
(1989) 11 MAD CK 0036
In the Madras High Court

T. Vadadri alias Chellappa

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 15-11-1989

Acts Referred:

Constitution of India, 1950 — Article 10(1)(g), 226, 300(A)
Land Acquisition Act, 1894 — Section 10, 4, 4(1), 6, 9

Citation : (1990) 1 MLJ 219

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Judgement

Bakthavatsalam, J.—The petitioner herein challenges the Notification made u/s 4 (1) of the Land Acquisition Act which was issued in G.O.Ms. No. 1096. Housing and Urban Development Department dated 17.7.1978 and published in Tamil Nadu Government Gazette dated 9.8.1978 and to quash the same in so far as it relates to the petitioner's lands comprised in S. Nos. 86/4, 86/8, 93/8, 96/11, 101/13A, 102/6 and 102/8 of Thiruvanmiyur Village Madras-41.

2. Earlier the petitioner herein and his brother preferred W.P. No. 1478 of 1982 before this Court challenging the declaration u/s 6 of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") in pursuance of the notification which is challenged in this writ petition. Mohan, J. (as he then was) quashed the declaration u/s 6 of the Act leaving the Section 4 (1) Notification intact by order dated 5.9.1983. Subsequently an appeal has been preferred by the respondents in W.A. No. 470 of 1985 and it was dismissed in limine at the admission stage itself by a Division Bench of this Court consisting of Chief Justice M.N. Chandurkar and K. Venkataswami, J. on 8.7.1985. So this matter is concerned with the Notification 4 (1) of the Act published as early as 1978 which exists so far as the petitioner's lands are concerned and no follow up action has been taken by the respondents either to quash or to take any fresh proceedings under the Land Acquisition Act.

3. It is alleged in the affidavit that the petitioner has come to know that the

Government has abandoned the proposal to acquire the Lands of the petitioner u/s 4 (1) Notification which is the subject matter of the writ petition and in view of that dropping of the proposal, Notification u/s 4 (1) is liable to be quashed. It is also stated that due to the fact that the land acquisition proceedings are pending for the last ten years the petitioner could not deal with the property. The petitioner also alleges that in view of the land acquisition proceedings are pending for a long time, the petitioner's right to deal with the property is denied which is in violation of the Article 10 (1) (g) of the Constitution and the said Notification u/s 4 (1) of the Act has to be set aside. The petitioner also alleges that there is inordinate delay in finalising the acquisition proceedings and that this will clearly establish that no public purpose is in existence. With these allegations, the petitioner has come-up before this Court with the prayer as stated supra.

4. Notice of motion has been ordered by me on 11.8.1989.

5. Mr. Bhavanandam, the learned counsel for the first respondent and Mr. J. Venugopal, the learned counsel for the second respondent appeared for the respondents before this Court. No counter has been filed by the counsel for the respondents. Records have been produced before me.

6. By consent of both parties, the main writ petition itself is taken up for final disposal.

7. From the facts above narrated it is to be seen that the Notification u/s 4 (1) of the Act was published as early as 1978 and the declaration u/s 6 of the Act published in the year 1981 has been quashed, by Mohan, J. (as he then was) by order dated 5.9.1983 and it was also affirmed by a Division Bench of this Court by order dated 8.7.1985. It is clear that there was no stay at all by this Court with regard to the acquisition proceedings. Mohan, J. (as he then was) disposed of the writ petition in the year 1983. As such, for nearly eleven years the Notification made u/s 4 (1) of the Act made in the year 1978 is continuing and the respondents have not taken any care to take any action. It is true that an appeal has been preferred in the year 1985 and it was also dismissed. Even then four years have elapsed, during which, no action has been taken by the respondents. The proviso u/s 6 of the Land Acquisition Act, which has been introduced by Act. 68 of 1984 is in the following terms:-

Provided that no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1)--

(i) Published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of three years from the date of the publication of the notification; or

(ii) Published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication

of the notification.

Explanation 1 to this proviso is in the following terms:

Explanation 1: In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued u/s 4, Sub-Section (1) is stayed by an order of a Court shall be excluded.

If the proviso and the explanation above mentioned are taken into account, I do not think the State can proceed further in this matter, based upon the notification made u/s 4 (1) of the Act in the year 1978. It is very unfortunate to note that the notification made u/s 4 (1) of the Act has been kept intact for the past eleven years. Of Course there were proceedings pending before this Court which ultimately ended in orders against the Department in the year 1985 itself. Even then, four years have gone. As rightly pointed out by the learned counsel for the petitioner, once Notification u/s 4 (1) of the Act is published, the owner cannot improve his lands or put them into proper use or to deal with the same. By keeping a Notification made in Section 4 (1) of the Act pending for a very long time, without taking any proper action, is in my view wholly unjustified. The owner of the lands is kept in dark and he is not allowed to deal with his property as he likes. This is a very unfortunate situation to which the land owner is put to. By publishing the notification u/s 4 (1) of the Act and keeping it intact even when the proceedings u/s 6 of the Act has been set aside without taking any further action, the owner of the lands is completely denied his right to deal with the property.

8. I have gone through the entire file produced before me. A decision has been taken by the Government on 12.12.1985 informing the Housing Board that if they are interested for acquiring the lands a fresh notification u/s 4 (1) has to be issued. In that letter it is further requested to send for a draft notification, if they think that it is necessary to issue a fresh notification. The attention of the Chairman Housing Board was drawn by, reminder dated 3.1.1986 and the Chairman by order dated 7.1.1986 asked the Special Tahsildar (Land Acquisition) Madras to send the reply in that matter urgently. The correspondence goes on. Ultimately, the petitioner has given a petition to the special Deputy Collector (L.A.) Tamil Nadu Housing Board Schemes, Madras on 27.6.1986 when an enquiry under Sections 9 and 10 of the Act was proposed to be held. I do not see how an award proceedings can go on, when the proceedings u/s 6 of the Act have been quashed by the order of Mohan, J. (as he then was) on 5.9.1983. It shows the carelessness of the authorities to issue notice without knowing what had happened. I find a lot of correspondences exchanged between the Chairman of the Housing Board and the Government. Ultimately, on 10.6.1988, the Special Tahsildar, (Land Acquisition) wrote a letter to the Chairman, Housing Board stating that the matter is pending for a long time and further delay would push up the market value and so a final decision should be taken. The chairman again sent a letter dated 21.7.1988 enclosing a letter of the petitioner herein and

another dated 13.6.1988 which is a petition of the petitioner praying to drop the land acquisition proceedings. A reply has been sent by Special Tahsildar (Land Acquisition) on 6.9.1988 and nothing has moved therefrom. This is a picture of the file produced before me with regard to the Lands in dispute of the proceedings.

9. Considering the facts of this case and the provisions of the Land Acquisition Act, 1894, I think that the impugned notification made in the year 1978 has to be set aside. Normally a notification made u/s 4 (1) of the Act is not interfered with by this Court. But this is a peculiar case where a notification made in the year 1978 is kept pending due to lethargic attitude of the authorities and the owner of the property is not able to deal with the property. The owner of the property is having a sword hanging, on his head right from the year 1978. This cannot be allowed. This is a fit case in which this Court should extend its helping arm under Article 226 of the Constitution. In my view, the action of the authorities concerned is purely arbitrary and the property of the petitioner herein has been dealt with recklessly by the authorities without any responsibility. As I have already stated, the writ appeal preferred by the Government has been disposed of in the year 1985 itself. For the past four years, nothing has moved. It is true that they have got owner to acquire the lands, but it does not mean that they can keep the petitioner in suspense for a very long time. In my view, such action of the respondents is nothing but depriving the right of property of a citizen. Property is meant to be enjoyed. If it is not so, what else is that except the violation of Article 300 (A) of the Constitution. Without any authority of law and against the provisions of the Land Acquisition Act, the impugned notification made u/s 4 (1) of the Act in the year 1978 is kept intact.

10. For the reasons stated above, I am inclined to set aside the impugned notification in so far as the lands of the petitioner herein are concerned and accordingly the writ petition shall stand allowed. In my view this is a fit case where exemplary costs can be awarded in favour of the petitioner and costs of Rs. 3,000 (Rs. Three thousand only) is awarded having taken note of the fact the lethargy and irresponsibility of the officials in this case.