

(1983) 12 MAD CK 0002
In the Madras High Court

Sree Vengeeswarar Alagarperumal Devasthanam	APPELLANT
Vs	
The State of Tamil Nadu and Another	RESPONDENT

Date of Decision : 16-12-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 9(3)

Citation : (1984) 2 MLJ 427

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—The lands of the petitioners herein were notified for acquisition under the Land Acquisition Act, hereinafter referred to as the

Act, along with other lands by the Special Deputy Collector for Land Acquisition, Neighbourhood Schemes, as required by the Chairman, Tamil

Nadu Housing Board, in connection with the development of the area as ""Kodambakkam-Pudur Neighbourhood"", as early as in 1963. The draft

notification u/s 4(1) was published on 8-5-1983. The notice u/s 9(3) was issued on 7-9-1964 and the statement of claim was filed by the

petitioners on 7-10-1964. Sri Vengeeswarar Devasthanam, one of the owners, preferred W.P. No. 2365 of 1965 concerning an extent of 1.87

acres. The challenge to_ acquisition was on the ground that this extent formed part of the "Prakaram" of the temple. That writ petition was allowed

on 10-4-1968. Thereafter, one K.R.P. Haran filed W.P. No. 2383 of 1970 stating that in spite of Seven years having lapsed, the award in respect

of his lands had not been passed and, therefore, he prayed for a mandamus to expedite the passing of the award. It was represented to this Court

that the Special Deputy Collector (Land Acquisition) Neighbourhood Schemes, was prepared to proceed further in the matter which he could not

do on account of the writ petition pending in this Court. This Court, accepting the undertaking given by the Special Deputy Collector, ordered that

the matter might be disposed of as expeditiously as possible. This was on 6-10-1971. As a follow-up action, the Special Deputy Collector

addressed to the Executive Engineer, P.W.D., South Presidency Division, Madras, for valuation of the structures "standing in S. No. 37/65 in file

No.M2/24429/64 dt. 27-11-1971, and several reminders were sent to him. Though eleven years elapsed after the undertaking given to Court, the

valuation of the structures had not been made nor was any report received from the said Executive Engineer. During the award enquiry, the said

Haran claimed severance compensation on the ground that the main building standing in the land left out from acquisition proceedings, would be

rendered useless if the structures in S. No. 37/7 were acquired, inasmuch as the sanitary facilities attached to the main building would be severed

by it. He claimed a huge amount of Rs. 1,80,000/- as severance compensation. The matter was referred to the Chairman, Tamil Nadu Housing

Board for his remarks. The Chairman, after detailed examination, agreed to acquire the portion of the land measuring 0.09 acres covered by the

main building also. Accordingly, the left out portion was subsequently notified for acquisition as S. No. 37/81 and acquired in Award No. 4/81

dated 2/4/1981.

2. On abolition of the post of the Special Deputy Collector (Neighbourhood Schemes) the file was transferred to the Special Deputy Collector,

Tamil Nadu Housing Board. In the meantime, the Highways Department, Corporation of Madras, etc., required certain lands falling in Madras and

Chingleput Districts for developmental activities under Madras Urban Development Project Schemes to be implemented under World Bank Aid. It

was found that if the lands required by these agencies are to be acquired by utilising the available staff with the Special Deputy Collector, Tamil

Nadu Housing Board, and Collector, it will not be possible to have the lands at the right time. Hence, a Land Acquisition Cell in the M.M.D.A.,

was created to deal with such cases of acquisition with the approval of the Government in G.O. Ms. No. 1251, Housing and Urban Development

Dept., dt. 15-7-1979. Accordingly, the post of the Special Tahsildar (LA) MMDA., was created in October, 1979 and the files relating to

acquisition of lands under MUDP., schemes were transferred to the Special Tahsildar (LA) MMDA. The land under reference is one such case

transferred from the Special Deputy Collector, TNHB., to the Special Tahsildar (LA) MMDA., as the Highways Department proposed to form an

Inner Ring Road to connect it with the Arcot Road in Kodambakkam. The Award No. 4/81 dt. 2-4-1981 relates to one of the awards passed by

the Special Tahsildar (LA) MMDA., after taking over charge of the files, from the Special Deputy Collector (LA), TNHB.

3. Since the award in respect of the land bearing S. No. 37/65 measuring 0.081/2 acres was not passed even after 11 years from the date of

disposal of the Writ Petition No. 2383/70, the said Haran again filed W.P. Nos. 2556 and 2557 of 1981 and obtained stay restraining the Special

Tahsildar (LA) MMDA., from taking any further action in respect of the above-said land. Thereafter, I am informed, by private negotiations his

lands were taken over. It is at this stage, the writ petitions have come to be filed for certiorari to quash the Section 4(1) Notification as well as the

declaration u/s 6 made on 8-5-1963 and 26-8-1964 respectively.

4. The one and only ground urged by Mr. G.M. Nathan, learned Counsel for the Petitioners, is that the proceedings are clearly vitiated by reason

of an abominable delay of twenty years. In support of the same, reliance is placed on the decisions in P. Appalamurthy and Others Vs. State of

Andhra Pradesh and Others, , and Radhey Sham Gupta and Others Vs. State of Haryana and Others, .

5. The learned Government Pleader submits that the delay had happened as stated in the file owing to the constitution of a Land Acquisition Cell in

the Madras Metropolitan Development Area. That took some time. Apart from that, there were two other writ petitions and, therefore, this is a

case in which the delay has been properly explained.

6. The facts I have quoted, are culled out only from the file. I am greatly astonished to find the nonchalant attitude evinced by the Executive

Engineer, P.W.D., South Presidency Division, Madras. The file itself categorically states that the valuation report was called for as early as on 27-

11-1971. Though several reminders were issued to him, he had remained impervious to these reminders. One is rather pained to note that the

rights of the citizens should be dealt with in this cavalier fashion. In short, all

that I can say will be nothing could be more irresponsible than this.

Earlier itself, the said Haran was obliged to move this Court by way of mandamus in W.P. No. 2383 of 1970, which was allowed on 6-10-1971.

At least then, the Special Deputy Collector (Neighbourhood Schemes) having undertaken before this Court, he should have been eager to fulfil his

obligation in view of the undertaking. If he has not been alive to his official responsibility, what else am I to characterise this attitude excepting to

say it is one of supine callousness? Be that so. Then again, the constitution of M.M.D.A., has nothing to do with expediting the award. There might

have been alterations of the scheme but they need not hold up the proceedings and keep the citizens' right in suspense. That is precisely what has

happened. It may not be out of context to note that the very same Haran was obliged , to move this Court by way of two other writ petitions,

W.P. Nos. 2556 and 2557 of 1981 for the same relief. Even then, if things did not improve, are the citizens to keep silent and bemoan their lot or

are they to remain for long. I should consider this bureaucratic attitude, after having used the powerful weapon of eminent domain under the Land

Acquisition Act which is expropriatory in character, as something which has to be criticised outright. Here is a case where the Section 4(1)

Notification was published as early as on 8-5-1963. Twenty long years have rolled by. If the award is to be passed, here again, what is it that the

petitioners would get by way of compensation? Undoubtedly, the market value as on the date of Section 4(1) Notification. Certainly, that will be

making a mockery of the rights of the citizens because the valuation as in 1963 could hardly be the compensation on today, after twenty years. This

is, besides, the value of the rupee itself having gone down. Therefore, this is nothing but gross injustice to a citizen. Having reached this conclusion,

the point to be posed is, would the delay in making the award vitiate the notification u/s 4(1). The matter is no longer res integra. The judgment of

the Andhra Pradesh High Court reported in P. Appalamurthy and Others Vs. State of Andhra Pradesh and Others, , clearly holds that if there is

unreasonable delay in making the award, that would vitiate the Section 4(1) notification itself. The delay in that case was not so abominable as in

this case, but three years passed after the declaration u/s 6 and five more years elapsed before the award was passed. Under these circumstances,

the learned Judge held as follows:

The delay in approaching the writ Court is not by itself fatal, since there is no law of limitation obliging a person to approach the Court within a

particular time. Laches is one of the considerations which must weigh with the Court in exercise of its discretionary power under Art. 226 of the

Constitution of India. In the instant case Writ petition was filed three days earlier to the passing of the award. Held, petitioners could not be held

guilty of delay and laches.

In the Full Bench judgment of the Punjab and Haryana High Court in *Radhey Sham Gupta and Others Vs. State of Haryana and Others*, , t h e

learned Judges put the matter eloquently:

Long unexplained procrastination, either by itself and in any case coupled with other factors clearly tends to prove the lack of bona fides in the

exercise of the power of acquisition. If it can be established beyond cavil that the real motivation behind the acquisition was not any specific public

purpose and its expeditious execution but was a mere ruse to peg down the prices by an issuance of notification u/s 4 and thus holding the citizens

to ransom for years at the whim and caprice of the State to finalise the acquisition proceedings when it chooses (if at all it is so done) is clearly a

factor for establishing the colourable exercise of power. It must, therefore, be held that unexplained inordinate delay is certainly a starkly relevant

factor if not a conclusive one for determining the colourable exercise of power or otherwise in the context of proceedings under the Act.

After so observing, the judgment proceeds to consider the issue as follows:

Having held as above, one may now revert back to the main issue of the unexplained inordinate delay in the finalization of the acquisition

proceedings. It has already been observed that this is a starkly relevant factor for determining whether the exercise of power is colourable or

otherwise. However, in its practical application the question boils down to the fact whether the delay, if any, is either unexplained or is factually or

statutorily justifiable. On a closer analysis, delay in this context may be placed in three categories for clarity's sake:

(i) betwixt the issuance of the notification u/s 4 and that u/s 6;

(ii) betwixt the date of the notification u/s 6 and the issuance of notices u/s 9 to the claimants; and (iii) betwixt the date of the notice u/s 9 till the

rendering of the Award by the Collector.

In the instant case, no doubt there has not been any delay between the Section 4(1) notification and the declaration u/s 6 or even the issuance of

Section 9 notice. It is only the third of the categories abovementioned which concerns us in this case. That is dealt with in Paras 24 and 25 of the

Judgment by the Full Bench as under:

Coming now to the category (iii), the main- stay of the arguments on behalf of the State and the private respondents was that any delay after the

issuance of notices u/s 9 is qualitatively different from the delay prior thereto. In substance an ingenious analogy was sought to be raised that

proceedings after notice u/s 9 were in the nature of execution of procedural proceedings which cannot in any way affect, what was called the

decretal or the substantive proceedings of acquisition prior thereto. Counsel submitted that whilst delay in the proceedings subsequent to notice u/s

9 may merit a mandamus or a direction for expeditious disposal the same is not relevant to, nor can be made a basis for nullifying the acquisition

proceedings themselves. In sum, the stand of the respondents was that no amount of consequential delay after the issuance of notice u/s 9 is either

relevant or germane to the validity of the ""notifications , under Sections 4 and 6.

The argument aforesaid does credit to the ingenuity of the learned Counsel and in fairness one must notice that it was presented with plausibility

and ability by Mr. J.K. Sibal. However, a deeper analysis would show that, in essence, the stand is untenable if not wholly fallacious. I am unable

to see any basic or qualitative difference betwixt proceedings under the Act up to the stage of issuing of notices u/s 9 and thereafter. Indeed, a look

at Part II of the Act in which Sections 4 to 18 are contained, seems to indicate that all these provisions are only components of one integral whole.

No artificial or finical line of distinction can be drawn with regard to proceedings up to Section 6 or to Section 9 and the provisions that follow

thereafter. Right up to the proceedings culminating in the rendering of the Award by the Collector, the procedure prescribed by the Act is one

integrated whole which cannot, or in any case should not, be artificially compartmentalized. I am, therefore, of the view that inordinate delays even

after the issuance of notice u/s 9 are equally relevant and fit for consideration in determining the basic issue of the colourable exercise of power.

7. Adopting the reasoning of the Full Bench, it is seen in this case that there is an unexplained inordinate delay, which tends to hold the rights of the citizens, at ransom, whose properties are sought to be acquired. They are denied the compensation in spite of reasonable time. The prices being pegged down to the Section 4(1) notification such compensations if not paid within a reasonable time, they would be sharp and pointed pieces of evidence to establish the lack of bona fides for the exercise of power. Judicial notice can be taken and indeed has to be taken, of a continued and inexorable up trend in the prices of real estate. Consequently, if there exists no explanation at all for the inordinate delay in finalising the land acquisition proceedings and thereby concretise the so-called public purpose, the inference inevitably arises that no immediate public purpose existed or was in sight which could be put in practical shape. If that be so, it follows that the exercise of the power of eminent domain was a colourable attempt to freeze prices forthwith, for an acquisition years later when they may well be double or treble of the existing prices. For a Welfare State to do so at the cost of the citizen, would thus be something which would be a fraud on the power conferred by the Statute.

8. In view of the above discussion, it follows that the land acquisition proceedings will have to be quashed and they are accordingly quashed. Rule made absolute. The petitioners will be entitled to costs at Rs. 250/- each.