

(2009) 07 MAD CK 0329

In the Madras High Court

Case No : Writ Appeal No's. 789 and 1689 of 2005

The District Collector, The District Revenue Officer and The
Special Tahsildar, Competent Authority, National Highways Act

APPELLANT

Vs

Siddheswaran and The Union of India (UOI)
The Union
of India (UOI) Vs Siddheswaran, The District Collector, The
District Revenue Officer and The Special Tahsildar, Competent
Authority, National Highways Act

RESPONDENT

Date of Decision : 14-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

National Highways Act, 1956 — Section 2, 3, 3A, 3A(1), 3B

Citation : (2009) 07 MAD CK 0329

Hon'ble Judges : Prabha Sridevan, J;C.T. Selvam, J

Bench : Division Bench

Advocate : M. Dhandapani, Spl. Govt. Pleader in W.A. No. 789 of 2005 and R. Maheswari, S.C.G.S.C. in W.A. No. 1689 of 2005, for the Appellant; A.P. Srinivasa Babu, for Respondent-1 in W.A. No. 789 of 2005, R. Maheswari, S.C.G.S.C. for Respondent-2 in W.A. No. 789 of 2005, R. Vijay Narayan for R. Parthiban, for Respondent-1 in W.A. No. 1689 of 2005 and M. Dhandapani, Spl. Govt. Pleader for Respondents-2 to 4 in W.A. No. 1689 of 2005, for the Respondent

Judgement

Prabha Sridevan, J.—The first respondent herein filed the writ petition claiming that his possession of Door Nos. 63A and 64A at Puliampatti Village, Puliampatti Panchayat, Omalur Taluk, Salem District shall not be interfered with in the acquisition proceedings without complying with the provisions of the National Highways Act, 1956 (hereinafter referred to as the Act). Even at the stage of admission, the learned single Judge, taking note of the fact that the Counsel for the respondents submitted that the petitioner will be satisfied if the respondents determine the compensation, disposed of the writ petition directing the fourth respondent to conclude the acquisition proceedings and determine the compensation. Against this, the authorities of the State have filed W.A. No. 789 of 2005 and the Union of India has filed W.A. No. 1689 of 2005.

2. According to Mr. R. Vijay Narayan, learned senior Counsel appearing for the Union of India, viz. the appellant in W.A. No. 1689 of 2005, the first respondent was not entitled to any hearing, much less compensation. According to him, the Union of India ought to have been heard before the order was passed and even the cause title in the writ petition was wrong; the National Highways Authority of India is a statutory authority and cannot represent the Union of India. He also submitted that the first respondent is an encroacher on a cart track and his encroachment and occupation is illegal and unauthorised. He further stated that the requirements of the Act were duly complied with and publication has also been effected. According to him, in none of the notifications effected under the Act, the name of the first respondent was found, because the lands under the illegal occupation of the first respondent were Government poramboke lands and such lands should be transferred to the Central Government authorities before giving a land transfer proposal and since that was separately proceeded with, the name of the first respondent was not found in the notification. Learned senior Counsel referred to several decisions in which the Supreme Court had explained the nature of right of such encroachers or trespassers. He also submitted that the right of the owners of the lands is very limited under the Act.

3. Learned Special Government Pleader appearing for the State of Tamil Nadu, viz. the appellants in W.A. No. 789 of 2005 submitted that the Revenue records and other documents show that the first respondent was a rank trespasser with absolutely no right over the lands.

4. Learned Counsel appearing for the first respondent, however, submits that the first respondent had been in possession of the lands in question for over 54 years; he had been assessed to property tax and house tax; he also holds a ration card, and to now treat him as nothing more than a rank trespasser would not be equitable. Learned senior Counsel submitted that by this long possession, the first respondent had a perfected title and he was entitled to possession. He also submitted that before commencing the acquisition proceedings, the State ought to have initiated proceedings under the Land Encroachment Act, 1905. He further submitted that it would be relevant to note that the first respondent had filed a civil suit, which was only for a permanent injunction and was not a title suit and if he had had even a semblance of a title, he would have prayed for a declaration of his title. It was also submitted that the competent authority had also not been designated.

5. On 29.11.2002, a notification u/s 3A(1) of the Act was issued to the effect that the lands in question are required for the purpose of widening of National Highway No. 1 (Bangalore ? Salem ? Madurai). It called for objections from any person interested in the lands it shall be made to the competent authority. The notification indicated that the land plans and other details could be inspected by the interested person at the office of the competent authority. Subsequent to this, a notification u/s 3D(1) of the Act was published on 3.6.2003. In this notification also, the relevant owner is shown as the State Government of Tamil

Nadu. The Register extract shows that it is a "Vandi Padhai" (cart track). The Adangal extract also shows that it is a "Vandi Padhai" (cart track). The F.M.B. Sketch shows the property which is on the cart track.

6. The National Highways Act intends to provide for declaration of certain Highways to be National Highways and for matters connected therewith. Section 2 of the Act reads as follows:

2. Declaration of certain highways to be national highways. - (1) Each of the highways specified in the Schedule is hereby declared to be a national highway.

(2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.

(3) The Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway.

The Highway in question finds place at Serial Number 8. It starts from the junction near Benares ending with Cape Comerin. Section 3 of the Act deals with definitions and it shows that the Central Government may notify any person or authority to perform the function of a competent authority. Crucially, Section 3(b) defines land as follows:

(b) "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

Section 3A deals with the power of the authority to acquire any land. It is seen that under this section, the Central Government declares its intention to acquire a particular land and effects a notification in the Official Gazette which gives a brief description of the land and this notification should be published in two local newspapers, one of which will be in the vernacular. Section 3B gives the authority the power to enter for survey. Therefore, upon the issuance of the notification u/s 3A(1), any person authorised by the Central Government may enter the land, dig into the subsoil, mark levels, boundaries etc. Section 3C deals with objections of the persons interested in the land objecting to the use of the land for the purpose or purposes mentioned in that Section. Section 3D is the declaration of the acquisition and Section 3E deals with the power of the authority to take possession. Section 3G deals with determination of amounts payable as compensation and the said Section reads as follows:

3G. Determination of amount payable as compensation. - (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any

manner whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under Sub-section (1), for that land.

(3) Before proceeding to determine the amount under Sub-section (1) or Sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which shall be in a vernacular language, inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in Sub-section (2) of Section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under Sub-section (1) or Sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under Sub-section (1) or Sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of publication of the notification u/s 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

7. We have to see what the right of the first respondent is. The Act makes it clear that nothing in the Land Acquisition Act shall apply to an acquisition under this Act. Learned Counsel for the first respondent referred to 2003 (1) C.T.C. 235 [Sharda Devi v. State of Bihar], in which the Supreme Court had dealt with the scheme of the Land Acquisition Act, but since nothing in that Act shall apply to this Act, we will just refer to certain observations which may help us in deciding this matter. It says that the person interested would obviously be a person having a pre-existing title with reference to the date of the award. The Supreme Court referred to AIR 1942 35 (Privy Council) and observed as follows:

32. In AIR 1942 35 (Privy Council) it was held that where the Government acquires and property consisting of land and buildings and where the land was subject-matter of the Government grant, subject to the power of resumption by Government at any time on giving one month's notice, then the compensation was payable only in respect of such buildings as may have been authorized to be erected and not in respect of the land.

33. In In the matter of the Land Acquisition Act: Govt. of Bombay v. Esufali Salebhai 34 Bom 618 (at page 636), Batchelor, J held that the Government are not debarred from acquiring and paying for the only outstanding interests merely because the Act, which primarily contemplates all interests as held outside Government, directs that the entire compensation based upon the market value of the whole land must be distributed among the claimants. The Government was held liable to acquire and pay only for the super-structure as it was already the owner of the land.

In Ramaraju Vs. The State of Tamil Nadu and Others, , a Full Bench of our court sitting on the Madurai Bench dealt with the question of removal of encroachments and also the scope of application of various Acts in this regard. The Acts in question were Tamil Nadu District Municipalities Act, National Highways Act, Tamil Nadu Highways Act, Control of National Highways (Land and Traffic) Act, Tamil Nadu Land Encroachment Act, etc. Before the Full Bench, it was contended that many of the occupants were assessed to property tax and had been given water connection etc. as has been submitted by the learned Counsel for the first respondent in this case. The Full Bench held as follows:

31. If the occupation of a person is unauthorised, merely because such a person is asked to pay property tax or is given water connection or electricity supply, such unauthorised occupation does not become authorised. Payment of property tax or provisions for water connection or electricity can at best be construed as evidence of possession of a person, but such payment of property tax or provision of water connection or electricity does not legalise the occupation, if such occupation is otherwise unauthorised.

Finally, the Full Bench gave several directions, since the public was under the impression that blanket directions for removal of encroachments had been given by the Division Bench and we will extract only that direction which applies to the Act in the present case:

(5) To the extent the National Highways Act, 1956 and the Control of National Highways (Land and Traffic) Act, 2002 are applicable, action can be taken only by following the procedure prescribed under such statutes. Similarly the provisions of the Tamil Nadu Highways Act, 2001, are applicable to the Roads coming under the State Act.

8. In M/s. Anamallai Club Vs. Government of Tamil Nadu and others, , Government lands had been given on licence to Anamalai Club for sports and recreation purposes. The land was resumed after determination of the grant. The

question was, whether the resumption of possession unilaterally after determination of the grant was valid in law. The High Court held it was, whereas the Supreme Court held it was not. However, some observations of the Supreme Court are relevant for us:

5. ...The same view was reiterated by this Court in *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, thus:

A lessor, with the best of title, has no right to resume possession-extra-judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. The use of the expression "reentry" in the lease deed does not authorise extra-judicial possession and forcible dispossession is prohibited; a lessee cannot be dispossessed otherwise than in due course of law.

8. Law makes a distinction between persons in juridical possession and rank trespassers. Law respects possession even if there is no valid title to support it. Law does not permit any person to take law into his hands and to dispossess a person in actual possession without having recourse to a court. The object thereby is to encourage compliance of the Rule of law and to deprive the person who wanted a person in lawful possession removed from possession, accordingly to proper form and to prevent him from going with a high hand and eject such person. Undoubtedly, the true owner is entitled to retain possession even though he had obtained it by force or by other unlawful means but that would not be a ground to permit the owner to take law into his own hands and eject the person in juridical possession or settled possession without recourse to law.

10. ...There is no need for the State to file a suit for eviction. But notice in compliance of principles of natural justice should have been given giving reasonable time of 10 or 15 days to vacate the premises and to deliver vacant and peaceful possession; thereafter, the Government would be free to resume possession. Since possession was already taken, though we are not approving of the manner in which the same was taken we do not think that in this matter notice afresh needs to be given to the appellant. It may be open to the appellant to avail of any remedy available in law.

In *Competent Authority Vs. Barangore Jute Factory and Others*, , it was held as follows:

14. Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of the land of the writ petitioners in the present case in pursuance of the said notification was not in accordance with law, the question arises as to what relief can be granted to the petitioners. The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance, i.e. the construction of a national highway. The construction of national highway on the acquired land has already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. We cannot be

unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the land owners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the land owners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems Page 2064 involved in quashing the impugned notification, we are of the view that a better course will be to compensate the land owners, that is, writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action.

9. It has been held by the Supreme Court in various decisions that the right to property under Article 300A of the Constitution is a human right and a constitutional right, though not a fundamental right and that though the right to property is no longer a fundamental right, but still it is a constitutional right and so, the procedures laid down for deprivation thereof must be scrupulously complied with. In *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others*, , though in a different context, the Supreme Court impressed upon the authorities not to allow encroachments to persist for too long and to take steps to remove them by issuing reasonable notice. In 2000 (3) M.L.J. 845 [T. Ramasamy Poojari v. The Tahsildar, Thiruvidadaimarudur Taluk, Thiruvidadaimarudur], a learned single Judge of this Court has considered how to deal with encroachments in the following words:

4. The Supreme Court, in the case of *Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and others*, , has held as follows:

If the encroachment is of a recent origin the need to follow the procedure of principle of natural justice could be obviated in that no one has a right to encroach upon the public property and claim the procedure of opportunity of hearing which would be a tedious and time-consuming process leading to putting a premium for high-handed and unauthorised acts of encroachment and unlawful squatting. On the other hand, if the Corporation allows settlement of encroachers for a long time for reasons best known to them, and reasons are not far to seek, then necessarily a modicum of reasonable notice for removal, say two weeks or 10 days, and personal service on the encroachers or substituted service by fixing notice on the property is necessary. If the encroachment is not removed within the specified time, the competent authority would be at liberty to have it removed. That would meet the fairness of procedure and principle of giving opportunity to remove the encroachment by the encroachers. On their resistance, necessarily appropriate and reasonable force can be used to have the encroachment removed.

From the above principle, it is clear that the encroachment, if of a recent origin, there is no need for the authorities to issue a notice on the ground of principles

of natural justice. On the other hand, if the encroachment exists for some time, then the encroacher is entitled for a notice, that too, to put on caution that he is an encroacher and he has to remove the articles from the removed portion. Virtually, it means that he has to vacate the place. In case, if he does not do so, it is open to the authorities to evict the encroacher. This is what the authorities have done in this case. When the authorities have acted in accordance with the principles laid down by the Supreme Court, I do not find any illegality in the order.

....

5. It may also be pertinent to note that the petitioner being, admittedly, an encroacher in the land, he is not entitled to come before this Court seeking for the redressal under Article 226 of the Indian Constitution, since it has been held by the Division Bench of this Court in the case of Tiruchirapalli Palporul Virkum Thozhilalar Sangam Vs. The Commissioner, Corporation of Tiruchirapalli, , that the jurisdiction under this Article can be invoked only to protect the existing right and not to confer a new right. The encroacher having no existing right to occupy the place, this writ petition is mis-conceived.

10. Under the National Highways Act, "land" includes "benefits arising out of any land and things attached to the earth or permanently fastened to anything attached to the earth". Section 3A of the Act deals with the power of the competent authority to acquire any land; Section 3C deals with objections to the use of the land; Section 3D deals with the acquisition of the land; Section 3E deals with taking over possession of the land; Section 3F deals with the right to enter the land and Section 3G deals with the determination of amount payable as compensation for the land so acquired. The land in question undoubtedly is a cart track. Therefore, the first respondent is not entitled to claim any compensation as a land owner. His possession of the land is only as an encroacher. As observed in Ahmedabad Municipal Corporation's case (supra), whether the encroachment is of recent origin or it is there for a long duration, there is no difference in the consequence which is, that the encroacher has to vacate the place and in the event of resistance, appropriate and reasonable force can be used to have to the encroachment removed. Therefore, the first respondent does not have any right as an owner of a land. Even in Aanamalai Club's case (supra) where the genesis of possession was legal but the possession continued beyond the expiry of the license period, the Supreme Court said that force or unlawful means cannot be used to evict the occupant, but some time should be given to enable the occupant to give vacant and peaceful possession of the land. In fact, in that case, the possession had been taken in a manner which the Supreme Court did not approve of. But yet, the Supreme Court did not think that any notice afresh needed to be given, though it laid down the law that the owner cannot take law into his own hands and eject the person entitled to juridical possession without the course of the law.

11. The question is, whether the first respondent is entitled to any compensation. A portion of the building put up by the first respondent in the acquired land has

been demolished and there were also trees in the land when it was acquired for laying the National Highway. In the decisions referred to by the learned senior Counsel, especially in Sharda Devi's case (supra), the Supreme Court makes the difference between compensation payable in respect of the land and in respect of the buildings and holds that where the Government is the owner of the land, payment of compensation must be only for the superstructure. Therefore, we do not think that the order of the learned single Judge requires any interference, but we clarify it and explain it in the following terms:

The first respondent is not entitled to compensation for the land acquired, since he is not the owner thereof. But, he may be heard on the question of compensation that is payable in respect of the building put up by him on the said land, for which he has also been paying property tax for several years and the like. After so hearing him, it is open to the authorities to pass appropriate orders in accordance with law.

12. The writ appeals stand disposed of accordingly, but there shall be no order as to costs. Consequently, W.A.M.P. No1502 and 3120 of 2005 in the respective are closed.