
(1999) 08 MAD CK 0127
In the Madras High Court
Case No : S.A. No. 1278 of 1985

The State of Tamil Nadu

APPELLANT

Vs

M. Balakrishnan and 2 Others

RESPONDENT

Date of Decision : 27-08-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 9
Constitution of India, 1950 — Article 136, 226
Land Acquisition Act, 1894 — Section 4(1), 5A, 9(3)

Citation : (1999) 08 MAD CK 0127

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : Murugappan, for the Appellant; R.G. Narendran, for the Respondent

Final Decision : Allowed

Judgement

Mr. A. Ramamurthi, J.—The unsuccessful defendants are the appellants and they have filed the Second Appeal aggrieved against the judgment and decree of the District Judge, Coimbatore in A.S. No.220 of 1984 dt. 1.3.1985. The case in brief for the disposal of the appeal is as follows:-

The plaintiffs filed a suit for a declaration that the notification relating to the acquisition of a portion of the suit property is illegal and also for an order of permanent injunction. The suit properties are situate in Chikkadhasam Palayam Village. The plaintiffs have carved out as house sites in 1980 and also obtained necessary permission from the Town Planning Director as well as from Mettupalayam Municipality. Some few years back, the Government decided to acquire the same for the purpose of providing houses to Harijans. Subsequently, the claim was given up in 1979-80. They have spent a sum of Rs. 10,000/- for putting up house sites. No notification u/s 9(3) of the Land Acquisition Act was served on the plaintiffs and no enquiry was also conducted and hence the suit.

2. The defendants resisted the suit stating that the acquisition proceedings commenced as early as 27.12.1982. Notification was also published u/s 4(1) of

the Land Acquisition Act in the Gazette. Enquiry was also conducted in accordance with the provisions of the Act and communication was also given to the land owners and they have refused to receive the same. The award was passed by the Special Tahsildar on 29.3.1983 and the compensation amount payable to them was also deposited in Sub Court, Coimbatore. The acquisition proceedings relating to 9.43 acres was already known to the plaintiffs and the suit filed by the plaintiffs is not maintainable under law. They have also not issued any statutory notice u/s 80 of the CPC and on all these grounds, the suit is liable to be dismissed.

3. The Trial Court framed three issues and on behalf of the plaintiffs, the first plaintiff was examined as P.W.1 and Exs. A.1 to A.5 were marked. On the side of the defendants, the Special Tahsildar as well as the Village Administrative Officer were examined as D.Ws. 1 and 2 and Exs. D.1 to D.9 were marked. The trial Court dismissed the suit and aggrieved against this, the plaintiffs preferred A.S. No. 220 of 1984 on the file of the Sessions Court, Coimbatore and after hearing the parties, the appeal was allowed and the Judgment and Decree of the Court below was set aside and the suit was decreed without costs. Aggrieved against this only, the defendants have preferred the Second Appeal.

4. At the time of admission, the following substantial questions of law were raised;-

1. Whether the lower Appellate Court has erred in holding that the Civil Court has jurisdiction to examine the validity of the land acquisition proceedings sought to be assailed on the ground of failure to give notice u/s 9(3) of the Land Acquisition Act.

2. Whether the lower Appellate Court has committed an error of law in holding that the failure to give notice u/s 9(3) of the Land Acquisition Act will vitiate the entire proceedings.

5. Heard the submissions of the learned counsel for both sides. Learned counsel for the appellants/defendants contended that the suit filed by the plaintiffs is not maintainable under law and on that ground alone, the suit is liable to be dismissed. However, learned counsel for the respondents/plaintiffs contended that the notice u/s 9(3) of Land Acquisition Act has not been served on the land owners and hence they have got right to institute the suit.

6. The suit property measures about 9.43 acres is situate in Chikkadhasam Palayam Village. It is admitted that acquisition proceedings commenced as early as 27.12.1982 and notification u/s 4(1) of the Act was also published in the Gazette and enquiry u/s 5A of the Act was alone done. The main contention put forward by the learned counsel for the respondents is that Section 9(3) of the Act has not been complied with which reads as follows:-

Collector shall also serve the notice to the same effect on the occupier of the land and on all persons known or believed to be interested therein, or to be

entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf within the revenue district in which the land is situate.

7. Learned counsel for the appellants contended that notice has been sent, but the same has not been received and therefore, they were affixed. The first Appellate Court decreed the suit filed by the plaintiffs on the sole ground that Section 9(3) has not been complied with. However, learned counsel for the appellants/defendants mainly contended that the suit filed by the plaintiffs is not maintainable under law and the question whether Section 9(3) has been complied with or not cannot be agitated in Civil Court.

8. Learned counsel for the appellants relied upon a decision of this Court reported in Padmanabhan and Others Vs. The Union of India (UOI) and Another,) wherein it is observed as follows:-

The Supreme Court has observed in Laxmi Chand and others Vs. Gram Panchayat, Kararia and others, thus; "Sec. 9 of the CPC gives jurisdiction to the Civil Court to try all civil suits, unless barred... The scheme of the Act is complete in itself and thereby the Jurisdiction of the Civil Court to take cognizance of the cases arising under the Act (Land Acquisition Act) by necessary implication, stood barred. The only right aggrieved person has is to approach the plenary power under Articles 226 and 136 respectively with self-imposed restrictions on their exercise of extraordinary power, barring thereof, there is no power to the Civil Court.

In view of the categorical decision of this Court as well as the Apex Court, this Court holds that the suit filed by the plaintiff is not maintainable. This decision is exactly applicable to the case in all force.

9. It is therefore settled position of law that no suit is maintainable with reference to the proceedings to be adhered to under the Land Acquisition Act. The principle involved is that at every stage, if the plaintiffs have any objection or grievance it is always open to them to raise their objections before the Land Acquisition officer or the competent authority as provided under the Act. Even if there is any flaw or error in the proceedings initiated in the acquisition proceedings it is always open to the aggrieved persons to approach this Court exercising jurisdiction under Article 226 of Indian Constitution and thereafter appeal to Supreme Court. Hence there is no difficulty in coming to the conclusion that the suit filed by the plaintiffs is not maintainable and as such the judgment and decree of the lower Appellate Court are liable to be set aside. For the reasons mentioned above, the Second Appeal is allowed and the judgment and decree of the lower Appellate Court are set aside and the suit is dismissed and in the circumstances, there will be no order as to costs. The dismissal of the suit would not preclude the plaintiffs from approaching the appropriate authority including the Government from pursuing the remedy if any available in law.