

(2000) 11 MAD CK 0074

In the Madras High Court

Case No : W.P.No.13943 of 1992 and W.M.P.Nos.19753 of 1992 and 23208 of 1995

Sembanna Gounder and three others

APPELLANT

Vs

State of Tamil Nadu and two others

RESPONDENT

Date of Decision : 03-11-2000

Acts Referred:

Land Acquisition (Tamil Nadu) Rules — Rule 3(b), 3(c)
Land Acquisition Act, 1894 — Section 3(f)(vi), 3(f)(vi)(vii), 4, 6
Tamil Nadu State Housing Board Act, 1961 — Section 158

Citation : (2000) 11 MAD CK 0074

Hon'ble Judges : M. Karpagyavinayagam, J

Bench : Single Bench

Advocate : Mr. N. R. Chandran, for Mr. V. Srinivasan, for the Appellant; Mr. K. V. Venkatapathi, General for Mr. K. Chelladurai and Mr. Rajavel, Special Govt. Pleader, for the Respondent

Judgement

1. Section 4(1) Notification under G.O.Ms.No.879 (H & UD) dated 19.6.1991 and Section 6 Declaration in G.O.Ms.No.447 (H & UD) dated

21.7.1992 are the subject matter of the challenge in this writ petition seeking for the writ of Certiorarified Mandamus requesting this Court to

quash the same and forbear the respondents herein from acquiring the petitioners' agricultural lands situate in Kottagoundampatti Village, Omalur

Taluk, Salem District.

2. According to the petitioners, they, the members of the Joint Hindu Family are owning 37.5 Hectares in Kottagoundampatti village and in the said

lands they constructed a tiled house in which they are residing and they have also installed electric motor pump sets after sinking three wells and

two bore wells and for irrigation purposes they have put up P.V.C. pipes of more

than 1000 metres with considerable cost. In the above lands there are several palmyra trees and coconut trees besides the said three wells and two bore wells. Suddenly, they noticed the publication dated 5.7.1991 that the above lands are to be acquired for construction of the houses for Tamil Nadu Housing Board under Salem Neighbourhood Scheme. They sent their objections on 1.10.1991 and attended the enquiry on 9.10.1991. Even without following the mandatory provisions of Rule 3(b) and (c) of the Land Acquisition (Tamil Nadu) Rules framed under the Act and without considering the objections, the Declaration u/s 6 had been published in the Tamil Nadu Government Gazette dated 21.7.1992. Hence, this writ petition.

3. This writ petition was admitted and interim stay was granted on 10.11.1992. The petition dated 6.10.1995 to vacate the interim stay was filed by the respondents 1 and 2, namely, the Secretary, Urban Department and the Special Tahsildar, Land Acquisition. The petitioners filed another application in W.M.P.No.24724 of 1999 on 14.10.1999 seeking permission to raise the additional grounds. At that stage, the Tamil Nadu Housing Board filed a petition in W.M.P.No.27770 of 1999 to implead Tamil Nadu Housing Board as one of the respondents as it is the proper and necessary party for the disposal of the writ petition. Accordingly, this application was ordered on 13.12.1999, Consequently, the Tamil Nadu Housing Board was made as the third respondent. The third respondent filed the counter dated 19.12.1999 on 6.3.2000 before this Court giving out their stand and also answering the additional grounds raised by the petitioners.

4. Mr.N.R. Chandran, the learned senior counsel while arguing the matter would point out that the 3(b) enquiry has not been conducted and as such, the entire proceedings are vitiated.

5. On the other hand, it is represented by the counsel for the respondents 1 and 2 through counter that the 3(b) enquiry was conducted, that the remarks from the requisitioning body were called for and that further opportunity was given to the petitioners to make their objections and only thereafter, the Section 6 Declaration was issued.

6. However, Mr.N.R. Chandran, the learned senior counsel would refute the said contention stating that the petitioners had not been given any

opportunity for 3(b) enquiry and as such, they had no occasion to participate in the said enquiry. He would request this Court to verify the original

records with reference to the plea made by both the parties. But however, this Court has not chosen to do the same, in view of the fact that

Mr.N.R. Chandran, the learned senior counsel has very seriously pursued the additional ground urged in the petition filed in W.M.P.No.24724 of

1999. The following is the additional ground raised by the petitioners:-

The public purpose has been given exhaustive definition in Section 3(f) of the Act. Section 3(f)(VI)(VII) makes the provision for carrying out any

housing scheme by the Government or by any authority established by Government for carrying out any such scheme, a public purpose. The said

provisions are extracted below

3(f). the expression "public purpose" includes-

(vi) the provision 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 cooperative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or with the prior approval of the appropriate

Government, by a local authority.

A reading of Section 3(f)(vi)(vii) requires that a scheme of development, in particular the scheme relating to housing must be sponsored by the

Government or by a local authority with the previous approval of the Government. The said conditions are imposed in the Land Acquisition Act. In

the instant case the housing scheme indicated in the notification, was not sponsored by the Government, nor was it sponsored by the local authority

with the previous approval of the Government. This Hon"ble Court has taken the view of the housing board is the local authority.

7. With reference to this additional ground, the counter has been filed only by the third respondent. As indicated above, he has also projected his

stand with reference to the additional ground in their impleading petition in

W.M.P.No.27770 of 1999. Their contention as mentioned in the impleading petition and the counter is given below:-

Now the contention of the writ petitioners as if in this case the Housing Scheme indicated in the 4 (1) notification was not sponsored by the Local Authority i.e. the Housing Board with previous approval of the Government etc., are not admitted as true and correct. As per Section 158 of the Tamil Nadu Housing Board Act, the Tamil Nadu Housing Board is considered only as a "Local authority" for the purpose of acquisition concerned for its housing scheme i.e., for a "public purpose". As per G.O.Ms.No.371 dated 5.5.1975 and G.O.Ms.No.619 dated 29.6.1990, necessary land acquisition proposals were sent to the Government and only after approval of the Government the acquisition proceedings have been initiated in this case according to law. As much, all the formalities have been complied with.

8. In elaboration of the above pleas, Mr.N.R. Chandran, the learned senior counsel appearing for the petitioners and the learned Advocate General appearing for the third respondent, the Housing Board, would venture to establish their stand.

9. In order to understand the controversy raised in this petition, it would be appropriate to refer to Section 3(f) of the Land Acquisition Act.

10. By Land Acquisition (Amendment) Act, 1984 (Act 68 of 1984) several amendments have been introduced in the said Act including in the definition "public purpose". This amendment came into force with effect from 24.9.1984.

11. The expression "public purpose" has been defined in Section 3(f) of the Act. 3(f) the expression "public purpose", includes,--

(i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent

disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons

displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or

controlled by the State;

(vi) the provision 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 Cooperative societies for the time being in force in any State;

(vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate

Government, by a local authority"

(viii) the provision of any premises or building for locating a public office.

but does not include acquisition of land for Companies.

12. Of this, the relevant Section is 3(f)(vi). There are three categories given in the said clause, which are these. The provision of land for carrying

out any housing scheme etc. (i) sponsored by Government or by any authority established by Government for carrying out any such scheme; (ii) -

with the prior approval of the appropriate Government, by a local authority; (iii) a society registered under the Societies Registration Act, 1860.

13. In the instant case, Section 4(1) Notification has been issued in G.O.Ms.No.879, dated 28.5.1991 as the lands in question are needed for

public purpose for the construction of houses by Tamil Nadu Housing Board under the Salem Neighbourhood Scheme.

14. The stand taken by the third respondent as, projected in the impleading petition and the counter is that the third respondent is a local authority

for the purpose of acquisition for its housing scheme for public purpose and as per G.O.Ms.No.371 dated 5.5.1975 and G.O.Ms.No.619 dated

29.6.1990, the land acquisition proposals were sent to the third respondent through Government and only after approval of the Government the

acquisition proceedings have been initiated in this case according to law. The

relevant statement made by the third respondent in

W.M.P.No.27770 of 1999 is the following:-

In fact the Housing Department has passed a G.O.Ms.No.371 dated 5.5.1975 and only as per that G.O. necessary land acquisition proposal

were Sent to the Government and only after approval of the Government the acquisition proceedings have been initiated in this case according to law.

15. In view of this stand, there is no difficulty in concluding that these acquisition proceedings have been initiated by the authority concerned for a

public purpose as contained in Section 3(f)(vi) under the second category, namely, with the prior approval of the appropriate Government by a

local authority, namely, ""provision of land with the prior approval of the appropriate Government by a local authority"".

16. As admitted by the third respondent in its counter dated 19.12.1999, the third respondent is the local authority as provided in Section 158 of

the Tamil Nadu State Housing Board Act. Section 158 is as follows:-

158. The Board to be a local authority under Central Act 1 of 1894 and Central Act IX of 1914.-The Board shall be deemed to be a local

authority for; the purposes of the Land Acquisition Act, 1894 (Central Act I of 1894), and the Local Authorities Loans Act, 1914 (Central Act IX

of 1914).

17. It is also held by a Division Bench of this Court reported in Periyathayee Vs. The Special Tahsildar (LA) and Others, , that the Tamil Nadu

Housing Board is a local authority for the purpose of Land Acquisition Act. The following is the relevant. observation:-

The Tamil Nadu Housing Board was enacted for the purpose of providing housing and improvement schemes and for all such related matters of

providing amenities to such housing schemes. It is needless to point out that it is more in the nature of a ""local authority"". The definition of the word,

local authority"" in the General Clauses Act refers to Municipal Committee, District Board, Port Commissioner or other authority, legally entitled to

or entrusted by the Government with control and management of municipal or local fund. The words "other authority" has to be read ejusdem

generis with the words used earlier and therefore, in our opinion the Tamil Nadu Housing Board will fit in with the definition of local authority.

....Further, Section 158 of the Tamil Nadu Housing Board Act says the Board shall be deemed to be a local authority for the purpose of the Land

Acquisition Act, 1894.

18. These observations and the reading of the relevant sections would make it clear that the land could be acquired for a public purpose by the

local authority, namely Housing Board with the prior approval of the appropriate Government. In other words, the prior approval of the

Government is quite essential. Then only the acquisition of the land for housing scheme can be held to be for public purpose.

19. In Section 3(f)(vi) the expression "housing" has been used along with educational and health schemes. As such, the housing scheme

contemplated by Section 3(f)(vi) shall be such housing scheme which shall serve the maximum number of the public. Such housing scheme should

prove to be useful to the public. That is why Parliament while introducing a new definition of ""public purpose"", said that any scheme submitted by

any Board or society relating to housing, must receive prior approval of the appropriate Government.

20. In the light of the purpose of the new definition, it shall be held that the prior approval, required by Section 3(f)(vi) of the appropriate

Government is not just a formality; it is a condition precedent to the exercise of the power of acquisition by the appropriate Government for a

housing scheme of the Housing Board. This is what exactly held in the decision reported in H.M.T. House Building Co-operative Society Vs. Syed

Khader and others, .

21. In the tight of the above settled principles, now we have to see whether the prior approval has been obtained by the local authority, namely the

Housing Board, the third respondent, before commencement of the acquisition proceedings.

22. As noted above, in the impleading petition, it is clearly stated by the Housing Board that as per G.O.Ms.No.371 dated 5.5.1975 the necessary

land acquisition proposals were sent to the Government and only after prior approval of the Government the acquisition proceedings have been

initiated in this case.

23. The learned Advocate General appearing for the third respondent though would make an attempt by submitting that no prior approval is

necessary, ultimately, he would stress the point that G.O.Ms.No.371 of Housing Department dated 5.5.1975 and G.O.Ms.No.671 of Housing

and Urban Development dated 29.6.1990 are to be taken as the prior approval.

24. The above submission, in my view, does not deserve acceptance for the following reasons.

25. G.O.Ms.No.371 dated 5.5.1975 reads as follows:-

Housing Department

G.O.Ms.No.371 Dated 5.5.1975

Order:

At present requisitions for acquisition of lands on behalf of the Tamil Nadu Housing Board for its schemes are sent to the Government and the

Government in turn address the Collectors or D.R.Os. as the case may be, to send the acquisition proposals. As this procedure results in delays,

the Government permit the Tamil Nadu Housing Board to send the requisitions for acquisition of lands required for its schemes direct to the

Revenue authorities concerned with all relevant particulars and to mark a copy of the proposals to Government for watching the proposals at

Government level. The Collectors/D.R.O. of Districts are requested to honour the requisitions for acquisition of lands received direct from the

Tamil Nadu Housing Board and send necessary land acquisition proposals for approval of the Government.

This G.O. would provide for the general instructions to the Tamil Nadu Housing Board to send the requisitions for acquisition of lands to the

revenue authorities and the Collectors were directed to forward the same with necessary proposals to the Government for approval of the

Government.

26. G.O.Ms.No.619, dated 29.6.1990 reads thus:-

Housing And Urban Development Department

G.O.Ms.No.619 Dated:29.6.1990

G.O.Ms.No.371, Housing and Urban Development Department, dated 5.5.1975.

Order: In the Government Order read above, the Government have permitted the Tamil Nadu Housing Board to send their requisition for

acquisition of lands to the District Collectors/District Revenue Officers concerned. The Board has given powers to the Revenue Officers

concerned. The Government have reason to believe that these orders have not been followed strictly. The Government have decided that these orders should be strictly adhered to by the Tamil Nadu Housing Board and that this work should not be delegated to the other functionaries of the Housing Board. The Government reiterates the orders issued in the G.O. read above. The requisition for land acquisition along with land plan and schedule should be sent to the District Collectors/District Revenue Officers only after it has been duly approved by the Chairman and Managing Director, Tamil Nadu Housing Board.

This G.O. also would provide instructions to the Housing Board to send the requisitions to Revenue Authorities and directed the Revenue Authorities to forward the same without delay by reiterating the earlier G.O.Ms.No.371. Thus, it is clear that this is only a reminder for the earlier G.O.

27. The reading of the above G.Os. would make it obvious that the local authority, Housing Board is to send the requisitions through the Revenue Authorities to the Government to enable them to consider the requisitions and proposals for granting approval. These general instructions cannot be considered to be prior approval as contemplated in Section 3(f)(vi).

28. The learned Advocate General appearing for the third respondent could not point out or produce any other order of the Government u/s 3(f)(vi) of the Act granting prior approval and prescribing conditions and restrictions in respect of the use of the lands in question which were to be acquired for public purpose. Prior approval is a condition precedent because the appropriate Government while granting approval has to necessarily examine different aspects of the matter so that it may serve the public interest and not the interest of a few.

29. In this case, even without the said prior approval, the power under Sections 4(1) and 6 of the Act has been exercised, which, in my view, would vitiate the entire acquisition proceedings.

30. In fine, it is manifestly clear that in the instant case, the Housing Scheme indicated in the Notification for acquiring the lands in question was not sponsored by the Government nor was it sponsored by the local authority with the prior approval of the Government as mandated u/s 3(f)(vi) of the Act and as such, the requirements under the relevant sections of the Act

have not been satisfied and consequently, the acquisition proceedings are held to be vitiated.

31. In view of what is stated above, the writ petition is allowed. No costs. Consequently, W.M.P.Nos. 19753 of 1992 and 23208 of 1995 are closed.