

(1967) 09 MAD CK 0047
In the Madras High Court

Sivaprakasa Mudaliar

APPELLANT

Vs

The State of Madras and Another

RESPONDENT

Date of Decision : 20-09-1967

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1969) 1 MLJ 8

Hon'ble Judges : P. Ramakrishnan, J

Bench : Division Bench

Judgement

P. Ramakrishnan, J.—The petitioner is the owner of land bearing S. No. 154, an extent of 2.44 acres which was notified u/s 4 (1) of the Land Acquisition Act in the Fort St. George Gazette for acquisition, and the purpose for the acquisition, which was stated in that notification, was the rehabilitation of the slum dwellers in Kanniappanagar and other slums in the Madras City. At that time, the enquiry u/s 5-A was proposed to be dispensed with and the urgency clause in Section 17 (4) was applied. In W.P. Nos. 1094 of 1959 and 151 of 1960, this Court struck down that part of the notification which invoked Section 17 (4) for dispensing with the application of Section 5-A, with the result that the acquisition had to proceed from the stage of the notification u/s 4 (1). It may be necessary to point out that at the time when the aforesaid writ petitions were filed, a declaration u/s 6 of the Act had also been made on 26th November, 1958. The petitioner along with other persons interested in other lands in the locality filed W.P. No. 80 of 1961 and some other writ petitions in this Court. The contention which they urged at that time was that it was improper to proceed further with the acquisition and that in the above circumstances the notification u/s 4(1) should be quashed. One of the main grounds, which was urged before Veeraswami, J., before whom W.P. No. 80 of 1961 and other writ petitions came up for hearing was that after the notification was made, the avowed public purpose for which according to the notification, the lands were intended to be acquired had been ceased to exist or had been converted into some other purpose. It was mentioned prominently that the slum dwellers for whose benefit the original

notification u/s 4 (1) was made, refused to leave their places and the authorities therefore proposed to allot the land for dwelling houses to people in the middle and low income groups. Veeraswami, J. refused to grant the prayer for quashing the notification u/s 4 (1). The learned Judge observed that in view of the counter-affidavit filed by the Government in those writ petitions agreeing to deal with the matter from the stage of the notification u/s 4(1) the petitioners would have an opportunity u/s 5-A to make to the concerned authorities all representations including the objection mentioned above to the proposed acquisition. The learned Judge dismissed the writ petitions.

2. That order was taken in appeal by the petitioner herein and the appeal was disposed of by a Bench of this Court consisting of the learned Chief Justice Sri Ramachandra Iyer and Venkataraman, J. on a decision which was reported in *Sivaprakasa Mudaliar v. State of Madras* (1963) 2 M.L.J. 376. The main ground urged before the Bench was that the authorities would not be justified in making a diversion of the original purpose stated in the earlier Section 4 (1) notification. The Bench was of the opinion that even if the Housing Board (the Public body at whose instance the land was proposed to be acquired) proceeded to grant the house-sites to persons belonging to the low and middle income groups in the city, it would not amount to a diversion of the original purpose. In fact, the Bench went so far as to say that the original purpose of the acquisition, namely, providing house-sites for slum dwellers, if given a literal construction, would include the object of providing accommodation for persons belonging to low and middle income groups as well.

3. Before the Bench another argument was put forward that if the original Section 4(1) notification was to be kept intact as being for a valid public purpose the subsequent proceedings would deprive the affected party of the opportunity to file objections, for the purpose of a Section 5-A enquiry because Section 5-A (1) states that any person interested in any land which has been notified u/s 4 (1), may within thirty days after the issue of the notification object to the acquisition of the land. It was urged that in view of the intervening proceedings leading only to a partial quashing of Section 4 (1) notification, the time which the statute has thus prescribed for interested persons to file their objections had expired, and that there would, therefore, be no opportunity for aggrieved persons to file their objections, and that consequently the Section 4 (1) notification also should be quashed and a fresh Section 4 (1) notification should be published to give to the interested parties opportunity to file their objections within thirty days thereafter. The learned Judges, who dealt with the appeal, did not go into the merits of this objection. They recorded the willingness expressed on behalf of the Government to hear the objections of the appellants before them on all the matters referred to even though the time of 30 days from the date of the Section 4 (1) notification had expired. In the above circumstances they were of the opinion that the petitioner herein could not have substantial grievance that an opportunity was not given to him for filing his objections within 30 days of the original notification. The Bench also observed that one serious impediment to the

issue of a fresh Section 4 (1) notification, would be the creation of further complications in regard to the validity of the titles acquired by the various persons who had already obtained house-sites under the scheme and who had perhaps built houses thereon.

4. Subsequently the authorities gave an opportunity to the petitioner to file his objections, a Section 5-A enquiry was held, and a declaration u/s 6 also was issued on 26th May, 1965. The petitioner has thereafter filed this writ petition under Article 226 of the Constitution praying to quash the abovesaid declaration u/s 6.

5. The main grounds urged by the petitioner in this writ petition, to a great extent, traverse the grounds already dealt with in the Bench decision above stated. It is urged in the first place that a partial striking down of Section 4(1) notification would be illegal. The reason urged in support of this contention is again the point mentioned above, and considered in the Bench decision that the aggrieved party will be deprived of an opportunity of putting forward his objections because the thirty days" time-limit prescribed in Section 5-A(l) expired long previously. The further objection is that the original purpose to accommodate slum dwellers had become altered and a new purpose was mentioned in Section 5-A enquiry as well as in Section 6 declaration, the new purpose including " the development of the area for the rehabilitation of slum dwellers in Kanniappa Nagar and other slums in Madras City ", and so far as this purpose is concerned it is the same as the one in the original notification u/s 4 (1). Section 6 (1) declaration proceeds to add "that in accordance with the Land Acquisition and Development Scheme of the Government, for the purpose of increasing house accommodation ". It is urged that in substance what was originally a purpose which was to rehabilitate the slum dwellers in the Madras City, had been widened to the purpose of increasing the housing accommodation in Madras City. I am of the opinion that there is nothing illegal in expanding the public purpose in the above manner in the circumstances of the case. Rehabilitating the slum dwellers means giving them proper dwelling facilities. The fact that the increasing of housing accommodation is added, in the Section 6 (1) declaration, would only serve to make the purpose mentioned in the original Section 4 (1) notification fuller and more comprehensive. It will not amount to introducing a new purpose wholly divorced from the purpose stated in the original Section 4(1) notification. I have already referred to the view expressed by the Bench that providing accommodation to low and middle income groups could not amount to diversion of the original purpose in the circumstances of this case. It was explained before me that the neighbourhood project in the City of Madras was intended to provide accommodation for low and middle income groups.

6. In this connection learned Government Pleader appearing for the respondent has cited the decision of the Allahabad High Court in *Shyam Swarup v. State of U.P.* AIR 1968 All. 426 where a single Judge of that Court observed that though

the purposes mentioned in the two notifications under Sections 4 (1) and 6 were not identical, they were analogous to each other in so far as both the purposes were part and parcel of a larger public purpose, and that even if there had been an alteration of the public purpose at the stage of the notification u/s 6, such alteration would not have the effect of vitiating the entire proceedings. I am of the opinion that, in the circumstances of this case, there is no ground for attacking the validity of the Section 6 declaration because the purpose stated therein is in no material way, different from the purpose stated in the original Section 4 (1) notification.

7. Regarding the argument that the long lapse of time subsequent to the date of the Section 4(1) notification would deprive the petitioner of an effective opportunity of putting forward his objections, the position now is that in compliance with the directions of both Veeraswami, J., as well as the appellate Bench the first respondent has given full opportunities to the petitioner to put forward his objections at the Section 5-A enquiry, has overruled his objections and decided to issue a Section 6 (1) declaration. The reference to thirty days' time-limit in Section 5-A, is primarily intended to provide an opportunity for an aggrieved party to file his objections to the proposed acquisition. Where an enquiry u/s 5-A has been held and the petitioner's objections have been heard at that enquiry, there can be no more occasion for quashing the Section 6 declaration, on the ground that proper opportunity had not been given to the aggrieved party to file his objections, in consequence the expiry of more than thirty days after Section 4 (1) notification. The time-limit of thirty days stated on Section 4 (1) of the Act is intended to enable the authorities in proper cases to exclude belated objections. But where the authorities are prepared to excuse the delay in filing the objections, and actually hear them at the Section 5-A enquiry, there is no more room for objecting to the proceedings. Further Section 5-A (2) gives power to the Land Acquisition Officer to make any such further enquiry if he thinks necessary, and that power will include the power for hearing objections which are made even subsequently to the 30 days' time-limit, provided the Officer is prepared to hear them after condoning the delay. This is what has happened in this case. Learned Counsel also refers to Rule 1 issued by the Government u/s 55 (1) of the Act which states that the Collector shall issue notice to the persons interested to urge before the Collector within thirty days after the issue of the notification all their objections. This rule is only issued in compliance with Section 5-A (1) of the Act, but it does not affect the principle stated above that if the authorities are prepared to receive the objections even after the lapse of thirty days and take these objections into account at Section 5-A enquiry, there can no longer be any question of the subsequent proceedings including the declaration u/s 6 being vitiated.

8. The third point urged by learned Counsel for the petitioner is that one Krishnamurthy Iyer whose land was also included in the Section 4 (1) notification had been given exemption in respect of his land, whereas the petitioner has not been given any such exemption and his lands have been taken up for acquisition.

Learned Government Pleader states that Krishnamurthy Iyer's land was found to contain a tope and that was why the authorities were prepared to exclude his land from the acquisition proceedings, but the petitioner's land is not a tope. It is not also claimed by the petitioner that his land is a tope. The authorities have a discretion in the matter of accepting the objections filed by an owner to the acquisition of any particular land and overruling the objections of the owner of another land. There will be no question of discrimination in such cases for in one case the objection may be valid, and in the other case the objections may not be valid. This is a matter which is within the discretion of the authorities at the time of hearing the objections at the Section 5-A enquiry. This Court in *Gangadhara Mudaliar v. State of Madras* ILR (1965) Mad. 374, observed that there was no question of lack of bona fides in this case on the part of the authorities, nor was there any question of any deliberatae discrimination favourable to others and unfavourable to the appellant on grounds which were irrelevant or improper. A Bench of this Court in *Sivaprakasa Mudaliar v. State of Madras* (1963) 2 M.L.J. 376, has referred to the Board's Standing Order 90, Rule 9 as laying down the kind of objections available to an owner of the land whose land is proposed to be acquired, namely:

- (1) that the purpose for which the land is acquired is not a bona fide public purpose;
- (2) that the petitioner's land notified is not the best adopted to the purpose intended or that its area is greater than what is actually applied for the purpose; and
- (3) the acquisition of the land of any land in the locality is not desirable or expedient.

There is no question in this case of the authorities giving up the land of Krishnamurthi Iyer, and deciding to acquire the land of the petitioner, actuated by mala fide motives. For the reason mentioned above, the authorities were entitled to drop out one piece of land out of the items notified u/s 4 (1), and proceed with the acquisition of the other pieces of land. It is urged that subsequently Krishnamurthy Iyer has allotted his land for a housing colony and the petitioner would also like to do likewise if his lands were also exempted. But that will not be a relevant consideration for this Court, while dealing with the matter in writ proceedings.

9. Finally it is urged by learned Counsel for the petitioner that the Section 4 (1) notification was issued in this case on 17th September, 1958 and that though nine years had passed since that time, the award enquiry has not yet been passed, and the compensation, which the petitioner would get in such circumstances, would be based on the market value of land prevailing in 1958 and would not take into account the rise in prices in the interval and that this will work great hardship to the petitioner. He referred to the decision of the Supreme Court in *State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and*

Others, . The Supreme Court observed on that decision that by reason of long delay after the notification u/s 4 (1), notification, prices had risen in the meantime, and therefore the person whose land was sought to be acquired would stand to lose. But the important point to be observed is the context in which the above observations were made. In that case successive Section 6 declarations were issued on the basis of a single original Section 4 (1) notification. The Supreme Court condemned the practice, of using a single Section 4 (1) notification as a kind of reservoir from which the Government might from time to time pick out different parcels of land and make successive Section 6 declarations, as a measure calculated to cause great prejudice to the owners of the land. In the present case, while the delay undoubtedly is there, it must be stated that a considerable part of the delay is due to the successive attempts made by the petitioner to attack the land acquisition proceedings in writ proceedings. The attack commenced with a writ petition filed in 1961 and the present writ petition is in fact the third in the series, if we include the Bench appeal which has been referred to above.

10. In the circumstances, I see no grounds to interfere with the Section 6 declaration. The writ petition is dismissed. There will be no order as to costs.