claims for compensation. it appears that there were some objections to the acquisition before the

Government and it took some time for them to consider and dispose of the same, the appellant owns 2.44 acres of wet lands in S. no. 154 in the

area proposed to be acquired; that was subject to a mortgage created by him in favour of one Jambunnga Mudaliar. Like other owners of land in

the locality the appellant filed his claim for compensation. Compensation was fixed by the Special Deputy Collector for land acquisition, who by his

notice dated 18th January 1961 intimated his award to the mortgagee that a sum of Rs. 1,6836 had been awarded as compensation for 2.44 acres

of land in S. No. 154. Soon thereafter the appellant was called upon to deliver possession of the property, it was at that stage, i. e. nearly three

years after the notification u/s 4(i) of the Act, that he and a number of other owners filed applications under Article 226 of the Constitution to this

court to quash the notification relating to the acquisition of the land.

2. The substantial ground urged in support of the applications was this : the intended purpose of the scheme had failed as the slum dwellers for

whose benefit the lands were sought to be acquired refused to move into the scheme area; the State Housing Board in whom the lands stood

vested proceeded however to allot building sites in the area to persons belonging to the low and middle income groups that amounted to a

diversion of the original purpose which the Government had no authority to do.

3. It is necessary at this stage to digress a little into the other connected proceedings relating to this acquisition. During the time when the present

applications were pending W. P. Nos. 1094 of 1959 and 151 and 501 of 1960 which related to certain properties covered by the same

notification, came up for disposal before Veeraswami J. who quashed a part of the notification, namely, that which purported to be u/s 17(4),

dispensing with the applicability of Section 5-A of the Act.

4. The learned Judge, however, declared that the rest of the notification would be valid. Having due regard to that decision the Government

intimated the court in these cases that they are willing to withdraw that portion of the notification which applied the emergency provisions u/s 1(4)

of the Act. In so doing, it cannot be said that the Government had sufficient regard for what had transpired already namely, the publication of the

various notifications, the passing of the award etc. However, that withdrawal meant that the Government had an open mind on the question

whether the acquisition was for a public purpose, presumably they were willing to consider all those objections that could be filed under S. 5-A. If

that were to be so, and if as a result of the representations the Government were to hold that the original acquisition was not for a public purpose

what would happen to all that had been done i. e., what would be the position of the persons who had applied for allotment of sites, in that area,

obtained them and spent monies thereon are matters which do not appear to have been considered. that is only by the way.

5. To resume the narrative, it is clear from the petitions tiled in the case that there was no controversy about one fact, namely, that on the date

when the notification u/s 4(1) of the Act was published, there was a genuine need to rehabilitate the slum dwellers that would undoubtedly be a

public purpose, there was no doubt that the Government believe that the slum dwellers should avail themselves of the opportunity of having better

houses in healthier surroundings. It has been stated in the counter affidavit filed by the Special Deputy collector for Acquisition, that the intention of

the Government was not to confine the allotment under the scheme to slum dwellers alone. The notification does not say anything specific about it.

6. Sometime after the acquisition, the slum dwellers exhibited an initial reluctance to leave their existing homes but subsequently there appears to

have been a gradual change in their attitude, it is said, that almost all the families in Kanniappanagar have moved into the scheme area now. But

the property sought to be acquired was more than sufficient to meet the needs of the residents of Kanniappanagar. the object of the scheme was

also to provide better houses for persons living in other slum areas in the city. therefore, the Government decided to offer sites in the area to

persons of the low and middle income groups, who but for this concession would have to reside in crowded places and in unhealthy surroundings,

some of which could perhaps be termed as scarcely better than the so-called slums.

7. It has been contended on behalf of the petitioners that as the admission of the members of the low and middle class income groups into the

scheme area was not the avowed object of the acquisition, the attempt of the Housing Board to benefit persons of those groups would amount to a

diversion from the original purpose and that, therefore, the entire acquisition would be regarded as invalid. Veeraswami J. did not consider it

necessary to decide whether the contentions of the appellant were well founded or not. The learned judge accepting the concession made on

behalf of the Government, quashed that part of the notification which dispensed with the obligation of conforming to the provisions of Section 5-A

leaving the petitioners before him with the opportunity of making their objections to the acquisition under that section to the concerned authority.

therefore the substantial question raised as to the validity of the acquisition proceedings is still undecided. Only the notification, in so far as it

dispensed with the obligation u/s 5-A was struck down as invalid. The rest of the notification which came within the ambit of Section 4(1) was

retained.

8. The appellant feeling aggrieved by this order has filed the present appeal.

9. Mr. Arunachalam appearing for the appellant has contended that the learned Judge was in error in not deciding the question as to whether in

view of the changed circumstances the notification in question could at all be regarded as valid the argument being that although the original

purpose might be a public one, that purpose having been found to be impossible of fulfilment by reason of the unwillingness of the slum dwellers to

migrate to the scheme area, necessity for the acquisition has ceased and that the further proceedings therein should be regarded as illegal. Support

for this contention was sought in the decision *R. H. Galloway v. Mayor and Commonality of London*, (1866) 1 H. L. 34. In that case a railway

company was authorised to take compulsorily lands of any person for a particular purpose. It was held that the company could not compulsorily

acquire property albeit it made due compensation to the owner, for another object, that was a case where a private body was authorised by

Parliament to acquire property for a specified purpose, it could not obviously exercise that power for any other purpose of a collateral kind. That

decision itself recognises that the case will be different where for example an existing public body such as a corporation of a city is entrusted by the

legislature with the duty of making public improvements in its city. In such a case it has been held that the powers entrusted to it for such purposes

will not be subject to a strict and restrictive construction

10. In the present case the object of acquisition was to provide housing accommodation for the slums. That object could not be said to be where

instead of settling the slum dwellers alone there some other persons who were equally in need of better housing accommodation were provided

with house sites to the scheme area. In *Parshottam Jethalal Soni Vs. The Secretary of State for India*, a certain land was acquired for a particular scheme which was later on abandoned and therefore a revised scheme was introduced it was held that the scheme remained essentially the same.

Broomfield J. observed thus:

The Land Acquisition Act postulates a public purpose as to the existence of which the Government is to assume for the sake of argument without or

deciding that the public purpose must remain substantially the same throughout the proceedings, that was so] in the present case. The Act nowhere

postulates (sic) in the scheme by means of which the public object is to be carried out. All that is legally necessary is that the lands which: it is

intended to acquire for a public purpose should be notified u/s 4 and then u/s 5 land acquisition Act. that has been done".

11. We are unable to accept the contention that is urged on behalf of the appellant that the grant of house sites in the scheme area to members of

the low and middle income groups amounted to a diversion of the original object of the scheme. The original notification no doubt stated that We

purpose of the, Government in acquiring the property was to provide house sites for housing the slum dwellers in Kanniappanagar and also slum

dwellers to the other parts of the city. The expression "slum dwellers though in popular parlance has acquired some special meaning, namely, those

who are economically backward and who huddle themselves together in unhealthy surroundings, the term as such has no such technical

meaning. The word "slum" in its, true import means a "street or alley situated in a crowded district of a town or city and inhabited by people of in

low class of by the poor". It may be that in some cases the slum area may be a thickly populated tract and of a squalid and wretched character, but

essentially the wrong slum is of wide import including within it a crowded place in a city inhabited by the poor. Actually whenever there is scarcity

of accommodation, one not unoften finds, that several of the persons belonging to the low and middle income groups, have of necessity to take up

their abodes. its very crowded parts of the locality which can be said to be no better than slums. there is nothing very wrong to regard them, as

slum dwellers in a sense. The question being one intended for a beneficent must receive a liberal construction. It will therefore include within the

object of providing accommodation for persons belonging to the low and middle income groups as well.

12. mere has therefore, bean no diversion diversion of one purpose on the part of the Housing Board in among house sites to persons belonging to the member of cases groups.

13. The contention appears to be wrong even factually. In the counter-affidavit tiled by tile Special Deputy Collector for Land Acquisition, it has been stated that almost all the residents of Kanniappanaga, have come to take up their residence in the scheme locality, in view of this also, we are of the opinion that there is no substance in the contention that there has been a diversion of the original purpose on the part of the Housing Boara proceeding to grant house sites to persons belonging to the low and middle income groups in the city.

14. Mr. Arunachalam next contended that the learned Judge should have struck out the entire notification instead of confining his direction to; that

u/s 17(4) alone for the reason that what remained win not Be in accordance with the provisions of the statute, me learned Judge has held, and on

that point there is no dispute on the part of the Government, that the portion of the notification dispensing with the provisions of Section 5-A was

invalid, that portion is separable from the rest of the notification. There is authority to show that in a similar situation, that is where the original

notification is a single one containing within itself a notification u/s 4(1) and also an order u/s 17(4) dispensing with the provisions of Section 5-A,

the invalidity of the latter part will not vitiate the validity of the former one i. e., that part of the notification which came u/s 4(1): Vide

Ramabranmam v. State of Andhra, AIR 1957 AP 450; Madhavi Amma Vs. Revenue Divisional Officer, Kozhikode and Others, and Naga Hills

Tea Co. Ltd. v. State of Assam, AIR 1962 Ass 132.

15. The argument before us did not proceed on my theory of in sever ability. What was said was that the striking out of that part of the notification

which related to the obligation u/s 5-A, severable it might be, left behind it, a notification u/s 4(1) which could not is any sense be said to be in

accordance with the statute, and that therefore, the former notification should also be struck down. The contention is elaborated thus: u/s 5 any

person interested in any land which has been notified u/s 4 and sub-section (1)

may, within; thirty days after the issue of the notification, object to the acquisition of the land. The right, so to object, is a statutory one given to the individual to be exercised within thirty days of the notification. A proper notification under Section 4(1) should, therefore, enable the individual concerned to file his objections u/s 5-A within thirty days from the date of publication of such notification. In the present case by reason of the Government order u/s 17(4) which was part of the original notification, Section 5-A was expressly dispensed with. In other words the person aggrieved had no right to state his objections in the manner provided for under that section. If three years after the notification the urgency part of it alone were to be struck down, it was argued, the person aggrieved would have no right to put forward his objections as more than thirty days had already elapsed from the date of the original notification u/s 4(1). In other words, it was contended that in order that the statutory rights given to the owner of the land u/s 3-A might be effective, it would be necessary that there should be a fresh notification u/s 4(1) after which alone the owner will have an opportunity within thirty days thereof to file his objections. If on the contrary, the part of the notification u/s 4(1) was retained, the benefit conferred u/s 5-A could become illusory.

16. The learned Special Government Pleader did not accept this contention. He argued that the filing of the objections u/s 5-A could be made within thirty days after the substance of the notification has been published by the Collector and it need not necessarily be within thirty days of the actual publication of the notification u/s 4(1). The former could be done even now. In the view we are taking of the case, it is unnecessary to

consider this contention. It must be observed that this objection to partial striking out of the notification was not raised before the learned Judge.

Indeed no objection to the acquisition: or even as to the invalidity of that part of the notification regarding the applicability of Section 1(4) was taken by the appellant all these years. It is practically conceded that the original purpose for which the land was acquired is a public one.

17. Generally speaking the kinds of objections that would be available to an owner of the land whose land is proposed to be acquired u/s 5-A will be those mentioned in Board's Standing Order MO rule 9, namely:

1. that the purpose for which the land is acquired is not a bona fide public

purpose (2) that the particular land notified is not the best adopted to the purpose intended or that its area is greater than what is actually required for the purpose and [i] that the acquisition of the land or any land, in the locality is not desirable or expedient.

18. So far as the first of the three categories of objections is concerned, there is no denial that the purpose of the acquisition was a bona fide public

one. the other two objections available to the owner of the land can be heard at any stage, the government have now intimated their willingness to

hear the objections of the appellant on those matters. As pointed out by the learned Judge, we have no reason to think that any representation in

that behalf by the appellant will not be fairly and reasonably considered by the authorities concerned. the Government have always the power to

abandon an acquisition in relation to any part of the land, if the Government are satisfied with the reasons advanced, against the acquisition even at

this stage, they have the power to and can abandon the acquisition. There can, therefore, be no substantial grievance on the part of the appellant

that an opportunity was not given to him u/s 5-A for filing his objections within thirty days of the original notification. Apart from that consideration,

it may also be noticed that if the court were to hold that the notification u/s 4(1) should be re-issued with an opportunity to the appellant to file his

objections, it would create further complications in regard to the validity of the title acquired by the various persons who had already obtained

house sites under the scheme and who had perhaps built houses thereon. Having regard to the circumstances of the case, we consider that there is

no case for exercising the discretionary power of this court under Article 226 of the Constitution to quash the entirety of the notification. The

notification u/s 4(1) of the Act will, therefore, stand. The Government will however hear and dispose of all relevant objections which might be put

forward by the appellant within any time to be specified by them. The appeal fails and is dismissed. There will be no order as to costs.