

(1994) 03 MAD CK 0046
In the Madras High Court
Case No : Writ Petition No. 797 of 1986

T. Ramaraj

APPELLANT

Vs

State of Tamil Nadu and another

RESPONDENT

Date of Decision : 22-03-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 31
Land Acquisition Act, 1894 — Section 4, 5

Citation : AIR 1994 Mad 313

Hon'ble Judges : Kanakaraj, J

Bench : Single Bench

Advocate : N. Rajan, for the Appellant; Mrs. N.G. Kalaiselvi, for the Respondent

Judgement

1. The petitioner claims to be an ex-service man. He had voluntarily retired from armed service and had joined service in a paper mills at Pallipalayam. He retired from service on 31-12-1981. The petitioner had purchased a small plot on 15-9-1976, with the sole object of constructing a house for his residence and the residence of his family members. According to him, he proceeded to construct a house in September 1981. To his misfortune, his land along with certain other lands were sought to be acquired under the Land Acquisition Act by publishing the notification under S. 4(1) of the Act on 11-11-1981. The petitioner's plot is only of an extent of 1,650 sq. ft. and it forms part of large extent of 1 acre 39 cents in Survey No. 198/4B in Kadachinallur Village, Tiruchengode Village, Tiruchengode Taluk. An enquiry under S. 5A of the Act was held on 22-1-1982. The petitioner submitted his objections on 6-2-1982 and 18-3-1992. The objections of the petitioner were communicated to the Salem Housing Unit at whose instance, the acquisition was initiated. The

remarks of the Housing Unit were communicated to the petitioner and second enquiry was held on 14-6-1982. Again the petitioner filed his objection. The petitioner was shocked to find that a Declaration under S. 6 has been issued in G.O.Ms. 915, Housing and Urban Development dated 30-10-1984. The writ petition is to quash the proceedings culminating in the Declaration under S. 6 of the Act, dated 30-10-84.

2. In support of the writ petition, Mr. N. Rajan, learned counsel appearing for the petitioner makes the following submissions :

(i) The objections of the petitioner had not been properly considered by the Land Acquisition Officer and consequently the decision of the

Government to acquire the lands, is also vitiated;

(ii) The selection of the petitioner's land for the purpose of developing neighbourhood scheme ignores the fact that the petitioner has no other land

to have a residence;

(iii) The counter-affidavit filed by the respondents practically admits the allegation of the petitioner that the objections filed under S. 5-A of the Act,

have not been properly considered.

3. Learned counsel appearing for the petitioner also cites in support of his arguments, a judgment of the Division Bench of this Court in A. Subbiah

Vs. Deputy Secretary to the Government of Tamilnadu, Social Welfare Dept., Madras, , as well as a judgment of the Supreme Court in Shri

Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others, .

4. In the counter-affidavit filed by the respondents, it is pointed out that an extent of 52-53 acres of land in Kadachenallur Village, Tiruchengode

Taluk had been proposed to be acquired for the construction of houses by the Tamil Nadu Housing Board. The 4(1) Notification was issued on

11-11-1981. The enquiry under S. 5-A was conducted 25-2-1982. The procedure prescribed by the rules framed under S. 55 of the Land

Acquisition Act, regarding the notice to the requisitioning authorities and the forwarding of the remarks to the land owners, were strictly followed.

The Land Acquisition Officer recommended the issue of the Declaration under S. 6. Accordingly, the Declaration under S. 6 issued by the

Government on 30-10-1984 in respect of an extent of 51.90 acres. It is pointed out that an extent of 0.63 acres was dropped from the acquisition

proceedings. It is also stated that an award enquiry was conducted on 24-10-1986 and the award was pronounced on 20-11-1986. It is also

stated that the possession of the lands were handed over to the Sales Housing Unit. Regarding the specific objections taken by the petitioner, it is

stated as follows:--

The objections raised in this case which are of a general nature and they were not considered by the Government. All the objections of the land

owners in this land, the Draft Declaration under S. 6 and Draft direction under S. 7 were sent to the Government through Commissioner of Land

Administration, Madras and approved in G.O.Ms. No. 915, Housing and Urban Development, dated 30-10-1984".

Again, it is stated in the counter-affidavit, as follows:

After the publication of 4(1) Notification on 11-11-1981, the 5-A enquiry and 3(b) enquiry was conducted on 25-2-1982 and 14-6-1982

respectively after observing usual formalities, the objections were sent to the Government for consideration. The objections were not considered

by the Government. The petitioner's plot is essentially required for forming compact block of the housing scheme".

5. In my opinion, the counter-affidavit has not been properly drafted. The statement that the objection were not considered by the Government has

to be taken, in the light of the subsequent sentence to the effect that the plot is essentially required for forming compact block of the housing

scheme. Similarly, the statements that the objections were not considered, because the objection were all of general nature, is also inappropriate.

However, having regard to the above statements, I called for the records to satisfy myself whether the Land Acquisition Officer had considered the

objections of the petitioner. I find from the reports submitted u/s 5-A of the Act, that the objections of all the owners were considered in seriatim in

the report dated 14-6-1982. So far as the petitioner is concerned, the report is as follows:--

He has objected to be acquisition of the Land in S.No. 198/4B2 on the ground that he has constructed a terraced house and sunk a well. He has

also stated that he is an ex-service man. The Executive Engineer and Administrative Officer, Salem Housing Unit, Salem has replied that the land is

essentially required to frame a compact housing scheme. Hence, I consider that

the objection raised in this case which are general deserve to be over-ruled".

6. The consideration by the Land Acquisition Officer leaves much to be desired. The Statement that the objection is of a general nature is without any basis. The Land Acquisition Officer should have seen that the case of the petitioner totally different from others, because he claims to be an ex-service man he claims to have constructed a house, on the plot purchased by him. I could have appreciated the Land Acquisition Officer, if he had verified the correctness of the claim made by the petitioner and recommended for exemption of the petitioner's land or at least re-allotment of the said site back to the Writ Petitioner. After all, the acquisition is for a housing scheme, where the housing Board will sell the developed plots by auction. Why should an ex-service man who has invested his retirement benefits in purchasing a plot a just 1,650 sq. ft. and constructed a house at a cost of Rs. 60,000/ - be deprived of the house either to be demolished or to be re-allotted to some other person. I am not unaware of the scope of the proceedings. u/s 5-A of the Act and decision of the various courts to the effect that the selection of sites, is entirely for the Government and Court should be slow to interfere in such selection by the Government it is in this connection that the judgment of a Division Bench of this Court, in A. Subbiah Vs. Deputy Secretary to the Government of Tamilnadu, Social Welfare Dept., Madras, , comes to the aid of the petitioner That was a case where a small farmer developed land and a coconut tope, was sought to be deprived of his land by Land Acquisition proceedings. The Division Bench observed as follows (at page 356):

It is also no answer to say that though the proposed land is a coconut "tope", and the appellants are doing intensive cultivation and they have also dug up a well at heavy cost, the appellants could be compensated wiili imnn-v and therefore the acquisition should be proceeded with. Unless there is a categorical and clear finding that it is the only land that is Available for that purpose and no other alternative lands are available and that this land is the most suitable for the purpose, the Government could not have acquired this property. In fact, in this case, all the facts arc against acquisition".

7. No doubt in the said case, there was an additional fact that the harijans for

whose benefits, the lands were sought to be acquired had also raised an objection to the suitability of the lands for building houses. Even so, the ratio of this judgment of the Division Bench, cannot be lightly ignored. In *Shri Mandir Sita Ramji Vs. Lt. Governor of Delhi and Others*, , the apex Court pointed out the importance of enquiry u/s 5-A of the Act. That was a case where the objection of the land owner were not traceable in the files and therefore, the objections had not been considered. It is significant to note that in that case, a plea was made that a final decision may be taken after the site was inspected by the Officer. However, the authorities had proceeded with the acquisition and the apex Court held that there was no proper enquiry, u/s 5A of the Act. Even though, on facts the said judgment can be distinguished, the observation contained therein are very apposite. While on this subject, it is also necessary to refer to certain other decisions of the apex Court. In *Collectors of 24 Parganas and Others Vs. Lalit Mohan Mullick and Others*, , the apex Court had this to say (at page 626 of AIR):

The respondents contention can be approached from another angle also. It is a generally accepted principle that persons interested in lands cannot lightly question the validity of a notification u/s 4 or u/s 6 and go behind them. When an acquisition is proposed for a public purpose and the purpose is shown to be a public purpose, Courts usually frown upon light-hearted attacks on the validity of the notification. In this case, we see an unusual method of fishing out information by looking into the files and discovering two letters in which mention is made of the starting of a hospital for crippled children".

Added to this, we have the decision of the Constitution Bench on the finality of Section 6 of the Act which has been followed in many other cases.

Reference can usefully be made to *Smt. Somavanti and Others Vs. The State of Punjab and Others*, , *Babu Barkya Thakur Vs. The State of Bombay and Others*, and *Land Acquisition Collector and Another Vs. Durga Pada Mukherjee and Others*, . On the immediate issue of selection of sites, the apex Court in *the State of Punjab and Another Vs. Gurdial Singh and Others*, , observed as follows :--

First, what are the facts? A grain market was the public purpose for which Government wanted land to be acquired. Perfectly valid. Which land

was to be taken? This power to select is left to the responsible discretion of Government under the Act, subject to Arts. 14, 19 and 31 (then). The

Court is handcuffed in this jurisdiction and cannot raise its hand against what it thinks is a foolish choice. Wisdom in administrative action is the

property of the executive and judicial circumspection keeps the Court lock-jawed save where power has been polluted by oblique ends or is

otherwise void on well established grounds. The constitutional Balance cannot be upset.

8. The above analysis of the case based on the judgments of this court as well as the apex Court poses a moot point, as to whether the selection of

the petitioner's site for the development of the neighbourhood scheme" was proper and justified. I am of the opinion that I must follow the last

mentioned Supreme Court judgment in State of Punjab and Another Vs. Gurdial Singh and Others, , which has very lucidly pointed out the scope

of the Court's power to interfere with the decision of the Government. At the same time, I must record that the respondents have not done justice

to the petitioner who is an ex-service man. The only way of balancing the rights of parties, is to give appropriate directions to the Government,

while upholding the acquisition proceedings. I am upholding the acquisition proceedings for more than one reason. It is stated that the acquisition of

the petitioner's land of the extent of 1,650 sq. ft. is part of larger scheme comprising of an extent of 51.90 acres. Secondly, the acquisition in

respect of all the other lands have been completed and the award passed and there is also a vague reference to the fact that the lands have been

handed over to the Housing Unit. Learned counsel for the respondents states that the development in respect of the other lands have already taken

place. It is also contended that the house in question was constructed only after the notification u/s 4(1) of the Act. I am not willing to accept the

last claim of the respondents, because -- 5A report, which I have extracted above shows that the petitioner referred to the construction and no

attempt was made by the Land Acquisition Officer to verify the correctness of the same. For the above reasons, I propose to give the following

directions in the Writ Petition.

(i) The notification u/s 4(1) and the Declaration u/s 6 impugned in this Writ Petition are upheld:

(ii) The Writ Petitioner should not be dispossessed of the land and the house in his possession unless and until the Government specifically

considers, whether the subject site alone can be exempted from the acquisition proceedings:

(iii) For this purpose of the Government considering the claim for exemption, I direct the petitioner to file an application to the Government, within

three weeks from today. If such an application is filed, the Government is directed to consider and pass orders, in the light of the observations

contained in this judgment.

(iv) The Government while considering the claim for exemption, can also suggest the alternative site with adequate compensation. Till the

Government takes a final decision on the application for exemption, the petitioner shall not be disturbed from the subject site in which he has

already built a house. The writ petition is ordered in the above terms. There will be no order as to costs.

9. Order accordingly.