
(1992) 11 MAD CK 0010
In the Madras High Court
Case No : Writ Petition No. 11408 of 1983

Saroja Sethu

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 05-11-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 12, 12(2), 16

Citation : (1992) 11 MAD CK 0010

Hon'ble Judges : Mishra, J

Bench : Single Bench

Advocate : Nalini Chidambaram, for M/s. K. Kuppusamy and V. Jeevagan, for the Appellant; M. Liakat Ali, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Mishra, J.—Petitioner herein is a member of the Kodaikanal House Building Co-operative Society Kodaikanal for the purpose of

constructing a house therein to spend the last days of her life, by the Society, stating inter alia as follows:

Whereas the "Member" has applied to the society for a class house in Kadaikanal House Building Co-operative Society Limited, colony in survey

No. 1 Kodaikanal urban, hereinafter referred to as the colony at Kodaikanal and taken one share of the value of Rs. 5 (Rupees five only) in the

society and deposited the said sum of Rs. 5 (Rupees five only) with the society and

Whereas the Government has assigned the site necessary for the construction of houses in the said colony in favor of the society and

Whereas the society has, after deducting the extent allotted for common purposes such as road, parts, marker, shops, school, playground and

other public amenities common to all the members of the Society, divided the land remaining in the total extent assigned by the Government to the

Society, into plots and allotted them to members and whereas the member has been allotted the plot bearing No. A. 30 in the said colony

measuring about 25 cents in extent, and

Whereas, after taking into account the cost of the land set apart for communal purposes as mentioned above and the cost of all other works which

have to be carried out for the benefit of all the members, the cost of site in the said plot No. A. 30 has been fixed at Rs. 25 percent and whereas

the cost of the plot No. A. 30 which comes to Rs. 625 has been recovered by the Society in cash from the member.

The Society hereby conveys the said plot No. A. 30 by virtue of this sale deed to the member to be enjoyed by him, his legal representatives, and

assignees with absolute rights from generation to generation subject to the conditions mentioned hereunder.

Following the transfer of the land to her, the petitioner entrusted the house construction work to a contractor, In the mean while however, a

notification u/s 4(1) of the Land Acquisition Act, 1894 (Central Act 1 of 1894) was issued vide publication in the Tamil Nadu Government Gazette

dated 27th August. 1980, expressing intention to acquire this land for the purpose of establishing a Repeater Station of the Public Works

Department, Hydrology Division. This, however, was modified vide Gazette Notification dated 5-7-1982, saying that the land was needed for the

purpose of Staff Quarters of the employee of the Repeater Station of the Public Works Department, Hydrology Division. Alleging that having

come to know of the notification, the petitioner sent her objections to the Tahsildar Land Acquisition Officer on several dates and that no enquiry

of any kind was held under S. 5-A of the Act by the competent authority, the petitioner moved this Court for a writ in the nature of certiorari and

for such other or other further orders as the Court deemed fit. Petitioner stated in the petition as follows:

I state that to my best knowledge, there has been no declaration u/s 6(1) of the Act. Nor is there any publication of the declaration in the Tamil

Nadu Government Gazette which is mandatory under S. 6(2) of the said Act. It is only after such declaration the Government can direct the Land

Acquisition Officer to take orders for acquisition of my site under S. 7 and after this issue of Notice under S. 8(1) and calling for making statement

under S. 10 arises. But, even without declaration under S. 6. The notices under Ss. 9 and 10 had been issued to me in the Roe. N 66/80/A dated

12-9-1983. These notices were objected to by me. Inspire of this I have been served with a letter under S. 12 (2) of the said Act in Tahsildar

Memo Roc. No. 66/80/A dated 10-11-1983 intimating the amount about Rs. 2,200 as compensation awarded for the site and directing to take it

in person or by an authorize agent. Such fixing of very low compensation for my site is without proper enquiry and is arbitrary and I reserve my

right to agitate a in the proper jurisdiction. This apart, such an award is going to be passed under S. 11 and the possession of the site will be taken

under S. 16 without reference to my civil rights in an arbitrary manner as has been done at every stage.

Mention of the notice under S. 12 of the Act in the above show that some sort of declaration had already been made followed by proceedings

leading to the award under S. 11 of the Act. Respondents have, in their counter, stated so in these words:

It is submitted that at the instance of the Executive Engineer (Public Works Department). Hydrology Division, Madurai, acquisition proceedings

were initiated for acquisition of an extent of 0.25 acres of land in S. No. 1/6-2AI of Kodaikanal village for construction of quarters for the staff of

Repeater station. The Notification under S. 4 (1) of the Land Acquisition Act in respect of the Land measuring 0.25 acre in S. No. 1/6-2AI of

Kodaikanal village, Kodaikanal Taluk for the construction of staff quarters of Repeater Station was approved in G.O-Ms. No. 1345 (Public

Works Department) dated 20-7-1980 and published at page No. 10 of Tamil Nadu Government Gazette Supplement to part (I S. 2, dated 27th

August, 1980. At the time of submission of Notification under S. 4 (1), the name of the interested person (owner) was noted as President,

Kodaikanal House Building Co-operative Society Limited as per Revenue accounts instead of Tmt. Saroja Sethu in the schedule (Form 2A) of

4(1) of the Act. The same was published in the Guzette also. The Government in their letter No. 36456/72-81-8, Public Works Department,

dated 7-4-1982 ordered to submit an amendment, indicating the name of Tmt. M.S. Saroja Sethu to notification under S. 4 (1) of the Land

Acquisition Act. The amendment was published at page 29 of part II, S.I of Tamil Nadu Government Gazette dated 23-6-1982. Enquiry under S

5A of the Land Acquisition Act was conducted on 30-8-1982 after observing the usual formalities as laid down under rules. The draft declaration

and directions were approved in G.O.Ms. No. 1767, Public Works Department dated 19-8-1983 and they were published as extraordinary in

Part II S. 2 of Tamil Nadu Government Gazette dated 22-8-1983. The award enquiry was conducted on 3-10-1983 and award passed acquiring

0.25 acre of land in S. No. 1/6-2AI of Kodaikanal village for construction of Staff quarters of Repeater Station awarding a compensation of Rs. 2;

199.40 to the landlady in Award No. 1/83 dated 3-10-1983. The land was taken possession on 8-10-1983. The awarded did not attend the

award enquiry on 3-10-1983 posted at Taluk Office. Kodaikanal either personally or through a representative but had sent a letter on 29-9-1983

requesting adjournment for six weeks as the Tamil month Purattasi was inauspicious. The award enquiry was conducted on 3-10-1983 as already

fixed. The notice under S. 12(2) of Land acquisition Act dated 10-11-1983 was sent to the landlady and it was served on her on 22-11-1983.

The possession of the land was handed over to the requisitioning body on 8-12-1983. The awarded did not attend the award enquiry and receive

the compensation. Now, the awarded has obtained an interim stay confirmed to taking possession of the land But, the possession of the land was

taken on 8-10-1983 and was handed over to the requisitioning body on 8-12-1983 even before the receipt of the stay order from this Honorable

Court.

There has been a serious contention whether any valid enquiry under S. 5-A has been held, whether procedures prescribed by law have been

followed by the respondent in acquiring the land in question and whether on account of the irregularities in the procedure petitioner has suffered any

legal injury. But, one fact has emerged out of all the controversies between the parties, which relates to the character and purpose of the house site

allotted to the petitioner by the society and the nature and character of the Society in the eye of the law, which is known as the Land Acquisition

Act. Ss. 4 and 6 of the Act, which apply to all types of land acquisitions under the Act, make no distinction in the procedure of the acquisition of

the land for a public purpose or for a company. S. 3(3) has defined the expression "company" to include, a co-operative society, within the

meaning of any law relating to co-operative societies for the time being in force in any State other than a co-operative society, which falls within the

definition of a corporation owned or controlled by the State, being a society established or administered by Government or being a co-operative

society in which not less than fifty one per centum of the paid up share capital is held by the Central Government or by any State Government or

Governments, or partly by the Central Government and partly by one or more State Governments. The definition of "public purpose" has

undergone quite a few amendments and as it stands today, it includes the provisions of land for carrying out any educational, housing, health or

slum clearance scheme, sponsored by Government or by any authority established by Government for carrying out any such scheme or with the

prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860, or under any

corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to co-operative societies

for the time being in force in any State. As on today, therefore, there cannot be any difficulty in accepting the scheme sponsored by the Kodatkanal

House Building Co-operative Society Limited for construction of houses for those who intended to spend their life in Kodalkanal as a public

purpose. On the day the notification was issued, however, the "Public Purpose" had the following definition:

the expression "public purpose" includes the provision of village-sites, in districts in which the appropriate Government shall have declared by

notification in the official Gazette that it is customary for the Government to make such provision.

Even so, when a question arose before a learned single Judge of the Allahabad High Court in Radha Raman Vs. State of Uttar Pradesh and

Others, as to whether acquisition for co-operative housing society will satisfy the definition of a public purpose, the learned Judge stated in his

judgment as follows:

The preamble to the Co-operative Societies Act, 1912, says that the object of the Act is to promote self help among poorer people and according

to S. 4 importance is attached to the promotion of interests of the members of the Society. Reference was also made to the bye-laws of the

Society amongst the objects of which are mentioned requirements of the members of the Society and the construction of residential houses or other

buildings for the convenience of the members and development of a co-operative colony for the convenience and benefit of the members. On the

strength of the preamble to the Co-operative Societies Act and the contents of S. 4 as well as the contents of bye-law No. 3 it is argued that the

object of the society is to benefit the members only and not any section of the public at large. Reference was also made to Nicholas on Eminent

Domain, Volume 2, pages 517, 518, 520, and 537.

I have considered the argument with care, but I do not think any of these provisions necessarily lead to the conclusion that the acquisition of land

for purposes of this Co-operative Society cannot be "useful to the public".

The general dearth of residential accommodation in the towns and cities of Uttar Pradesh is very well known, and if a Society is found to construct

a number of houses and the houses are actually constructed, the construction is likely to ease the situation, as there will be an increase in the total

residential accommodation in the town, and rents may also possibly go down. This will benefit not only the members of the Society but also the

resident public of the town. It is true that the bye-laws of Society as well as the Co-operative Societies Act itself are mainly concerned with the

interests of the members of the Society. But, if in carrying out those objects a situation is brought out which may be help the other members of the

public the acquisition may, in my opinion be same be one useful to the public.

S. 4 of the bye-laws of the Society shown the membership is open to all permits of the character and sound mind, which may be result or carrying

on any trade, business or professions Pilli hit. Anybody in Pilli hit can thereafter become a member of the Society and (sic) advantages of being a

member. In (sic) Housing Societies constituted for them (sic) clearing slumps have been held to be doing (sic) which is of "Public Use". Slump (sic)

clearance (sic) been held to be a valid reason for the action of land. (sic) The present case cannot be said to be a case of clearance of slums, but in

conditions prevailing in the towns of this (sic) at present, the construction of more residence (sic) houses is, in my opinion, an object which is full to

the resident public of the place

The Allahabad Judge has only carded what has been more specifically stated by a Bench of this Court in the case of P. Thambiran Padayachi and

Others Vs. The State of Madras and Others, . That was a case of a society formed and registered under the Madras Co-operative Societies Act,

1932 with the object of enabling its members to construct houses. This society considered that certain block of lands within the municipal limits of

the city would serve as suitable (sic) building (sic) sites and moved the Government for its acquisition. The Government gave its consent to the

scheme and issued a notification declaring that the lands were needed for public purpose to wit, construction of houses and in pursuance of this

notification proceeded to the quire lands. That was challenged in the court on the ground that the public a had no interest in the land or buildings,

that neither the public nor even a considerable portion thereof would be benefited by the scheme and in effect the acquisition would amount to

taking property of one individual and transferring it to a other. The Court answered the same by saying that the society could be regarded a

constituted for the benefit of the public, that in general building schemes were to be considered as advantageous to the public and that even though

the direct and immediate beneficiaries under the scheme might be individuals it was a public purpose as it benefited the public generally. One can

have support to the above view from the judgement of the Supreme Court in the case of Somavanti v State of Punjab A I.R. 1903 S. C. 151 and

another judgment of the Supreme Court in the case of Bai Malimabu and Others Vs. State of Gujarat and Others, Wherein it is said that

construction of staff quarters for the employees of dispensary under other employees working under State Insurance Scheme was is public

purpose. The definition, as it has stood before the amendment in the year 1984. after which amendment there can be no doubt that any housing

scheme of a co-operative society will be a public purpose was obviously not existent and when courts in India including this Court in the case of P.

Thambiran Padayachi and Others Vs. The State of Madras and Others, . extended its meaning to include house sites of co-operative societies, it

will be only reiterating the consensus, when it is said that the Kodaikanal House Building Co-operative Society Limited"s acquisition of land by

whatever method, whether by negotiations and purchase from the owners or through the process of law of the acquisition of land was is a public

purpose and the Society's allotting a piece of land and thereafter transferring the same to her has been an act in furtherance of the public purpose

for which the society existed/exists. In. the document of sale, the mention of the fact that the Government has assigned the site necessary for the

construction of houses in the said colony in favour of the society and further the words "the society has" after deducting the extent allotted for

common purposes such as roads, parks, market, shops, school, playground and other public amenities common to all the members of the society,

divided the land remaining in the total extent assigned by the Government to the society, into plots and allotted them to members" are quite

Significant. The Government has known the purpose for which it assigned necessary site for the construction of houses to the Kodaikanal House

Building Co-operative Society Limited and the society in fulfillment of the purpose created roads, parks, market, shops, schools, playground and

other public amenities common to all the members of the society and divided the land remaining in the total extent assigned by the Government to

the Society into plots and allotted them to members, one such member being the petitioner.

2. A question has thus arisen in the instant case, can any land allotted, assigned or marked for a public purpose and utilized for such a public

purpose, be subjected to acquisition proceedings in the name of any of the public purposes that could/can be spelled out from the definition or the

Explanation of the "public purpose". A serious objection to the consideration of this aspect of the case, however, has been raised on behalf of the

respondents. Learned counsel appearing for them has submitted that no specific plea in this behalf has been raised in the Writ Petition. Petitioner

should not in such a situation be permitted to raise any such ground. When pleadings are inadequate and material facts are absent, it is proper for

any Court not to permit a point, either of fact or law, to be raised in any proceedings. When, however, the material facts are available and on such

facts that are not in dispute when law is applied, a consequence has to follow. It will be, in my opinion, unjust to deny to a party availability of such

a ground. Learned counsel for the respondents has also urged that the objections, which the petitioner was in a position to raise under S. 5-A of

the Act and failed to rise at that stage, she cannot raise (such objections to the acquisition) for the first time in a writ proceeding. As I have said

earlier, if, on admitted facts when law is applied and the consequence has to follow, it will be unjust to deny to a party the benefit of such a legal

consequence. It will indeed be extending the same unfair rule of procedure if on the ground that some objection could have been raised under S. 5-

A of the Act but was not raised, a plea of this kind is rejected. In the instant case however, it is not possible to say that no such objection had been

raised by the petitioner at the stage of the enquiry under S. 5-A of the Act. The petitioner, in one of the representations to the Tahsildar (Land

Acquisition Officer concerned), has said:

Kindly read these objections besides the objections I had sent to you periodically It should be noted that the house site is allotted by the

Kodaikanal Co-operative Limited, to me as a part of the purpose for which they said house construction society was formed, and hence the said

P.W.D. Executive Engineer stated that the above construction is purely public interest and beyond the jurisdiction of the P.W.D.

It should be noted that the site for me under the scheme of public purpose could not be acquired for another public purpose as per the decision of

the High Court and the Supreme Court.

3. Learned counsel for the respondents has raised yet another objection saying that the acquisition proceedings have been completed and

possession of the land has already been taken under S. 16 of the Act by the concerned department of the Government. There may be some truth

in it as it seems award was made in the year 1983 itself and there is no reason to think that after making the award the Collector would not have

proceeded to take possession. Petitioner, however, has stoutly denied this statement of taking of possession by the respondents and asserted that

if respondents had taken possession as they allege they would have exercised possession. They have never exercised possession according to the

petitioner and petitioner is still in possession. Dispute as to who is in possession however, I need not determine, for, it is conceded at the Bar on

behalf of the respondents that no act in fulfillment of the purpose for which the impugned notifications have been issued beyond the alleged taking

of possession has been done by the respondent and the site is still awaiting any

construction.

4. I have given my anxious considerations and I have no hesitation in holding that there cannot be any acquisition of a public purpose when the land

is being used for another public purpose. Once it is found that the co-operative society could be regarded as constituted for the benefit of the

public and that in general, building schemes were to be considered advantageous to the public and that even though the direct and immediate

beneficiaries under the schemes might be individuals, it was public purpose as it benefited the public generally, any interference in the scheme of the

housing society by another acquisition will constitute interference in a public purpose. There can be no public purpose, which shall interfere with

another public purpose and if there are two public purposes in conflict, one which has proceeded ahead must be allowed to proceed farther. For

the reason, as above, I am satisfied that in the instant acquisition of land for the purpose of Staff Quarters of the Employees of the Repeater Station

of the Public Works Department, Hydrology Division, has been made without taking notice of the public purpose of the Kodaikanal House

Building Co-operative Society Limited and has accordingly been done without due care and regard to the scheme of the law in the Land

Acquisition Act. The acquisition being in the teeth of the law, as I have noticed above, the same has to be annulled. In the result, the writ petition is

allowed; the notification in G.O. Ms. No 1345 P.W., Irrigation, dated 19-7-1980 and all consequent proceedings are quashed The petitioner shall

be deemed to be the owner of the land and shall be entitled to utilize the same for the purpose of constructing a house as envisaged in the scheme

of the Kodaikanal House Building Co-operative Society limited. On the facts of this case, there shall be, however, no order as to costs.