

(1929) 08 MAD CK 0042
In the Madras High Court

Secy. of State

APPELLANT

Vs

T.S. Murugesan Pillai and Others

RESPONDENT

Date of Decision : 26-08-1929

Acts Referred:

Citation : AIR 1930 Mad 248

Hon'ble Judges : Sundaram Chetty, J

Bench : Division Bench

Judgement

Sundaram Chetty, J.—This second appeal arises out of a suit filed by the plaintiffs (respondents 1 to 3) for an injunction restraining defendant 1, the Secretary of State for India in Council, from acquiring the plaint-mentioned lands under the provisions of the Land Acquisition Act. The suit was instituted before the issue of any notification by the Government u/s 6 (1), Land Acquisition Act. But, as a matter of fact, such a notification was issued by the Government in respect of the plaint-lands soon after the filing of the suit. That is clear from Ex. 1 which is dated 15th May 1923. The trial Court took into consideration the fact of the issue of the notification, Ex. 1, during the pendency of this suit and held that there was no valid ground for the issue of an injunction restraining the Government from proceeding with the acquisition under the Act. But the lower appellate Court was of opinion, that the suit should be decided on the state of circumstances which existed at the date of the institution, without taking into consideration what transpired subsequent to the filing of the plaint. Considering the scope of this suit within this narrow compass, it held that the civil Court could go into the question, whether the acquisition was really for a public purpose or not, conceding at the same time that, if a notification u/s 6 (1), Land Acquisition Act, be issued and proceedings are taken on that basis, it may be conclusive evidence of the purpose being a public one. Regardless of the declaration contained in the notification, the learned Subordinate Judge came to the conclusion upon the materials furnished in the suit, that the purpose could not be deemed to be a public purpose. In this view, an injunction was issued against defendant 1 as prayed for in the plaint.

2. In this second appeal, it has been fairly conceded by the learned advocate for the respondents that, if a declaration u/s 6, Land Acquisition Act, be made by a notification in the gazette it would be conclusive evidence of the fact that the land sought to be acquired was needed for a public purpose. It has also been held in *Ponnaiya v. Secy. of State* AIR 1926 Mad. 1099 that after such a declaration, it is not open to the owner to contend in any civil Court that the land was not needed for public purpose: vide also decision in *Veeraraghavachariar v. Secy. of State* AIR 1925 Mad. 837. as to the conclusiveness of the declaration as to the purpose being a public one. That being so, the next question is, whether in deciding this suit, the Court can take into consideration the fact of the issue of such a notification by the Government soon after the filing of the suit as evidenced by Ex. 1. There is no doubt that the Government would take further steps in the matter of the acquisition on the strength of that notification. The relief claimed by the plaintiffs in this case, is an injunction to restrain the Government from proceeding with the acquisition. If an injunction should be granted ignoring the fact of the issue of this notification, it would only lead to an anomaly and also to multiplicity of suits.

3. The decision in *Nuri Miah v. Ambica Singh* [1917] 44 Cal. 47 relied on by the learned Government Pleader, lays down the principles which should be applied to a case of this kind. It is therein laid down that, though ordinarily the decree in a suit should accord with the rights of the parties as they stood at the date of the institution of the suit, that rule need not be followed where it is shown, that the original relief claimed, has, by reason of the subsequent change of circumstances, become inappropriate, or that it is necessary to have the decision of the Court on the altered circumstances in order to shorten litigation or to do complete justice between the parties. Adopting the principles enunciated in this ruling, it would be proper in this case for the Court to take notice of the fact of the issue of the notification, Ex. 1, though it was after the filing of the suit, in order to mould the decree in the proper form according to the circumstances which have arisen since the institution of the suit. The relief in this case being an injunction which is in the discretion of the Court to grant or refuse, I think that, for a satisfactory disposal of the case, due weight should be given to the issue of the notification, Ex. 1, in order to see whether, in spite of such a notification there are still reasonable grounds for the issue of any injunction. In the view I have taken, it must be held that the notification is conclusive evidence of the fact that the acquisition in question was for a public purpose. It is unnecessary therefore to canvass the evidence in order to come to an independent conclusion whether it is for a public purpose or not.

4. I have to consider the contention of the learned advocate for the respondents that there was no substantial compliance with the proviso to Section 6 (1), Land Acquisition Act, and therefore the declaration would be ultra vires. The proviso is to this effect:

No such declaration shall be made unless the compensation to be awarded for

such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

5. In the present case, what has been done is that 20 per cent of the cost of the acquisition should be levied in the first instance from the applicants for the sites and the remaining cost, namely, 80 per cent should first be paid out of the public revenues by the Government, but it should subsequently be recouped from the persons to whom the sites are assigned, in instalments which are spread over a period of 20 years. As I have already said the avowed purpose of the acquisition is to provide sites for the Panchamas and other labourers. It is argued that in view of the avowed intention of the Government to recoup the 80 per cent of the cost from the grantees of the sites in the manner stated above, it should be deemed that no portion of the cost really comes out of public revenues. Without now going into case law as to the interpretation of this proviso, it seems to me at first sight, that all that the proviso requires is, that some portion of the initial cost of the acquisition should come out of the public revenues. It is silent as to what the effect of any future action by the Government in the matter of recouping the amounts advanced by it would be upon the validity or propriety of the notification. There is no doubt that there must be a substantial bona fide compliance with the terms of this proviso. By reason of the stipulation that the 80 per cent of the cost now paid by the Government should later on be recovered from the grantees, it cannot be concluded that the entire amount would surely be recouped by the Government. We cannot forget the other contingency of the Government failing to recoup portion of this amount, in which case, it must itself bear the outlay to that extent. Such contingencies as would arise in future are now problematic and in the face of the clear fact that 80 per cent of the cost is now paid out of the public revenue, we need not speculate as to what would happen in future. I am therefore of opinion that, in spite of the aforesaid stipulation, there is substantial compliance with the condition in the proviso that at least a part of the cost should come out of public revenues at the time of the acquisition. In the case reported in *Ponnaiya v. Secy. of State* AIR 1926 Mad. 1099 referred to above, there was a payment by Government of only one anna out of a sum of Rs. 3,352 and odd, the cost of the acquisition. It was therein held that this was merely an evasion of the terms of the proviso to Section 6(1) of the Act. But, on a perusal of the judgments of both the learned Judges in that case, it seems to me that the facts proved in that case led to an inference that the acquisition in question was only a device for private ends under the guise of the Land Acquisition Act, and in all probability, the payment of one anna only out of a very big sum coupled with those special circumstances, was viewed as a mere evasion and not a compliance at all with the requisites of the proviso. Whereas, a divergent view was taken by another Division Bench of this Court in the case reported in *K. Senga Naicken and Another Vs. Secretary of State*, . It was held, that even a contribution of one anna by the Government, though the cost of the acquisitions amounted to a pretty large amount, would be a sufficient compliance with the proviso and that there was no valid reason to question the legality of the

notification. This objection is in my opinion unsustainable, and I hold that the declaration u/s 6 (1) of the Act evidenced by Ex. 1 is legal and valid.

6. Any further steps taken by the Government in pursuance of this notification cannot be arrested by the issue of an injunction in this suit. I therefore disagree with the opinion of the lower appellate Court, and find that it is needless to issue any injunction. In this view, the plaintiffs' suit should be dismissed and this appeal allowed. As for costs, the important fact to be borne in mind is, that the present suit was instituted by the plaintiffs before the issue of the notification, Ex. 1, and therefore it was open to them to question the alleged public purpose for the acquisition and to ask for an injunction. However, the plaintiffs have been throughout contending that the notification itself is ultra vires, and that contention has been found against. Taking all these circumstances into consideration, I think fit to direct the plaintiffs to pay one half of defendant 1's costs throughout and bear their own costs. Leave refused.