

(2004) 04 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 20599 of 2003 and WPMP No. 25677 of 2003

S. Sunderraj

APPELLANT

Vs

The Union Territory of Pondicherry

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 04 MAD CK 0052

Hon'ble Judges : N. Kannadasan, J

Bench : Single Bench

Advocate : Hema Sampath, for the Appellant; N.G. Kalaiselvi, Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

N. Kannadasan, J.—By consent of both the parties, the main writ petition itself is taken up for final hearing.

2. The petitioner, who is a proprietor of an electronic industry by name Raj Electronic Industry has purchased the land measuring an extent of

3986 sq.ft., on 5.12.2001 from one Dedorit Kannagi comprised in Survey No.242/2A/1 situate at Kamaraj Salai, Thattachavady, Pondicherry.

After the said purchase, she has sold an extent of 300 sq.ft., of land to a third party. The necessary changes in the revenue records were effected.

The petitioner's industry has been registered provisionally as a small scale business establishment by the Directorate of Industries and Commerce,

Pondicherry bearing Registration No.34/02/23933 dated 10.6.2002. The petitioner is authorised to manufacture computers and the necessary

application was submitted on 1.8.2002 to the Pondicherry Planning Authorities for putting up industrial godown for computers and electronic items

and necessary fees were also paid thereon.

3. The learned counsel for the petitioner contended that the petitioner came to know that the second respondent has notified by way of a paper

publication in Malaimalar dated 4.6.2003 to the effect that the land measuring an extent of 0.96.00 hectares in R.S.No.242/2B in Thattanchavady

village was to be acquired u/s 17(4) of the Land Acquisition Act, 1894. Even though the petitioner has purchased the land as early as on

5.12.2001 and necessary changes in the revenue records were effected, the petitioner was not shown as the owner of the land. The learned

counsel has further pointed out that as early as on 10.11.2000, the Deputy Collector (Land Acquisition) Government of Pondicherry has handed

over possession of the lands in question to the then owner viz., Tmt. Dedorit Kannagi. The learned counsel has contended that inasmuch as an

Officer in the rank of Deputy Collector (Land Acquisition) has taken note of the correct name of the owner of land as Tmt. Dedorit Kannagi, the

present notification, notifying the lands in question without disclosing either the above mentioned Tmt. Dedorit Kannagi or the subsequent

purchaser viz., the writ petitioner is bad in law. It is also contended that when the authorities having granted a provisional registration to the

petitioner for a small scale business establishment on 10.6.2002, they cannot plead ignorance about the subsequent purchase made by the

petitioner. The learned counsel further contended that the impugned notification discloses that the name of the land owner only as Thitharo

Balaraman. The learned counsel has further contended that the above said individual is none-else than the original owner of the land prior to 1972

and Tmt. Dedorit Kannagi has purchased the same from the legal representatives lands as early as in the year 1972. The learned counsel has

further contended that even though a corrigendum was issued disclosing the correct survey number, the authorities have not taken care of to

ascertain about the actual ownership of the land in question. The learned counsel has further contended that the authorities proceeded with the

impugned notification with a great haste without taking note of the fact that the petitioner's industry itself is recognised as one of the small scale

industry and the said industry has entered into various business commitments, which will be useful for the industrial growth of the State.

4. Per contra, the learned Government Pleader for Pondicherry has contended that the writ petition itself is not maintainable at this stage, since a notification was issued only u/s 4(1) of the Land Acquisition Act and even though the emergency provision is invoked it is premature. The learned counsel has also contended that even though the original notification was issued disclosing the survey number as R.S.No.242/2B, subsequently, the correct survey number was indicated as R.S.242/2A/1 and a corrigendum was issued in G.O.Ms.No.36 dated 11.8.2003 which necessitated for the petitioner to file the appropriate petition to amend the prayer in the writ petition itself. The learned counsel has further contended that the authorities cannot be found faulted in notifying the lands in question in the name of one Thitharo Balaraman in whose name the revenue records stand. The learned counsel has further contended that the petitioner cannot found fault with the purpose for which the notification was issued and as such prayed for the dismissal of the writ petition.

5. I have considered the rival submissions of counsel for both sides.

6. As regards the preliminary objection raised by the learned counsel for the respondents that the writ petition cannot be entertained since the acquisition itself is at a premature stage, it is an admitted fact that Section 4(1) notification is issued in respect of a dead person viz., Thitharo Balaraman. Even though the normal rule is that the land acquisition proceedings cannot be challenged at the stage of Section 4(1) notification, considering the fact that the notification itself stands in the name of a dead person, the above contention of the learned counsel for the respondents cannot be countenanced. Inasmuch as the petitioner has already become the owner of the land and the person whose name found in the notification viz., one Thitharo Balaraman has died even prior to 1972 and the land was purchased from his legal representatives by one Dedorit Kannagi during 1972, it cannot be contended that the respondent would proceed further to pursue with Section 4(1) notification in the name of a dead person, who has died about 32 years ago. Further, the notification itself proceeds to the effect that the said notification is issued by invoking the emergency clause viz., u/s 17 of the Act and as such, the enquiry u/s 5-A is dispensed with. Inasmuch as the enquiry u/s 5-A itself is dispensed with, it is not open for the learned counsel for the respondents to contend that

the petitioner would be in a position to raise such objections at a later date.

7. As regards the other submissions are concerned, it is seen from the records that as early as on 10.11.2000, the Deputy Collector (Land Acquisition), Government of Pondicherry has issued an order by dropping further proceedings under Urban Land (Ceiling and Regulation) Act 1976 and the possession of the land was handed over to the erstwhile owner viz., Tmt. Dedorit Kannagi. It is an admitted fact that the abovesaid Kannagi has become the owner of the said land by virtue of the purchase from the legal heirs of the above mentioned Thitharo Balaraman as early as on 9.9.1972. The writ petitioner has become the owner of the land subsequently on 5.12.2001 and the petitioner's industry has been registered as small scale industry and the necessary registration is effected by the Government of Pondicherry by the Directorate of Industries and Commerce in its proceedings dated 10.6.2002.

8. In normal circumstances, the impugned Section 4(1) notification can be quashed reserving liberty to the respondents. But however, in the backdrop of the above factual aspects viz., the impugned notification came to be issued in respect of a dead person, who has died prior to 1972 and the Deputy Collector (Land Acquisition) has taken note of the fact that the owner of the land in question at the relevant point of time as Dedorit Kannagi and issued a proceeding dated 10.11.2000 under the Urban Land Ceiling Regulation Act 1976 and the petitioner who has become the subsequent owner was recognised by the Directorate of Industries and Commerce as a small scale service business establishment, it is clear that the notification came to be issued in a haste manner and without taking note of the surrounding circumstances.

9. It is also seen that the subject matter of the land in question is only a small extent of land viz., 3986 sq.ft., and a perusal of the impugned notification merely discloses that the same is required for the expansion of an industrial estate. It is an admitted fact that even after acquisition of the land in question, for the expansion of the industrial estate, the land is available only for the purpose of allotment to some other industrial entrepreneurs. When the facts are like this, the counter-affidavit filed on behalf of the respondents do not throw any light as to how the acquisition

of the small bit of land which is already owned by an industrial entrepreneur is absolutely necessary for the purpose of expansion of industrial

estate. In the backdrop of the above factual aspects and the respondents having failed to place any other material on record either in the counter-

affidavit or otherwise, I do not think that any useful purpose will be served in permitting the respondents to proceed further with the acquisition

proceedings.

10. For the foregoing reasons, the writ petition is allowed, however, there will be no order as to costs. Consequently, connected WPMP is closed.