
(1975) 09 MAD CK 0020
In the Madras High Court

The State of Madras

APPELLANT

Vs

R. K. Ramakrishnan and Another

RESPONDENT

Date of Decision : 15-09-1975

Acts Referred:

Land Acquisition Act, 1894 — Section 6(1)

Citation : (1976) 1 MLJ 410

Hon'ble Judges : V. Sethuraman, J

Bench : Division Bench

Judgement

V. Sethuraman, J.—The suit, which gives rise to this second appeal by the defendant, was filed by two plaintiffs for recovery of possession,

of the plaint schedule property from the State of Madras represented by the Collector of Madurai and for recovery of damages of Rs. 1,000 for

alleged wrongful demolition of the building that stood on that property.

2. One Dr. Venkatarama Iyer, who owned lands in R.S. Nos. 260 to 264, had an existing source of water supply from sluice No. 4 of Sakulam

fed by the Periyar system. He and his relative desired that they should get direct supply of water from the Periyar channel distributory No. 3. He

therefore moved the Public Works Department for the purpose of getting the change in the water supply. This involved the acquisition of certain

lands measuring about 6 cents in R.S. No. 286/2 lying in Sennagarampatti Village belonging to the plaintiffs. The Government issued the notification

u/s 4(1) of the Land Acquisition Act on the 6th of December, 1961. Section. 4(2) provides that whenever it appears to the Government that land

in any locality was needed or was likely to be needed for any public purpose, a notification to that effect should be published in the Official Gazette

and that the Collector should cause public notice of the substance of such notification to be given at convenient places in the said locality. Section

5-A(1) of that Act contemplates that 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 may, within thirty days after the issue of the notification, object to the acquisition of the land. The Collector

proposed an enquiry u/s 5-A by issuing the requisite notice, which was served on the plaintiffs on 1st June, 1962. The plaintiffs filed their

objections on 16th June, 1962 and appeared before him on 18th June, 1962. Thereafter as contemplated by Section 6(1) of the Act, a declaration

was made by the Government. As Section 6 is somewhat material for our present purpose it is necessary to extract it here:

6(1). Subject to the provisions of Part VII of this Act, when the Government is satisfied, after considering the report, if any made u/s 5-A, Sub-

section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature

of a Secretary to such Government or of some officer duly authorised to certify its orders.

Before the declaration was made on 6th of February 1963 the plaintiffs filed Writ Petition No. 617 of plaintiffs filed dismissed even at the stage of

admission. It is only thereafter that the enquiry u/s 5-A came to be made. The plaintiffs came forward with a suit in 1966. In the plaint it was

alleged that after filing of the objections on 18th June, 1962 there was no further information regarding the proposal of acquisition. It was further

alleged that the plaintiff's had put up a building in the suit site at considerable cost and that the authorities had demolished it. According; to the

plaintiffs, the land acquisition proceedings were taken to benefit a set of influential persons so that the acquisition proceedings were vitiated by mala

fides. It is on these facts that the plaintiff's prayed for recovery of the suit properties and also for damages for the demolition of the building.

3. The State of Madras, which was the defendant, denied that the acquisition proceedings were taken for a single individual. It pointed out that the

objections of the plaintiff's had been considered, investigated and a report submitted thereon to the Government for a declaration. The

Government overruled the objections and approved the declaration u/s 6. The Government referred to the payment of compensation and

submitted that the declaration made u/s 6(1) of the Land Acquisition Act was conclusive and final that it could not be scrutinised by the Court.

4. The learned District Munsif dismissed the suit holding that the acquisition had been done according to the provisions of law and that the plaintiffs

were not entitled to recover possession of the property or for damages for the alleged wrongful demolition of a part of the building.

5. The plaintiffs appealed and the learned Subordinate Judge found that the land acquisition proceedings in respect of the suit land were illegal and

were of no effect. For this purpose he relied on the new channel having been put up only to benefit certain private individuals. He further pointed

out that a declaration u/s 6 (1) would be vitiated by mala fides if it was passed by an authority without applying its mind at all, even though there

was no evidence of any personal ill-will, corrupt motive or other improper purpose. He pointed out that after the filing of the objections by the

plaintiffs no further enquiry had been made and no report had been submitted by the Tahsildar. Under these circumstances he held that the

Department had not observed the rules under the Act which had the binding force of law in relation to the enquiry u/s 5-A of the Act and as such,

the declaration made u/s 6(1) was a nullity.

6. The Government has appealed and on its behalf the first objection taken is that the suit was barred by limitation under Article 100 or Article 113

of the Limitation Act of 1963. Article 100 provides that in order to alter or set aside any act or order of an officer of Government in his official

capacity, a period of one year would be available from the date of the act or order of the office. In the present case, the notification u/s 6 came to

be issued on 8th February, 1963, and the period of one year would have lapsed by February, 1964. The objection of the Learned Counsel for the

respondents was that Article 100 had no application, because the present suit was not for setting aside the notification issued u/s 6, but was for the

purpose of recovery of possession. This objection has found acceptance in the hands of the learned District Munsif. This point was not agitated

before the learned Subordinate Judge. I find that the Learned Counsel for the respondents is right when he says that in the light of the frame of the

suit, there was no question of Article 100 applying to the present proceedings. Article 113 provides for a period of three years from the time when

the right to sue accrues. It is only after the award that possession was taken. The right to sue is one that accrued on dispossession. The suit is within three years of such dispossession.

7. The next contention urged by the Learned Counsel for the Government was that the lands had been, acquired for a public purpose and not for the benefit of any private individual, as held by the learned Subordinate Judge. In this connection he brought to my notice the decision of a Bench

of this Court in Belegal Gundachar and Anr. v. The State of Madras represented by the Collector of Bellary and Ors. (1953) 2 M.L.J. 262. It was

pointed out in that case that the power of a state to acquire property compulsorily was a power to acquire it only for a public purpose and that the

expression ""public purpose"" was not capable of a precise definition and had not a rigid meaning. An acquisition for carrying out an irrigation

scheme would be entirely for a public purpose, which was a State purpose: In the said case it was pointed out that though initially a channel for

which the land is acquired would serve only one part of land owned by a single individual, in course of time it would also serve the other lands as

well, so that it must be held that the acquisition was for a public purpose namely, extension of irrigation. It was ruled that the fact that initially only

one individual stood to benefit by the proposed channel would not make the acquisition any the less an acquisition for a public purpose. Having

regard to this Bench decision, it would follow that even assuming that Mr. Venkatarama Iyer was a single individual proposed to be benefited still it

would be a public purpose since aiding agriculture is a public purpose.

8. It is unnecessary, in this view, to go into the question whether the learned Subordinate Judge was right at all in proceeding as if the benefit was

intended only for Dr. Venkatarama Iyer. It was pointed out for the Government that the benefit was likely to enure to a number of individuals, so

that the learned Judge was not right in proceeding on the basis that he has done. There is substance in this submission.

9. The Learned Counsel for the respondents submitted that the whole of the proceedings u/s 5-A were vitiated because the procedure u/s 5-A(2)

had not been followed in this case. In The State of Madras represented by the The State of Madras and Others Vs. Periakkal and Others, , it has

been ruled that the provisions of Rule 3(b) of the Rules framed u/s 55(1) of the

Land Acquisition Act in relation to the enquiry u/s 5-A is not mandatory. In that case no notice had been given to the Department at whose instance the acquisition was initiated. The Court held that the failure to issue notice to the Department did not affect the validity of the enquiry. This decision relied on by the Learned Counsel for the Government does not however, affect the controversy before me. Section 5-A(1) contemplates further enquiry only if objection is received from the person interested in the land notified u/s 4(1) within, a period of 30 days after the issue of such notification. There is no dispute that in the present case this notification came to be issued on 6th December, 1961 and the objection came to be filed on 16th June, 1962. This objection, is wholly beyond the time provided u/s 5-A so that the mandatory character of section 5-A(2), if any, would not come up for consideration. In other words, only if there was an objection within the period specified in section 5-A(1) there would be scope for making the enquiry u/s 5-A(2). The Learned Counsel for the respondents, in this connection, brought to my notice Exhibits A-4 and A-5. Exhibit A-4 is a notice issued on 19th April, 1961. This was submitted to be the notice contemplated by Section 4(1) to the individuals and in pursuance of it he filed the objection in Exhibit A-5 on 29th April, 1961 which is within, the period of 30 days. The notice does not say under what provision it was issued. It was obviously with a view to make some further enquiry regarding the public purpose that the notice must have been issued. The suggestion for the respondent is that when once this objection is filed within the period of thirty days, then the provisions of Section 5-A(1) are satisfied. I think there is no substance in this submission. The provisions of Section 4(1) require only the issue or publication in the Official Gazette and also at convenient places in the locality. It does not contemplate any individual notice so that the notice under Exhibit A-4 cannot be taken as a notice u/s 4(1). The mandatory requirements of Section 5-A(2) would arise for consideration only in case there was a proper objection within the time contemplated by the Act. Therefore, there is no substance in the objection of the Learned Counsel for the respondents that the mandatory provisions of Section 5-A have not been complied with here.

10. The next point that was submitted was that Section 6 of the Land Acquisition

Act requires submission of a report to the Government and the consideration of that report by the Government. Unless such a report is received by the Government, the argument runs, the Government cannot make any declaration u/s 6. For this purpose my attention was drawn, to a decision, in *Sinnaiyan and Others Vs. The Union Territory of Pondicherry and Another*, . In that case it was pointed out that from Rule 3 of the Rules framed by the Government u/s 55(1) of the Land Acquisition Act, it was clear that the objector has got an opportunity to know, at the time of the enquiry u/s 5-A what answer, if any, the Department, for whom the acquisition was proposed, had given with regard to his objection. On coming to know at the time of the enquiry how the objections were sought to be met, the objector, it was held, got an opportunity to adduce evidence in support of his objections. In the case before the Court, the petitioner had no opportunity to know the answer given by the concerned department. The mandatory provisions contained in Rule 3 were, it was held, violated as the enquiry was not conducted in accordance with the provisions of the Act. This decision is inconsistent with the Bench decision of this Court reported in *Periakkal's case*¹, to which I have already referred. In that case it was held that there was nothing mandatory in Rule 3(h) which is the Rule applicable to Section 5-A proceedings. In view of this Bench decision, I am unable to hold that the provisions of Rule 3 require any mandatory procedure to be observed, the failure to do which would vitiate the proceedings under the Land Acquisition Act. But the provisions of Section 6(1) require the submission of and consideration of a report only in case there was one. As I have held, in the present proceedings the provisions of Section 5-A were not attracted because there were no objection filed within the period of thirty days, there was no need for any report u/s 5-A. There is no transgression of the provisions of Section 6 here. In the circumstances, the acquisition is proper and the learned District Munsif rightly dismissed the suit.

11. The appeal is, therefore, allowed. No order as to costs. No leave.