
(2000) 03 MAD CK 0099

In the Madras High Court

Case No : W.A. No"s. 828 and 829 of 98 and C.M.P. No"s. 8850, 8851 and 8852 of 98

The Chief Executive Officer, Chennai Metropolitan
Development Authority

APPELLANT

Vs

Sakunthala and The Government of Tamilnadu

RESPONDENT

Date of Decision : 25-03-2000

Acts Referred:

Land Acquisition (Tamil Nadu) Rules — Rule 3, 4
Land Acquisition Act, 1894 — Section 11, 4, 4(1), 5A, 5A(1)

Citation : (2000) 03 MAD CK 0099

Hon'ble Judges : Prabha Sridevan, J; Jayasimha Babu, J

Bench : Division Bench

Advocate : M.S. Govindarajan, for the Appellant; M. Sriram, for Respondent 1 and P. Selvi, Government Advocate Respondent 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Prabha Sridevan J.

1. When the wholesale market complex was established at Koyambedu Village, it was necessary to widen the existing access roads. So, the Government commenced Land Acquisition Proceedings at the instance of Chennai Metropolitan Development Authority to widen access roads like Nesapakkam Road. The writ Petitioners, who are the 1st Respondents in the above writ appeals owned six cents each, which were the subject matter of the acquisition proceedings. They got the proceedings quashed by this Hon"ble Court after the stage of 4(1) Notification in Writ Petition Nos. 3969 and 3976 of 1991. The Chennai Metropolitan Development Authority, (hereinafter referred to as C.M.D.A.) the third Respondent in the writ petitions has filed the present appeals.

2. The order of the learned Single Judge, which is under challenge holds that the mandate of Rule 3(b) of the Land Acquisition (Tamil Nadu) Rules (hereinafter referred to as Rules) stood violated and therefore, allowed the writ petition. The

learned single Judge, after referring to relevant provisions of the Act and various decisions of the Supreme Court and this Hon"ble Court cited by the counsels appearing for both the parties came to the conclusion that there was no enquiry in terms of Rule 3(b) after receiving the objections of the Petitioner filed belatedly on 20.10.1989 and therefore, the learned Judge held that there was violation of Rule 3(b).

3. The learned single Judge was of the opinion that the objections ought to have been considered regardless of the delay. So the learned single Judge held that an opportunity should have been given to the writ Petitioners by applying the principles of fair play and justice and they should have been given full opportunity in strict compliance of Acts and Rules. So, he allowed the writ petitions quashing the proceedings subsequent to 4(1) Notification.

4. The C.M.D.A. 3rd Respondent in the writ petitions has filed the appeals. As stated earlier, the lands were needed for the public purpose of widening of the existing Nesapakkam Road. Certain dates are important for deciding the matter. Section 4(I) Notification was issued by the second Respondent in these appeals and they were published in the gazette on 16.8.1989. The Requisitioning Body was stated to be the Appellant, C.M.D.A.(known at that time as Madras Metropolitan Development Authority). The Notification was published in the Newspaper on 17.8.89 and local publication was effected on 2.9.89. Section 5(a) Enquiry Notice was served on the writ Petitioners on 29.9.89. fixing 26.10.89 as the date for enquiry. The 1st Respondents viz., the writ Petitioners submitted their objections by Registered Post on 20.10.89 and it was communicated to the Appellant, the Requisitioning Body on 23.10.89. The 1st Respondent did not attend the enquiry on 26.10.89. The Appellant, the Requisitioning Body furnished the remarks on the objections on 5.12.1989. Thereafter the second Respondent was satisfied that the lands had to be acquired for the public purpose and issued Section 6 declaration on 30.8.90. The first Respondent herein challenged the proceedings mainly on two grounds: viz., there was no proper enquiry u/s 5(a) of the Act, since Rule 3(b) procedure was not followed and that the entire acquisition proceedings were liable to be quashed on the ground of mala fides.

5. The learned Counsel for the Appellant submitted that since the writ Petitioners had not filed their objections within the time prescribed, it is not open to them to complain of violation of Rule 3(b). We may, now refer to Section 5(a) and Rule 3(b).

Objections: - 5-A. Hearing of Objections-(1) Any person interested in any land which has been notified u/s 4, Sub-section (1), as being needed or likely to be needed for a public purpose or for a Company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.

(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and Collector shall give the objector an opportunity of being heard in

person or by any person authorised by him in this behalf or by pleader and shall after, hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, Sub-section - (1) or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

Rule 3-(a) If a statement of objection is filed by a person who is not interested in the land, it shall be summarily rejected.

(b) if any objections are received from a person interested in the land and within the time prescribed in the Sub-section (1) of Section 5A, the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

6. The learned Counsel for Appellant Mr. Govindarajan submitted that the language of "Rule 3(b) was clear and if the land owners filed their objections beyond thirty days, they need not be considered. For this, he relied on the decision reported in I.L.R.1996 2 Mad 299 (Government of Tamilnadu v. Ramasamy Chettiar and Ors.) decided by the First Bench of this Hon'ble Court. That was also a case, where the objections were filed beyond the time prescribed. The conclusion of the Division Bench is as follows:

This conclusion in our view is not only unwarranted but directly contrary to the ratio of the Supreme Court decision, particularly the portion extracted by us supra from AIR 1984 S.C.I 721 (cited supra) as also the tenor of Rule 4(b) of the Rules, which itself stipulates, as a condition precedent for following the special method and procedure of hearing de hors the enquiry of hearing normally to be conducted to satisfy the requirements of principles of natural justice, the receipt of objections from the person interested within the time prescribed in Sub-section (1) of Section 5-A of the Act and not within the further time or opportunity given under the notice served personally for the enquiry. Therefore, we are of the view that in cases other than those wherein the objections received from the person interested were beyond the time stipulated in Section 5A(1) of the Act, conducting of an enquiry with an opportunity to the person interested alone to substantiate his objections would constitute sufficient compliance and the failure to follow the special procedure and method of enquiry visualised in Rule 4(b) of the Rules will not vitiate the Section 5A enquiry or the declaration which followed the enquiry.

The learned Judges also referred to Form "B" which is the Notice u/s 5(A) of the

Act.

Form B vide Rule 4(b) Notice u/s 5A of the Land Acquisition Act, 1894, (Central Act of 1894) u/s 5A of the Land Acquisition Act, 1894 (Central Act I of 1894), notice is hereby given that the land specified in the Schedule and situated in the village of...in the taluk of...in the district of...is needed or is likely to be needed for a public purpose or for a company, to wit, for ...you are accordingly required to lodge before the...within fifteen days from, the date of service of this notice a statement in writing of your objections, if any, to the acquisition of the said land.

Any objection/statement which is received after the due date or which does not clearly explain the nature of your interest in the land is liable to be summarily rejected.

Objections, If any, received within the due date will be enquired into on...at ...when you will be at liberty to appear in person or by a person authorised by you in this behalf or by pleader and to adduce any oral or documentary evidence in support of your objections.

The Schedule Survey No. Descr. Extent req. Rep. Owner.

(1) (2) (3) (4) , x -----.-X Thus notice u/s 5-A calling for objections clearly states that any objections received after the due date are liable to be rejected summarily.

8. Therefore, according to the learned Counsel for Appellant the writ Petitioners' objections received beyond thirty days from the date of the 4(1) Notification which is 2.9.89 were ignored, as per the statutory provision. The objections ought to have been filed on or before 2.10.89, whereas the objections have been filed on 20.10.89. No -doubt, after receipt of this objection, the officer had forwarded them to the Appellant for their remarks. The learned Counsel submitted that the Officer cannot be held to have waived his right to reject the objections, or to have condoned the delay merely because he had forwarded the objections.

9. According to the learned Counsel for 1st Respondents herein, even though they did not submit their objections within 30 days from the date of publication of Section 4(I) Notification, the Land Acquisition Officer should have complied with the provisions laid down in Rule 3(b). In as much as he has failed to do so, the entire proceedings are liable to be quashed. He would submit that the learned single Judge had rightly held that there was failure to comply with the provisions.

10. The Land Acquisition Act is expro-priatory when a person's lands are acquired all the safeguards built into the Act have to be followed. The land owner should have his opportunity to get his right decided in accordance with the provisions of the Act. He should be given a full and fair opportunity to challenge the proceedings, if they are not in accordance with law. But when the Act

provides for certain time limits, the authorities constituted under the Act are duty bound to see that these time limits are adhered to. When no power is given to them to extend time or condone any default, they cannot do so on the ground of fairplay or principles of natural justice. The learned single Judge, while rightly holding that he is bound by the decision of the Division Bench reported in ILR 1996 2 Mad 299 (Government of India v. Ramasamy Chetiar and Ors.) referred to earlier, which was also cited before him, however, held that the proceedings would have been valid if the Land Acquisition Officer had pointed out the delay and rejected the objections, proceeding to conduct enquiry. The action of Land Acquisition Officer in communicating the belated objection according to the learned single Judge would prevent the Appellant from taking advantage of the aforesaid decision.

11. According to the learned single Judge, since there was violation of the statutory provisions, which were mandatory, this Court ought to interfere and set things right in the instant case. On the contrary, the records show that in fact the authorities have strictly followed the mandatory provisions, that is why no enquiry was conducted after 20.10.89, which is the date on which the objections are sent by the writ Petitioners belatedly. The authorities have followed the Rules. The fact that the objections were forwarded by them to the Appellants is really immaterial. There is no warrant for holding that the authority have "waived the default" and there is no provision in the Act or the Rules for condoning the delay.

12. The learned Counsel for the 1st Respondents raised an objection that it was not open to the Chennai Metropolitan Development Authority to file an appeal, when the State had not done so. For this proposition, he relied on a judgment of our High Court, reported in Writ Appeal No. 1808 of 1999 dated 23.3.2000. In this case, the Division Bench confirmed the order of the learned single Judge, who had quashed the award on the ground that prior approval as per proviso to Section 11(I) of the Act had not been obtained. The appeal had been filed by the Requisitioning Body and the Division Bench held following the decision reported in U.P Awas Evam Vikas Parishad Vs. Gyan Devi (Dead) by L.Rs. and another, etc. etc., that the Writ Appeals filed by the requisitioning body were not maintainable, since it cannot be a person aggrieved, especially when no appeal had been filed by the State. But the decision of the Supreme Court was decided on totally different factual circumstances and it was with regard to the award proceedings. That case dealt with the rights of the local authority at whose cost the land was acquired and whether it had a right to appear in acquisition proceedings before the Collector and the reference courts and adduce evidence for determining the compensation. That decision and the decision of the Division Bench of this Hon"ble Court following it have no application to this case. In this case, the Appellant is the Requisitioning Body, C.M.D.A. The Section 4(I) Notification clearly states that the Acquisition was made for public purpose, which is widening the road by Madras Metropolitan Development Authority, Section 6 Declaration says that the compensation is to be paid out of funds of

Chennai Metropolitan Development Authority. The writ Petitioners also impleaded C.M.D.A. as the third Respondent in the writ proceedings. When it is the Requisitioning Body, who is interested in acquiring the land for the purpose of widening the road it is definitely aggrieved by any order which sets aside the acquisition proceedings and it can definitely file an appeal there against. Therefore, the appeals are maintainable by Chennai Metropolitan Development Authority, the third Respondent in the writ petitions.

13. The writ Petitioners not having strictly adhered to the provisions of Rule 3(b) by filing their objection in time cannot now attack the Land Acquisition Officer for not conducting the enquiry after forwarding their objection on the Requisitioning Body and obtaining their remarks thereon. The Land Acquisition Officer may have forwarded the belated objection on account of misplaced zeal, that does not mean that he has to conduct an enquiry upon the delayed receipt of the objection. As seen earlier, a time limit is prescribed for filing the objections and the notice which calls upon the land owners to file their objections also warns them that any delay in filing the objections will result in their objection being rejected summarily. In the decision reported in 2000 CTC (I) 530 (Velusamy and Anr. v. Govt, of Tamil Nadu and Ors.) the First Bench of this Hon"ble Court has held in a similar matter that Rule 3 would apply only to objections filed within 30 days from date of publication of 4(1) Notification, and that the objections filed beyond 30 days "cannot be" construed as objection filed in accordance with Section 5-A of the said Act. So the question of following the procedure as contemplated under Rule 3(b) of the Rules will not arise. We hold therefore that there is no violation of Rule 3(b) in this case and the entire proceedings have been conducted in accordance with law.

14. The order of the learned single Judge is therefore set aside and the writ appeals are allowed. No order as to costs. Consequently, connected CM. Ps are dismissed.