
(2015) 12 MAD CK 0053
In the Madras High Court
Case No : W.P. No. 7870 of 2007

Thiru. B. Muniappa

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 08-12-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 3, 4, 6, 9

Citation : (2015) 12 MAD CK 0053

Hon'ble Judges : C.S. Karnan, J.

Bench : Single Bench

Advocate : R. Shivakumar, for the Appellant; M.S. Ramesh, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Karnan, J.—The petitioner has submitted that he owns piece of lands 0.32.0 (part), 0.73.0 (part), 0.45.5 (part), 0.24.0 (Part) 0.74.0 (part), 0.05.0 (part), 0.22.0 part), 0.04.0 (part) and 0.01.0 (part) in Survey Nos. 132/1B, 132/2, 133/2A, 140/2A, 140/2B, 141/1, 141/2A, 141/2B and 141/2C respectively in 105, Moranapalli Village Block IV Hosur (TK), Krishnagiri District. The revenue records including, chitta and other revenue records also stands in his name. He is a poor agriculturist and he depends upon this land alone for livelihood. At this juncture, to his shock and surprise, he received a notice under Form-E, issued by the District Collector, Krishnagiri, the first respondent herein, vide proceeding ROC.11201/98/B2, dated 12.10.2006 under Sub Section(2) of Section 4 of the Tamil Nadu Land Acquisition for Industrial Purpose Act, 1997 (hereinafter referred to as "The Act") directing him to surrender or deliver possession of the land in Survey Nos. 132/1B, 132/2, 133/2A, 140/2A, 140/2B, 141/1, 141/2A, 141/2B and 141/2C in 105, Moranapalli Village Block IV Hosur (TK), Krishnagiri District to the first respondent herein as it is required for industrial purpose. The petitioner also came to know through the above Form-E that notice under Sub Section (1) Section 3 of the Act was published by the Industries Department at

page 617 of Part-II Section 2 of the Tamil Nadu Government Gazette (Extraordinary) dated 7th September 2006.

2. The petitioner has further submitted that he did not receive any notice under Section (2) of Section 3 and Section 7 of Sub-Section (5) of the Act, which is a mandatory provision and he has not been put on notice about the acquisition of the land and he does not know for which purpose, the land is being acquired. The respondents herein have not followed the mandatory provisions of law for the acquisition of the land. He has not been given any opportunity to raise his objection to the acquisition, which is in clear violation of principles of natural justice and mandatory of law. Upon verification of Part-II Section 2 of the Tamil Nadu Government Gazette (Extraordinary) dated 7th September 2006, he also came to know that lands in Survey Nos. 132/1B, 132/2, 133/2A, 140/2A, 140/2B, 141/1, 141/2A, 141/2B and 141/2C respectively 0.32.0 (part), 0.73.0 (part), 0.45.5 (part), 0.24.0 (Part) 0.74.0 (part), 0.05.0 (part), 0.22.0 part), 0.04.0 (part) and 0.01.0 (part) hectares are also being acquired by the respondents. But till date, he has not received any notice under Section 3(2) or Section 4(2) in Form-E of the said Act, which are mandatory for acquisition under the above Act. The respondents have not served the mandatory notices to him under provision of the Act, therefore, the entire acquisition is illegal and arbitrary.

3. The petitioner has further submitted submits that he has not received any notice under Section 7(5) of the said Act calling upon him to appear in person before the Sub-Collector Office, which is mandatory for acquisition under the above Act. The respondents have not served the mandatory notices to him under provision of the Act, therefore, the entire acquisition is illegal and arbitrary. As the acquisition itself is illegal, if the respondents are allowed to continue, he would be put to irreparable loss and great hardship. Till date he is in possession of the property. He has also raised objection to the notice under Form-E through his letter dated 04.02.2007 raising various objections, but the same has not been disposed of so far.

4. The petitioner has further submitted that there are unused Government lands and poramboke lands unfit for the cultivation available adjacent to the land sought to be acquired which can be used for industrial purpose. The respondents are leaving the same and acquired the petitioner's land, which is arbitrary and colourable exercise of power. He is a poor agriculturist and therefore, the respondents cannot seek to acquire the same for industrial purpose for setting up of SIPCOT Industrial Complex, which is not in public interest. The power of Eminent Domain cannot be misused by the respondents and it would affect the right of the petitioner to hold the property guaranteed under the Constitution of India. Hence, the petitioner has filed the above writ petition.

5. The third respondent has filed a counter affidavit on his behalf and on behalf of other respondents. The third respondent has submitted that the land in Block IV and Survey Nos. 132/1B, 132/2, 133/2A, 140/2A, 140/2B, 141/1, 141/2A, 141/2B and 141/2C total extent of 0.32.0 (part), 0.73.0 (part), 0.45.5 (part),

0.24.0 (Part) 0.74.0 (part), 0.05.0 (part), 0.22.0 (part), 0.04.0 (part) and 01.01.0 (part) hectares respectively in 105, Moranapalli Village Block IV Hosur (TK), Krishnagiri District, had been acquired under the Land Acquisition Act, 1894. The 4(1) Notification was published on 06.09.2000 in the Government Gazette and Paper Publications on 25.08.2000 in Dina Malar and on 30.08.2000 in Tarasu and in the locality on 25.10.2000 of that Village Mornapalli. After the aforesaid notification, 5(a) enquiry was conducted on 13.12.2000 for Block IV in which, the petitioner had not appeared. But, he was served with the 5(A) Proceedings. However, he has not given any specific objection to the Land Acquisition Proceedings.

6. The third respondent has further submitted that after completion of 5(A) enquiry, Declaration under Section 6 was published in the Government Gazette on 22.08.2001 for Block IV. In the meantime, the Tamil Nadu Acquisition of Land for Industrial Purpose Act, 1997 Act 10/99 came into force with effect from 21.09.2001. Therefore, the acquisition proceedings originally initiated, under the Land Acquisition Act, 1894 (Act 1/1894) was continued to proceed with the New Act i.e., Tamil Nadu Acquisition of Land for Industrial Purpose Act 1997 for the purpose of expansion of Industrial Area, Phase II, SIPCOT, Hosur.

"Section 23 of Tamil Nadu Acquisition of Land for Industrial Purpose Act 1997 says about the application of the Act to certain pending cases of acquisition. As per the provisions of Section 23(1) of Tamil Nadu Acquisition of Land for Industrial Purpose Act, 1997 any case or cases in which proceedings have been started before the commencement of this Act for acquisition of any land for any public purpose or for company under the Land Acquisition Act, 1894 (Central Act 1 of 1894) intended for industrial purpose but no award has been made by the Collector under Section 11 of the said Act before such commencement as if

- (i) the notification published under sub-section (1) of section 4 of the said Act, or
- (ii) The declaration made under Section 6 of the said Act, or
- (iii) the notice given under sub section (I) of Section 9 of the said Act, were a notice to show-cause against the acquisition of the land served under Sub Section (2) of Section 3 of this Act.

23(2) Nothing contained in Sub-Section (I) shall apply in relation to any land unless and until after the Government has published a notice in the Tamil Nadu Government Gazette to the effect that the said land is required for the purpose of specified in Sub Section (I) of Section 3 of this Act.

Under Sub Section 2 of Section 23 of the Tamil Nadu Land Acquisition of Land for Industrial Purpose Act, form "H" notice was published in the Government Gazette for Block IV on 08.08.2003."

7. The third respondent has further submitted that as per Section 3(2) of the Industrial Purpose Act, Publication was effected and accordingly, the paper publication was effected for the Block IV in the Newspapers on 21.01.2005 and in

Locality on 22.01.2005. After publishing notice under Section 3(2) of the Industrial Purpose Act, 1997 individual enquiry was conducted at Taluk Office, Hosur on 24.02.2006 inviting objection from the landowner, for which, landowners have not chosen to give any objections. It is pertinent to note that as per Section 23 of the Tamil Nadu Acquisitions of Land for Industrial Purpose Act, 1997, there is no necessity to conduct an individual enquiry once again when already, the 5(a) enquiry has been completed in the earlier proceedings, however, in order to avoid the legal complications, this was done. Once again the opportunity has been given to the petitioner to enjoy the double benefit of enquiry. The petitioner with a bad intention to stall the acquisition proceedings has filed this writ petition. On this ground, the writ petition is liable to be dismissed.

8. The third respondent has further submitted that the Notification under 3(1) of the Industrial Purpose Act, 1997 (TN Act 10/99) was published in the Government Gazette on 07.01.2006. Subsequently, "E" form notice was issued to the petitioner on 12.10.2006 to surrender the possession of property of land within a period of 30 days from the date of receipt of this notice. Accordingly, the petitioner had also surrendered this property of land and in turn this respondent had also handed over the vacant position to the requisition body i.e., SIPCOT on 01.12.2006 in respect of Block IV. While that being so, the petitioner has no locus standi to file this writ petition. The contention of the petitioner is that the third respondent had issued a notice directing the petitioner to surrender the land while in the affidavit, he has also submitted that Form "E" Notice was not served upon him and he had enclosed in his typed-set. It is crystal clear that the petitioner has not come out with the clear facts of the case. Hence, the third respondent entreats the Court to dismiss the above writ petition.

9. The learned counsel appearing for the petitioner has submitted that the petitioner owns the subject land. He is a poor agriculturist and he is depending upon the cultivation from the said land for his livelihood. The second respondent had issued a notice under the land Acquisition for Industrial Purpose Act, 1997 and directed the petitioner to surrender the subject land. He had not received any prior notice under the said Act. Further, he is not aware that the subject land is being acquired for the said purpose. Without following the mandatory provisions and without giving any opportunity, the subject land had been acquired and publication had also been made in the Government Gazette. Particularly, the petitioner had not been served any notice under Section 3(2) or 4(2) in Form-E of the said Act, which are mandatory for acquisition under the said Act. As such, the acquisition proceedings are illegal and arbitrary. As of now, the petitioner is in possession and enjoyment of the subject land and hence he made several objections to the respondents, however all these representations have not been disposed of. Further, there are Government Poramboke lands adjacent to the subject land. The purpose for acquisition of the subject land is not of paramount importance when comparing to the cultivation of the subject land. Hence the learned counsel has prayed this Court to set aside the impugned

notification issued by the respondents in the Government Gazette with regard to the acquisition of the subject land.

10. The learned Additional Government Pleader appearing for the respondents has submitted that the third respondent had issued 4(1) notification during 2000 in the Government Gazette and local publication in the vernacular language. Subsequently, an enquiry was conducted under Section 5(a) of the Act. Thereafter, a publication was made in the Government Gazette under Section 6 of the Act. As such, the respondents had followed all legal formalities and acquired the subject land during 2001 itself. Thereafter also the respondents had invited objections from the landowner, for which the landowner had not chosen to give any objection. Further, the petitioner has filed this writ petition in order to stall the acquisition proceedings. After observing all the legal formalities, Form-U was issued to the petitioner on 12.10.2006 to surrender the possession of the acquired land. Accordingly, the petitioner had also surrendered the subject land to the respondents 1 and 2, who in turn handed over the same to SIPCOT on 01.12.2006. Therefore, the writ petition is not maintainable.

11. On considering the facts and circumstances of the case, arguments advanced by the learned counsel on either side and on perusing the typed set of papers, this Court is of the view that the third respondent has filed a counter affidavit on the basis of the records maintained by him, which reveals that the second respondent had issued Form-U to the petitioner on 12.10.2006 to surrender the possession of the land and the petitioner had also handed over the possession to the respondents 1 and 2, who in turn handed over the possession to the third respondent on 01.12.2006. In such circumstances, the writ petition is liable to be dismissed.

12. In the result, the writ petition fails and it is dismissed. No costs.