

(1967) 08 MAD CK 0039

In the Madras High Court

Case No : Writ Petition No. 4318 of 1965

Sellappa Gounder and Another

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 01-08-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17(4), 4(1), 4(6)

Citation : AIR 1969 Mad 104

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : V.P. Raman, for N.R. Chandran, for the Appellant; T. Selvaraj, for Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Kailasam, J.—This petition is filed for the issue of a Writ of Certiorari calling for the records of the State of Madras relating to G. O. No.

4256, Home, dated 14-9-1965 published in Fort St. George Gazette, dated 29-9-1965 and for quashing the same.

2. The Petitioners are the owners of Survey No. 250/28 and S. No. 2491/A in Ariyur Village, Namakkal Taluk, Salem District. Regarding this

land, the Government issued a notification u/s 4(1) of the Land Acquisition Act on 14-9-1965. In the same notification, under Sub-section (4) to

Section 17, the Governor directed that in view of the urgency of the case, the provisions of Section 5-A shall not apply. On the same date 14-9-

1965, the Governor also made a declaration u/s 6 of the Land Acquisition Act declaring that the lands were needed for public purpose, namely for

making provision for house sites for Harijans of Nadupatti. These two notifications are challenged in this writ petition.

3. Mr. V.P. Raman, the learned Counsel for the Petitioners raised three contentions. Firstly, he submitted that the notification u/s 4(1), the dispensing of the provisions u/s 5-A and the issuing of declaration u/s 6 of the Land Acquisition Act on the same date are illegal and contrary to Section 17(4) of the Land Acquisition Act. Secondly, he submitted that the State was not justified in invoking the provisions u/s 17(4) as there was no urgency as contemplated under the section. Thirdly, he contended that the acquisition of the house u/s 17(2)(b)(ii)(c) can only be justified for making provision for houses for the poor and not for Harijans as a class as there may be Harijans who are rich.

4. So far as the objection of the learned Counsel that the notification u/s 4(1) and u/s 17(4) that the provisions of Section 5-A shall not apply and the declaration u/s 6 cannot be made simultaneously is concerned, the learned Counsel strenuously relied on the wordings of Section 17(4) which reads:--

In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-section (1) or Sub-section (2) are

applicable the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section (1)".

5. The procedure under the Land Acquisition Act is to make a preliminary notification u/s 4(1) by the appropriate Government stating that the land in a particular locality is needed for any public purpose. The powers u/s 17(4) can be invoked in the case of urgency. It may be that at the time of

the notification u/s 4(1), the Government was satisfied that the land is required urgently and, therefore, may pass an order simultaneously that the

Government is satisfied that the provisions of Section 17(1) or 17(2) are applicable and declare that the provisions of Section 5-A shall not apply.

So far, there can be no difficulty. Strong reliance is made on the words "'a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4, Sub-section (1)". It was contended that the words "'a declaration u/s 6 may be made after the publication of the notification u/s 4, Sub-section (1)" would contemplate an earlier publication of the notification u/s 4, Sub-section (1) to be followed by a

declaration u/s 6, and, therefore, the two notifications cannot be made simultaneously.

6. The Supreme Court in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, . In answering the contention that notifications u/s 4(1)

and Section 6 cannot be made simultaneously observed as follows:--

But it seems to us that where there is an emergency by reason of which the State Government directs under Sub-section (4) of Section 17 of the

Act that the provisions of Section 5-A need not be complied with, the whole matter, that is, the actual requirement of the land for a public purpose

must necessarily have been considered at the earliest stage itself that is when it was decided that the compliance with the provisions of Section 5-A

be dispensed with. It is, therefore, difficult to see why the two notifications cannot, in such a case be made simultaneously. A notification under

Sub-section (1) of Section 4 is a condition precedent to the making of notification under Sub-section (1) of Section 6. If the Government,

therefore, takes a decision to make such a notification and, thereafter, takes two further decisions, that is, to dispense with compliance with the

provisions of Section 5-A, and also to declare that the land comprised in the notification is in fact needed for public purpose, there is no departure

from any provision of the law even though the two notifications are published on the same day.

The Court proceeded to observe that the law does not make the prior publication of notification under Sub-section (1) of Section 4 a condition

precedent to the publication of notification under Sub-section (1) of Section 6. The decision negatives the contention of the learned Counsel.

Following the decision, I hold that the objection that the notification u/s 4(1) and the declaration u/s 6 cannot be made simultaneously has to be

rejected. In this connection it will be useful to refer to the directions given in the Land Acquisition Manual compiled by the Madras Government at

page 89. They are as follows:

In cases in which exemption from the operation of Section 5-A of the Act is recommended and the Collector submits both the notification u/s 4(1)

and the declaration u/s 6 they may be sent together to the press, but they should not both be published in one issue of the Gazette. The latter

should be published a week after the former. The schedule of lands should be

published with the notification u/s 4(1) and the declaration u/s 6.

These directions are by way of abundant caution and if followed would avoid the objections that are raised in the present petition.

7. The next contention of the learned Counsel is that the decision whether there was an urgency or not is justiciable and the Court would be entitled

to look into the facts of each case. The Supreme Court in *Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others*, observed:--

It is true that the opinion of the State Government which is a condition for the exercise of the power u/s 17(4) of the Act, is subjective and a Court

cannot normally enquire whether there were sufficient grounds or justification of the opinion formed by the State Government u/s 17(4)". After

citing with approval the decision of AIR 1945 156 (Privy Council) and referring to the decision of the Supreme Court in *Jaichand Lall Sethia Vs.*

State of West Bengal and Others, , the Court observed:

But even though the power of the State Government has been formulated u/s 17(4) of the Act in subjective terms the experience of opinion of the

State Government can be challenged as ultra vires in a Court of law if it could be shown that the State Government never applied its mind to the

matter or that the action of the State Government is mala fide.

The exceptions mentioned in the decision which would enable a party to challenge the opinion of the State Government are that the State

Government never applied its mind to the matter or that the action of the State Government is mala fide.

8. Dealing with the satisfaction of the Government required under Rule 30 of the Defence of India Rules, 1962 the Supreme Court in *Jaichand Lall*

Sethia Vs. State of West Bengal and Others, has held that the satisfaction is a subjective satisfaction and that a Court cannot normally enquire

whether grounds existed which would have created the satisfaction on which alone the order could have been made in the mind of a reasonable

person, if, therefore, an authenticated order of detention is on its face regular and in conformity with the language of Rule 30 it is not ordinarily

open to a Court to enter into an investigation about the sufficiency of the materials on which the order of detention is based. The Supreme Court

quoted with approval the law stated in AIR 1945 156 (Privy Council) . There the Privy Council stated:--

In the normal case the existence of such a recital in a duly authenticated order will, in the absence of any evidence as to its inaccuracy, be

accepted by a Court as establishing that the necessary condition was fulfilled."''
The Supreme Court in summing up the position held as follows at

page 486:

The accuracy (of a recital) can be challenged in two ways either by proving that the State Government never applied its mind to the matter or that

the authorities of the State Government acted mala fide. In a normal case the existence of such a recital in a duly authenticated order will in the

absence of any evidence as to its inaccuracy, be accepted by the Court as establishing that the necessary condition was fulfilled. In other words, in

a normal case the existence of such a recital in a duly authenticated order that the State Government was satisfied will. In the absence of any

evidence to the contrary, be accepted by the Court as establishing that the State Government was so satisfied. If the order of detention itself suffers

from any lacuna, it is open to a Court in a proper case to call for an affidavit from the Chief Minister or other Minister concerned or to call for the

relevant file from the State Government in order to satisfy itself as to the accuracy of the recital made in the order of detention.

Thus it will be seen that normally an affidavit or the records will not be called for if the order prima facie discloses that the Government was

satisfied. If the order suffers from any lacuna, an affidavit can be called for. The case where the State Government never applied its mind to the

matter or where the State Government acted mala fide is different.

9. In *A. Natesa Asari Vs. State of Madras and Another*, a Division Bench of this Court in considering the scope of the challenge to the satisfaction

of the Government as to the state of urgency u/s 17(4) held that what was required u/s 17(4) is that the Government must be satisfied that there

was such urgency as is contemplated u/s 17(1) and if it was so satisfied it was entitled to pass an order u/s 17(4) dispensing with the application of

Section 5-A. The submission that there was no urgency in the case as would Justify invoking the provisions u/s 17(1) and that there was no enquiry

about such urgency was rejected on the around whether an urgency existed or not was a matter solely for the determination of the Government and

was not a matter for judicial review. A recent decision of a Bench of this Court in

Mohammad Habibullah Sahib and Others Vs. Special Deputy

Collector for Land Acquisition Madras and Others, followed the decision in A. Natesa Asari Vs. State of Madras and Another, and held whether

urgency existed or not is a matter solely for the determination of the Government and it is not a matter for judicial review. In Nagamalai Colony

Formation Association V. State of Madras, ILR 1965 1 Mad 741, in considering the scope of the Government's satisfaction regarding the

urgency, a Bench of this Court has found that no objective criterion is laid down to guide the Government and that the sub-section does not even

use the words like, that the Government should be reasonably satisfied as to the existence of the condition. Taking this into consideration that steps

will have to be taken u/s 17(4) in cases of urgency, the Court expressed its view that it would be hampering the freedom of swift action if an

objective investigation were to be prescribed. The Bench also followed the view expressed in A. Natesa Asari Vs. State of Madras and Another, .

10. Thus it will be seen that three Division Benches of this Court have taken the view that the question whether urgency exists or not is a matter

solely for the determination of the Government and it is not a matter of judicial review. Reading these decisions along with the decisions in Jaichand

Lall Sethia Vs. State of West Bengal and Others, and Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, , the position of law is

clear that the decision of the Government regarding the urgency is not subject to judicial review except in cases where the order itself suffers from a

lacuna or in cases where the Government never applied its mind to the matter or acted mala fide.

A view somewhat different is expressed by a Bench of this Court in W. P. No. 1555 of 1964 (Mad). The Court held:

The question in each case for the Government to consider when it desires to invoke Section 17(4) would be whether facts and conditions exist or

require that would not brook the delay which would be caused by applying Section 5-A. A decision on that question will have to be taken on

proper material and in an objective manner, neither capriciously nor whimsically. But when the Court is called upon to see whether the power in

invoking urgency provisions has been properly exercised, it has necessarily to examine whether the decision to invoke the provisions was based on

material and was neither arbitrary nor capricious nor mala fide.

The scope of the judicial review according to this decision is wider than that as envisaged by the two decisions of the Supreme Court in Jaichand

Lall Sethia Vs. State of West Bengal and Others, and Raja Anand Brahma Shah Vs. State of Uttar Pradesh and Others, . Neither the decisions of

the Supreme Court nor that of the Privy Council in AIR 1945 156 (Privy Council) nor the three Division Bench decisions of this Court in A.

Natesa Asari Vs. State of Madras and Another, and Mohammad Habibullah Sahib and Others Vs. Special Deputy Collector for Land Acquisition

Madras and Others, were brought to the notice of the learned Judges. With respect I feel bound by the two decisions of the Supreme Court and

the three Division Bench Judgments referred to above and hold that the decision of the Government regarding the existence of the urgency is not

justiciable except grounds specified in the decisions. The Court will not be entitled to go into the question whether the decision was taken on

proper material and in an objective manner. In this view I am unable to agree with the decision of a Single Judge of this Court in Periathambi

Mudaliar Vs. Special Tahsildar (L.A.) Planning Scheme, Coimbatore and Another, , W. P. No. 795 of 1962 and in W. P. Nos. 505, etc. of

1961.

11. The next point urged by the learned Counsel is that the notification requiring the lands for the purpose of providing the Harijans with house-

sites is not one contemplated u/s 17(4) of the Land Acquisition Act and the notification u/s 4(1) and the declaration u/s 6 which states that the land

is required as house-sites for Harijans are illegal. This argument is based on the wording of Section 17(2)(b)(ii)(c) which makes the procedure u/s

17(2) applicable in cases of acquisition for construction of houses for the Harijans need not necessarily be acquisition for providing dwelling houses

for the poor for some of the Harijans may be rich. The answer to this contention is twofold by the State. Firstly it is submitted that the notification is

one u/s 17(1) and as such may be upheld. It provides that when the Government is satisfied about the existence of urgency, it can invoke the

provision u/s 17(4) if the land sought to be acquired is waste or arable land. Section 17(1) is not applicable to lands which are not waste or arable.

It is only with regard to the lands which do not fall under the category of arable

lands, the question whether the land is intended for dwelling houses for the poor would have to be gone into. It is unnecessary to consider this question at any length in this case for it is clear from the counter affidavit that the notification in this case is u/s 17(1) and on the merits it is seen that the land is required for 24 families who are Harijans badly in need of the house-sites. Thus on the materials on record it is clear that the land is required for providing dwelling houses for Harijans who are without houses and are poor. The requirement under Clause (c) of Sub-section (2) (b) (ii) of Section 17 that the land can be acquired under\ Section 17(2) for providing house-sites for the poor is satisfied. In this connection it is useful to refer to the directions given in the Land Acquisition Manual compiled by the State Government. At page 85 of the Manual it is directed:

When land is required for providing house-sites for members of the Scheduled Castes or other labouring classes or of a cooperative society, the names of the members to whom it is intended to assign the land when acquired should be given in the notice issued under Sections 4(1) and 5-A together with the extents proposed to be given to each.

This instruction if followed would avoid the legal contentions that have been put forward in this case. It may not be necessary that in the notifications under Sections 4(1) and 5-A these particulars should be given but it is desirable to follow such a course.

12. In the result all the contentions raised by learned Counsel for the Petitioners are rejected. The Writ Petition is dismissed. There will be no order as to costs.