
(1976) 11 MAD CK 0053
In the Madras High Court

Sri Tirumeni Alagar Devasthanam

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 16-11-1976

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1978) 1 MLJ 118

Hon'ble Judges : A.D. Koshal, J

Bench : Division Bench

Judgement

A.D. Koshal, J.—Land belonging to the petitioner was acquired by the Special Deputy Collector (Rural Housing Schemes), Tiruvarur (here in after referred to as the Collector) for the purpose of providing house sites to landless workers. The notification u/s 4(1) of the Land Acquisition Act (here in after referred to as the Act) was published on the 4th of July, 1973. It provided inter alia:

...Under Sub-section (4) of Section 17 of the Act, the Governor of Tamil Nadu hereby directs that in view of the urgency of the case, the provisions of Section 5-A of the said Act shall not apply to this case.

2. Simultaneously a declaration u/s 6 of the Act was also published

3. By this petition under Article 226 of the Constitution of India the petitioner seeks the issuance of a writ of certiorari quashing the acquisition proceedings.

4. In support of the petition only three contentions are raised:

(1) The provision of house sites for landless workers was not a purpose which could attract the relevant emergency clause of Sub-section (2) of Section 17 of the Act.

(2) In fact, there was no urgency about the acquisition proceedings and the provisions of Section 5-A of the Act could not be dispensed with.

(3) No notice of the substance of the notification issued under Sub-section (1) of

Section 4 of the Act was given in the locality in which the acquired land was situated so that an imperative requirement of the Sub-section was not fulfilled, with the result that the entire acquisition proceedings including the said notification stood vitiated.

5. According to the case set up on behalf of the Collector it is item (C) of Sub-clause (ii) of Clause (b) of Sub-section 2 of Section 17 of the Act which is relevant in relation to the first contention. That item provides that whenever in the opinion of the Collector it becomes necessary to acquire the immediate possession of any land for the construction, extension or improvement of any dwelling house for the poor, the Collector may immediately after the publication of the notice mentioned in Sub-section (1) and with the previous sanction of the appropriate Government, enter upon and take possession of the land. Sub-section (4) of Section 17 of the Act states:

(4) 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).

According to learned Counsel for the Collector the landless workers for whom house sites were proposed to be provided from the acquired land Were obviously poor persons whose case was covered by item (C) so that the provisions of Sub-section (4) of Section 17 of the Act would come into play. This stand, in my opinion, is well-founded. Merely because the word "poor" is not used in the notification it Would not render the notification invalid. Landless Workers are presumably poor persons and the item applies to them so that it was legitimate for the State Government to act under Sub-section (4) of Section 17 of the Act. The first contention is thus found to be without substance.

6. The second contention raised on behalf of the petitioner is not without substance. No material has been placed before me such as might indicate the existence of any urgency for the acquisition. In this connection, What the counter-affidavit filed by the Collector says is:

The Government of India have formulated the scheme to provide the basic amenity of a dwelling site to all landless poor workers in the villages and the Government of Tamil Nadu have taken a policy decision, to ameliorate the conditions of rural workers as an emergency measure on a war-footing.

This is hardly a reason on the basis of which the provisions of Section 5-A of the Act might be dispensed with. The inviting of objections under that Section and their determination after enquiry normally takes no more than a period of a couple of months or so. The urgency therefore has to be such that the acquisition cannot brook that much delay, which does not appear to be true of the case in hand. I may mention here that although this petition was filed on the 14th of

November, 1973, i.e., four months after the issuance of the notification u/s 4 of the Act, the counter-affidavit of the Collector which is dated 22nd of August, 1975 makes no mention of any steps having been taken at any time till the date last mentioned towards the allotment of any sites out of the acquired land. to any landless of worker. Had the urgency been real, steps would surely have been taken to prepare a layout plan of the acquired land and to allot sites therefrom to the landless workers for whom they were meant. The inaction on the part of the Collector in that behalf knocks out the plea of urgency. So far as this Court is concerned, it has been repeatedly held that in such a situation the acquisition proceedings cannot be allowed to stand (vide Varadaraja Gounder and Others Vs. The State of Tamil Nadu and Another, and Periathambi Mudaliar Vs. Special Tahsildar (L.A.) Planning Scheme, Coimbatore and Another, .

7. The third contention must also prevail. On behalf of the State it is asserted that notice of the substance of the notification was given in the locality in which the acquired land is situated, but it is conceded on its behalf that such notice was given after the lapse of a considerable period of time from the publication of the notification under Sub-section (1) of Section 4 of the Act in the Official Gazette. That section itself does not in so many words say that the publication of a notification in the Official Gazette and the giving of the notice of its substance in the locality where the acquired land is situated have to be simultaneous. But that is what has been held by their Lordships of the Supreme Court in Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, , In this connection learned Counsel for the State contends that in the present case the filing of objections u/s 5-A of the Act was dispensed with by resort to the provisions of Sub-section (4) of Section 17 thereof, that the only purpose of the giving of a notice in the locality is to appraise the inhabitants there of the publication of the notification in the Official Gazette and of its contents, that when objections u/s 5-A are not to be filed, the requirement about giving of the notice in the locality becomes redundant and that therefore the failure of the authorities to give such notice would be of no effect and would not render either the notification or Part of the proceedings illegal. An identical contention was raised in Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, and was rejected as untenable with the observation that the requirement of the giving of notice in the locality has to be fulfilled whether or not the provisions of Section 5-A of the Act are dispensed with. Thus, by reason of the failure of the authorities to give a notice of the substance of the notification simultaneously with the publication thereof, the notification itself is rendered illegal.

8. In the result, the petition succeeds and is accepted and the acquisition proceedings including the notification issued under Sub-section (1) of Section 4 of the Act are quashed. There will, however, be no order as to costs.