

(2001) 02 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 18533 of 1993

Sarojini and another

APPELLANT

Vs

The Government of Tamil Nadu and another

RESPONDENT

Date of Decision : 14-02-2001

Acts Referred:

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

Citation : (2001) 02 MAD CK 0062

Hon'ble Judges : T. Meenakumari, J

Bench : Single Bench

Advocate : Mr. P.S. Venkatasubramanian, for the Appellant; Mr. P. Subramanian, Government Advocate, for the Respondent

Judgement

1. The writ petition is for the issue of writ of certiorari to call for the records relating to section 4(1) Notification made in G.O. 3-D No.344 Adi

Dravidar and Tribal Welfare dated 19.5.1992 and Section 6 Declaration made in G.O.(3-D) No.517 Adi Dravidar and Tribal welfare (L.A.I)

dated 26.7.1993 and quash- the same in so far as the acquisition of the lands of the petitioners are concerned namely,

R.S.No.291/1 measuring 0.23.5 hectares

R.S.No.291/2 measuring 0.07.5 hectares

R.S.No.291/6 measuring 0.09.0 hectares

R.S.No.289/1 measuring 0.13.0 hectares

R.S.No.289/2 measuring 0.21.5 hectares

R.S.No.289/3A measuring 0.07.5 hectares

R.S.No.291/3 measuring 0.05.5 hectares

R.S.No.291/4 measuring 0.11.5 hectares

R.S.No.291/5 measuring 0.02.5 hectares

in Kothampakkam Village, Villupuram Taluk, South Arcot District.

2. The case of the petitioners is that the Government acquired about 6 acres of petitioners' land in Kothampakkam Village for providing house

sites to Adi Dravidas. In that land a colony for the Adi Dravidas has been formed. The petitioners' land situate adjacent to the said colony. The

petitioners are cultivating the said land. There are sugar cane crops in the said land. The entire land is being irrigated by a bore well in R.S.Nos.

289/1 and R.S.No.289/2. According to the petitioners, by the Government Order 3 D.No.344 Adi Dravidar And Tribal Welfare dated

19.5.1992, the Government has proposed to acquire a total extent of 3.08.5 hectares of land in Kothampakkam Village for the purpose of

providing house sites to Adi Dravidas including the subject lands. Learned counsel for the petitioners submitted that the notification u/s 4(1) of the

Act was issued on 19.5.1992. The gazette publication was made on 17.6.1992. The same was published in the newspaper on 19.6.1992.

Learned counsel for the petitioner submitted that there was no local publication. The purpose of acquisition was for providing house-sites to Adi

Dravidas. The enquiry u/s 5A of the Act was made on 24.4.1992. The petitioners have filed their objections to the 5-A enquiry offering an

alternative land and requested to drop the acquisition proceedings. The declaration u/s 6 of the Act was made on 26.7.1993. Learned counsel has

further submitted that the authorities have failed to comply with the mandatory provision of making publication in the locality. In the circumstances

learned counsel for the petitioner submitted that the entire land acquisition proceedings are vitiated as the land acquisition officer has failed to

submit a report to the Government as required under Rule 6 of the Land Acquisition Rules. Learned counsel has further argued that the counter filed

by the respondents makes it clear that the land acquisition officer has submitted his report to the District Revenue Officer for approval. The District

Revenue officer has not accepted the proposal and directed the land acquisition officer to conduct a fresh enquiry u/s 5A of the Land Acquisition

Act by proceedings W2/19755/92 dated 13.11.1992. The Land Acquisition officer has issued notice to the petitioners on 20.2.1993. Accordingly

the enquiry u/s 5A of the Act was conducted on 16.3.1993. At this juncture learned counsel for the petitioners has argued that the respondents have issued the notification to acquire the land of the petitioners to an extent of 3.08.5 hectares. Relying upon the provisions of Section 5-a(2) of the Land Acquisition Act, learned counsel for the petitioner submitted that the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall after, hearing all such objections and after making such further enquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4(1) or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. In this regard, learned counsel has argued that the land acquisition officer has already conducted an enquiry u/s 5A of the Act on 24.9.1992 and he cannot reopen it again on 16.3.1993 on the recommendations made by the District Revenue Officer and such enquiry is not at all an enquiry in the eye of law. Learned counsel for the petitioner has further argued that as per Rule 5 of the Land Acquisition Rules, on completion of his enquiry the Collector shall submit the case for the decision of the Government through the Commissioner of Land Administration as provided u/s 5A(2) of the Land Acquisition Act. But in the case on hand, the Collector instead of submitting a report to the commissioner of Land Administration, has chosen to send a report to the District Revenue Officer which is in clear violation of the provisions of Rule 5 of the Land Acquisition Rules. Learned counsel for the petitioner has stressed his argument that when the land acquisition officer has conducted a second enquiry, there is no obligation on the part of the petitioners to appear for such enquiry as the acquisition is not for different parcels of the land, in the circumstances learned counsel for the petitioners submitted that- the impugned land acquisition proceedings are null and void and they are liable to be set aside.

3. Learned Government Advocate appearing for the respondents, basing on the records, submitted that the land acquisition officer has initially submitted a report to the District Revenue Officer and the District Revenue Officer did not accept the said proposal and returned the same to the

Land Acquisition Officer on 13.11.1992 for conducting a fresh enquiry. Accordingly a fresh enquiry was conducted on 16.3.1993. Learned

Government Advocate has also submitted that the petitioners have not attended the said enquiry and the award was passed on 12.1.1994.

However, in view of the interim orders passed by this court on 8.5.1993, the petitioners still continue the possession,

4. As per Section 5A(2)) of the Land Acquisition Act, the Collector is bound to either make a report in respect of the land which has been notified

u/s 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his

recommendations on the objections. In this case it has to be seen that the land acquisition officer has already conducted an enquiry on 24.9.1992

and submitted his recommendations only to the District Revenue Officer. Rule 5 of the Land Acquisition Rules contemplates that on completion of

his enquiry the Collector shall submit the case for the decision of the Government through the commissioner of Land Administration, in this case the

subject land did not contain different parcels and it is a land and an enquiry is contemplated and when there are no different parcels of land, the

authorities have no power vested with them to make different reports in respect of a land, for which the report has already been submitted, in this

case, as the collector did not send the report to the Government through the commissioner of Land Administration as required under Rule 5 of the

Land Acquisition Rules, it has to be held that the entire land acquisition proceedings are vitiated including the passing of the award. For the reasons

stated above, the impugned land acquisition proceedings are quashed and the writ petition is allowed. No costs. Consequently W.M.P.Nos.289 of

1993 and 18804 of 1996 are closed.