

(1986) 11 MAD CK 0043
In the Madras High Court
Case No : Writ Petition 11809 of 1986

S. Vellaikkan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-11-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 3, 4, 4(1), 5A

Citation : (1986) 11 MAD CK 0043

Hon'ble Judges : Mohan, J

Bench : Single Bench

Advocate : A.R. Lakshmanan, for the Appellant; J. Kanakaraj, Addl. Govt. Pleader, for the Respondent

Judgement

Mohan, J.—The writ petition raises an important question which I think requires to be noted by all those in charge of land acquisition proceedings, I preface my order with this remark because the power to acquire some one else's land by exercise of authority of eminent domain is a very valuable power and it should be exercised cautiously, being aware of the constraints conceived in the Land Acquisition Act. Now, on the facts--The petitioner purchased dry lands of an extent of 1.68 acres in survey field No. 153 under a registered sale deed, dt. 22nd February, 1985 from one Jayaraman. He claims in his affidavit that from the date of his purchase, he has been in continuous possession and enjoyment of the property. This land is subject to an acquisition under the Land Acquisition Act of 1894 (Central Act 1 of 1894) (hereinafter referred to as the Act), The notification under S. 4(1) of the Act for the acquisition of the land in question measuring 99 cents was made in G.O. Ms. No. 1824, Social Welfare Department, dated 5-9-1985. The said notification was published in the Tamil Nadu Government Gazette dated 18-9-1985. The public purpose, as stated in the notification is, for the provision of house sites to Arunthathiars of Pichaiah Nagar, hamlet of Angamangalam. Having come to know of the acquisition, the petitioner appeared during the enquiry under S. 5A of the Act and participated in the same raising objections. His objections were duly considered and they were overruled.

Thereafter, the declaration under S. 6 of the Act, was made in G.O. Ms. No. 2743 dated 16-10-1986. The said declaration was published in the Gazette on that very day and thereafter in the Tamil Daily Makkalkural. Madras edition, dt. 17-10-1986 and mofussil edition dt. 18-10-1986 the same came to be published. It is, at this stage of the land acquisition proceedings, the present writ petition has come to be preferred for the issue of a writ of certiorarified Mandamus to quash the notification and the declaration and consequently forbearing the respondents from acquiring the lands of an extent of 99 cents in S. No. 153/1 in Anagamangalam village, Tiruchendur vattam, Tirunelveli Dt.

2. Mr. A.R. Lakshmanan, learned counsel for the petitioner, raises the following points for my consideration--(1) The publication of S. 6 declaration is beyond the one year period that is stipulated under the amended provision of S. 6 of the Act. Therefore, prima facie, it is bad. According to him, reckoned from 18-9-1985, when S. 4(1) publication was made in the Gazette, the publication of S. 6 declaration on 16-10-1986 is beyond the period of one year. Therefore, the entire proceedings are bad. (2) The procedure as laid down under R.3(b) of the Act had not been followed. (3) In so far as the petitioner being an occupier and his name having come to be published and incorporated in the declaration under S. 6, he is entitled to notice under S. 9(3) and such a notice has not been issued to him so far.

3. The learned Additional Government Pleader, on notice, submits that as a proposition of law there can be no demur that the declaration under S. 6 ought to be published within one year from the date of publication of the notification under S. 4(1). But, the important question is, what exactly would constitute the date of publication for the purpose of the notification under S. 4(1) of the Act. A careful reading of that section will clearly show that the date of publication being the date on which the substance of the notification under S. 4(1) of the Act is caused to be published by the Collector at convenient places in the said locality. In this case, chronologically speaking, the notification under S. 4(1) was published in G.O. Ms. No. 1824, Social Welfare Department, dated 5-9-1985. That was published in the Tamil Nadu Government Gazette on dt. 18-9-1985, in the English daily Hindu on 1-10-1985, Daily Thanthi on 28-9-1985. The date of publication of the substance of the notification under S. 4(1) was on 19-10-1985 by beat of tom-tom. Cl. (c) of S. 4 clearly says the last of the date of such publication and the giving of such public notice being herein after referred to as the date of publication of the notification, the one year period should be reckoned from 19-10-1985. The records clearly show this. Therefore, if so calculated, the publication of the declaration on 16-10-1986 under S. 6 of the Act is well within the one year period. Hence, this point is not tenable.

4. There is no requirement to follow the procedure under R.3(b) because the Social Welfare department by amendment of the said Rule has come to be equated with the Revenue Department. Therefore, there is no need to follow that procedure, for, that department is exempt from the purview of this rule.

5. Presently, the acquisition is at the stage of S. 6 declaration only. When the revenue authorities came to know after the publication of the notification under S. 4(1) that the petitioner has acquired interest in the subject matter of acquisition, his name came to be incorporated under S. 6 declaration. In such a case, therefore, he would certainly be entitled to the notice under S. 3 read with S. 10. That stage is yet to come. The petitioner cannot have any grievance on that score.

6. I will deal with these points in seriatim. The Land Acquisition Act was resorted to by many States as well as the Central Government indiscriminately for acquiring lands for very many public purposes. After the publication of the notification under S. 4(1), the matter was allowed to lie over for a long time. To put it even very succinctly that notification was put in the cold storage, as a result the prices of lands under acquisition got pegged down. The declaration under 3.6 came to be published after a long lapse of time. This was prima facie not only unjust but also put the owners at great disadvantage. For instance, supposing it were to be an agricultural land, neither could the owner till the land with the feeling that he is the owner, nor could he allow that to remain fallow with a feeling that he is not the owner. This state of suspended animation together with the increase of price, was the subject matter of debate in very many quarters, including the Parliament. The Government did not fail to see reason. It was, in these circumstances, radical amendments were brought to the Act by the amending Act 68 of 1984. As to what is the significance of the amendment, I will demonstrate by the following tabulated statement:--

Unamended Act

As amended

Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the Official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(a) After the words "any public purpose", the words "or for a company" shall be inserted.

(b) After the words "Official gazette" the words "and in two daily newspapers circulating in that locality of which at least one shall be in the regional language" shall be inserted;

(c) after the words "in the said locality" the brackets and the words "(the lost 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)" shall be inserted.

The interpretation of this section calls for some serious consideration. It cannot be gainsaid, as Halsbury has laid down, where a statute requires an act to be

done at or within a particular time, or in a particular manner, the question arises whether the validity of the act is affected by a failure to comply with what is prescribed. If it appears that Parliament intended disobedience to render the act invalid, the provision in question is described as "mandatory", "absolute", "imperative" or "obligatory"; if on the other hand, compliance was not intended to govern the validity of what is done, the provision is said to be "directory". 7. Now, the question arises what exactly is the date of publication of the notification, because it is from that date one year is prescribed under the amended S. 6 (1) of the Act. It is clear by a careful reading of Cl. (c) the last date of such publication and the giving of such public notice being hereinafter referred to as the date of the publication of the notification. In the case on hand, as stated earlier, the notification under S. 4 (1) of the Act was made in G.O. Ms. No. 1824, Social Welfare Department, dated 5.9.1985. That was published in the Tamil Nadu Government Gazette on 18.9.1985, in the Tamil Daily Dhinanthi on 28.9.1985, and in the Hindu on 1.10.1985. Thereafter, the Collector caused public notice of the substance of the notification under S. 4(1) at convenient places in the said locality on 19.10.1985. Page 94 of the file clearly shows that this was done in the village by beat of tom-tom, which will be sufficient compliance, and by affixture at convenient places. Thus it is clear the last date of the publication of the notification under S.4(1) being 19.10.1985, it is that date which is material for calculating the one year period prescribed under S. 6 of the Act. By the amendment of S. 6, it is laid down in no uncertain terms, that where the notification under S.4 (1) is published after the amendment of the Land Acquisition Act, which amendment came into force on 24.9.1984, the period is one year because the proviso to S. 6 (ii) says that no declaration under S. 6 shall be published after the expiry of one year from the date of the publication of the notification. In this case S. 4(1) notification is on 5.9.1985 as seen already. It is undoubtedly after the amending Act 68 of 1984 in which case the one year period alone is available. It is, in this connection, the date of publication of the notification under S. 4 (1), the last of the date being 19.10.1985, becomes material. If reckoned from that date, undoubtedly the declaration under S. 6 made in G.O. Ms. No. 2743, dated 16.10.1986 published in the Tamil Nadu Government Gazette on 16.10.1986 and in English daily News Today on 17.10.1986, 18.10.1986 Makkalkural Tamil daily on 17.10.1986 and 18.10.1986 are perfectly within the one year period. Therefore, the first contention raised by the petitioner fails.

8. As regards the second point, I find no difficulty in rejecting the argument of the petitioner because the procedure under R.3 (b) is exempt for certain departments, namely, Revenue department, Social welfare, etc, Hence, non-compliance with that provision with regard to acquisition proceedings does not matter.

9. Concerning the last of the contentions, the land acquisition proceedings are only at the declaration stage, though the petitioner has stated in the affidavit that he has purchased the property on 22.2.1985. As the learned Additional

Government Pleader rightly contends there was no change in the Revenue Registry and that was why S. 4 (1) notification came to include only the name of the predecessor of the petitioner. However when he appeared during the enquiry under S. 5A. his ownership having been established, his name came to be incorporated under S. 6 declaration. Therefore, at this stage, there is no justification for him to contend that he has not been served with a notice under S.9 (3) read with S. 10. That stage is yet to come. I am sure the authority will serve notice on the petitioner under S. 9 (3) read with S. 10 of the Act. Therefore, this contention also fails. For all these reasons I dismiss the writ petition. No costs.