

(2000) 08 MAD CK 0059
In the Madras High Court
Case No : S.A. No. 818 of 1989

The State of Tamil Nadu and another	APPELLANT
Vs	
Rajamanickam	RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 48, 9
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1984 — Section 4(1), 5

Citation : (2000) 4 CTC 141

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : Mr. J.A. Selvakumar, for the Appellant; Mr. R. Muthukumarasamy, for the Respondent

Judgement

1. The above second appeal is directed against the judgment and decree dated 24.7.1987 made in A.S.No.10 of 1988 by the Court of

Subordinate Judge, Kumbakonam thereby confirming the judgment and decree dated 23.7.1987 made in O.S.No.368 of 1986 by the Court of

District Munsif Valangaiman.

2. Adverting to the facts and circumstances encircling the whole affair what comes to be known is that the respondent, herein filed a suit in

O.S.No.368 of 1986 on the file of Court of District Munsif, Valangaiman against appellants herein for a declaration that the acquisition

proceedings of the defendants in G.O.R.No.1018/Agriculture(AUI), dated 24.11,1984 and in G.O.Ms.No.449 Agriculture, dated 18.3.1986 in

respect of the suit property are illegal, void and unenforceable in law and for a consequential permanent injunction restraining the defendants from

proceeding with the said acquisition proceedings and for costs thereby

contending that he is the owner of the properties in

R.S.Nos.181/1,183/5,183/6,183/7 and 183/8 situate in Maruthuvakudi vattam, village, Thiruvidadamarudur Taluk of Thanjavur District; that first

appellant herein issued a Notification u/s 4(1) of the Land Acquisition Act (hereinafter referred to as the Act) in G.O.R.No.1018 Agriculture

(AUI) dated 24.11.1984 to acquire the said lands of the plaintiff along with other items for the purpose of formation of the National Agricultural

Rice Research Project by the Tamil Nadu Rice Research Institute, Aduthurai further appointing the second appellant herein as the Land

Acquisition Officer; that the defendants have committed inordinate delay in the matter of publication of the Notification u/s 4(1) of the Act; that the

said Notification not published in Tamil Nadu Government Gazette on 19.12.1984 but it was published in the daily newspapers "The Hindu" and

"Thinathanthi" on 16.7.1985 only, thus after an inordinate delay of eight months in the publication of the Notification which caused irreparable loss,

injury, and prejudice to the" plaintiff" that the notice u/s 5-A of the Act was issued on 5.9.1985 by the second defendant; that thereupon the

plaintiff filed his objections on 19.9.1985 objecting to the acquisition proceedings; that second the defendant conducted the enquiry on 9.10.1985

and forwarded a report on 4.11.1985 without proper appreciation and consideration of the merits of the contentions of the plaintiff that the reply of

the Director, Tamil Nadu, Agricultural University and the Tamil Nadu Rice Research Institute were forwarded by the second defendant along with

the communication only on 28.10.1985; that the first defendant issued a Declaration u/s 6 of the Act in G.O.Ms.No.449 Agriculture dated

18.3.1986 in the daily newspaper ""The Hindu"" dated 29.4.1986 and on such grounds the respondent would file the said suit praying for the relief

sought for as extracted supra.

3 On the contrary, the second appellant/defendant has filed a written statement before the trial court wherein besides generally denying all the

allegations of the plaint, he would further submit that the Notification u/s 4(1) of the Act was published in the locality on 25.7.1985 i.e.,

immediately after the publication of the said Notification in the daily newspapers on 16.7.1985; that the draft Declaration u/s 67 of the Act was

published within one year i.e. on 5.5.1986 from the last date of publication of the

section 4(1) Notification as contemplated by the Amended Act;

that the objections raised by the plaintiff/respondent at the time of section 5-A enquiry were duly considered and overruled on the ground that

there were no other suitable lands for the purpose since they constitute a compact block; that the objections of the plaintiff were duly considered in

each and every stage of the proceedings; that during Enquiry u/s 5A also, the plaintiff requested fair compensation for his enjoyment as tenants

over the property and he did not raise any objection against the acquisition; that there is absolutely no delay in observing the formalities; that there

is no cause of action for the suit and that the suit as framed is not maintainable and thus would pray to dismiss the suit.

4. Based on the above facts and circumstances as pleaded by parties, the trial court has framed the following issues:

1. Whether the Notification issued u/s 4(1) of the Land Acquisition Act in G.O.R.No.1018 Agriculture (AUI), dated 24.11.1984 is valid and

binding in law?

2. Whether proper enquiry was conducted u/s 5-A of the Land Acquisition Act?

3. Whether the Declaration issued u/s 6 of the Land Acquisition Act in G.O.Ms.449 Agriculture, dated 18.3.1986 is true, valid and binding?

4. Whether the plaintiff is ""entitled for Permanent Injunction? and

5. To what relief?

The Trial Court has also framed the following additional issue:

Whether the suit is maintainable?

Thereafter, the trial court had conducted trial of the case with due opportunity for both parties to be heard, wherein on behalf of the plaintiff, he got

himself examined as P.W.I and marked ten documents as Exs.A.I to A.10 and on behalf of the defendants, six witnesses were examined for oral

evidence as D.Ws.1 to 6 and 23 documents were marked as Exs.B.1 to B.23.

5. The Trial Court having appreciated the evidence thus placed on record in the context of the facts and circumstances of the case in its own way

held that the Notification issued u/s 4(1) and the Declaration issued u/s 6 of the Act are not valid in law and decreed the suit as per its judgment

dated 23.7.1987.

6. Aggrieved, the defendants in the suit had preferred an appeal in A.S.No.10 of

1988 before the Court of Subordinate Judge, Kumbakonam and

the said first appellate Court having framed the following single point for determination.

Whether the Civil Court has jurisdiction to entertain and try the suit"" and further relying on the decisions reported in (1) V. Gopalakrishna Vs. The

Secretary, Board of Revenue, Madras and Another, and (3) Shri Sanyojan Co-operative Housing Society Ltd. Vs. Surajben and Others, held that

the Civil Court has jurisdiction to try the suit. The First appellate Court further relying on Ex.A.10, which is the order of this Court dated

4.12.1986 made in W.P.No.4783 of 1986 filed by some of the owners of the lands aggrieved against the acquisition in question wherein both the

Notifications challenged in this case were quashed, dismissed the appeal thereby confirming the decree and judgment passed by the trial court. It is

only aggrieved against the said judgment and decree of the first appellate Court thereby confirming the Judgment and decree of the Trial Court, the

defendants before the trial court have now come forward to file the above Second Appeal on certain grounds as brought forth in the grounds of

appeal and this Court has admitted the above Second Appeal for determination of the following substantial Question of Law:

In view of the fact that the respondent has filed his objections and the same was considered, whether he is entitled to raise the question about the

delay in publication of the Notification u/s 4(1) of the Land Acquisition Act?

7. Prior to settling the only substantial question of law, as framed above at the admission stage, it is relevant to solve the legal question whether the

suit is maintainable as instituted by the respondent in Court of civil jurisdiction?

8. The subject is one concerned with the acquisition of the land by the Government of Tamil Nadu for public purpose. Of course, citing the

judgment of the Gujarat High Court delivered In Shri Sanyojan Co-operative Housing Society Ltd. Vs. Surajben and Others, , the trial Court has

observed that the Civil Court has got jurisdiction to try the suit. Regarding the said judgment the Full Bench of the Gujarat High Court while

resolving a controversy that arose between parties in the said case pertaining to Section 47-A, which has been inserted by the Land Acquisition

(Gujarat Unification and Amendment) Act, made the following remark:

... It is, therefore, obvious that despite what is stated in S. 47A(3), properly

constituted challenge to the entire land acquisition proceedings

initiating from S. 4(1) onwards and culminating into award under S. 11 read with S.12 of the Act, can be made the subject matter of a civil suit in

the civil Court and such a suit can be proceeded with on merits despite what is stated in S.47A(3). The said provision will only bar the jurisdiction

of the Civil Court to the extent of challenge to any action taken by the Collector, Magistrate or commissioner of Police wider sub sec(2) of S.47A.

It is this limited power of challenge which is taken out of the jurisdiction of the Civil Court.

Thus, while discussing the merits of Section 17-A, that has been inserted by a Gujarat Amendment Act, the Full Bench of the Gujarat High Court

has offered the above remark as a passing reference wherein it is not the Land Acquisition Act which is taken as the main issue and the question of

maintainability of a suit before the Civil Court pertaining to the subject of Land Acquisition has not been dealt with.

9. Likewise, the lower appellate Court, while deciding the point of jurisdiction of civil Court to entertain the suit, the subject of which is the land

acquisition, also has relied on judgment of this Court delivered in V. Gopalakrishna Vs. The Secretary, Board of Revenue, Madras and Another,

wherein the learned single Judge of this Court has remarked in Para No.10 that

I should add that a suit is the more appropriate remedy for considering questions of the kind raised by the petitioner and that on that ground also. I

should decline to interfere with the notification in proceedings by way of writ.

Even in this case, the learned Judge, while discussing a Notification of the Government of Madras issued u/s 6 of the Land Acquisition Act, in a

writ petition filed by an individual, has remarked in the above manner. But, the learned Judge has not taken the issue whether, regarding matters

relating to the provisions of the Land Acquisition Act, a suit could be maintained, taking up the same as main issue and holding it as a legal

proposition only as a passing reference, the above remark has been made and hence based on these two judgments, no conclusion could be

arrived at regarding the question of maintainability of a suit in the Civil Court on matters relating to the land acquisition proceedings.

10. On the contrary, during arguments, the learned Government Advocate appearing for the appellant citing a judgment delivered in L.Bashesar

Nath v. Provincial Government N.W.F.P. Through Collector, Peshawar, A.I.R.1943 Pes. 27 and a recent judgment of the Apex Court Delivered

IN S.P. Subramanya Shetty and others Vs. Karnataka State of Road Transport Corporation and others, , would point out that Civil Court has no

jurisdiction to entertain the suits pertaining to the land acquisition matters.

11. So far as the first judgment cited above is concerned, it has been held therein that

Section 5A absolutely debars a civil Court from questioning the propriety of a notification under S. 4. The objection has to go to the provincial

Government and the finding of that Government on his objections is conclusive. A declaration in the notification under S. 4 that the land has been

resumed by the Government of India and that the superstructure only was being acquired, does not mean that the land was resumed by the

notification, for resumption is absolutely foreign to the scheme of the Land Acquisition Act. Consequently, no suit lies to declare a notification

under S. 4 invalid merely because it relates to a fait accompli antecedent in time to the notification namely the resumption of the land by the

Government.

12. So far as the second judgment of the Apex Court, cited above, is concerned, it has been authoritatively held that

In view of the settled legal position that the notification had become final and the proceeding had attained finality, the Civil Suit was not

maintainable. This Court has repeatedly held that a Civil Court relating to acquisition proceedings is not maintainable and by implication,

cognizance u/s 9, CPC, is barred. The Court cannot issue mandatory injunction against the State to denotify the acquisition u/s 48. Therefore, the

question of granting an injunction against the authority from proceedings in accordance with the law does not arise. The High Court, therefore, was

right in refusing to grant injunction, the Court cannot compel the Government to withdraw the notification u/s 4(1) of the Act. It is for the

Government to consider the same on merits and it keeping in mind subservience of public interest.

13. In yet another case of the like nature, in State of Bihar Vs. Dhirendra Kumar and others, , the Apex Court has held that

...the case under S. 9 of C.P.C. stands excluded, and a civil Court has no

jurisdiction to go into question of validity or legality of notification under

S. 4, and declaration under S. 6, except by High Court in a proceeding under Article 226 of Constitution.

14. Since the Apex Court had held authoritatively in above cited two judgments ruling thereby that Civil Courts have no jurisdiction to entertain

suits relating to land acquisition proceedings, which could be justified only under Article 226 of Constitution of India before the High Court, no

mention need be necessary that said ruling is binding not only on High Courts, which have rendered the above cited decisions, such as the Full

Bench of Gujarat High Court and single Judge of this Court, but also on all civil Courts in the country from entertaining any doubt regarding this

proposition that civil the Courts have absolutely no jurisdiction to entertain any suit relating to land acquisition matters. Needless to mention that in

the case in hand, since subject is directly concerned with the land acquisition proceedings, the suit as entertained and tried in the civil Court i.e. in

the trial Court and in the first appellate Court below, have been without jurisdiction and said the judgments rendered by both the Courts below are

absolutely bereft of any legal force.

15. While the big question of maintainability of the suit by the civil Court itself has been decided against, in above manner, following the dictum of

the Apex Court, substantial question of law already framed relating to entitlement of respondent to raise question of delay in publication of

Notification u/s 4(1) of the Land Acquisition Act, need not at all be dealt with and hence to go into this question is unnecessary and unwarranted.

In result, above Second Appeal succeeds and the same is allowed.

Judgment and decree dated 24.7.1987 made in A.S.No.10 of 1988 by the Court of Subordinate Judge, Kumbakonam thereby confirming

judgment and decree dated 23.7.1987 made in O.S.No.368 of 1986 by Court of District Munsif, Valangaiman is hereby set aside.

The Suit in O.S.No.368 of 1986 on the file of the Court of District Munsif, Valangaiman stands dismissed.

However, in the circumstances of the case, there shall be no order as to costs.