

(1983) 11 MAD CK 0011
In the Madras High Court

T.K. Sambana Rao and Another

APPELLANT

Vs

The Union Territory of Pondicherry and Others

RESPONDENT

Date of Decision : 28-11-1983

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1)

Citation : (1984) 2 MLJ 446

Hon'ble Judges : S. Mohan, J

Bench : Division Bench

Judgement

S. Mohan, J.—These three writ petitions challenge one and the same acquisition and therefore, they can be dealt with under a common

order. The facts are as under: On 3-5-1979 the Government of Pondicherry received a requisition from the Pondicherry Industrial Promotion

Development and Investment Corporation Limited, Pondicherry (hereinafter referred to as the Industrial Corporation) requesting certain lands to

be acquired for setting up a Trade Centre to exhibit and display quality products of small-scale industries. A preliminary investigation was made by

the Deputy Collector (Revenue) on 13-6-1979. He submitted a report to the Government on 2-3-1979. On 12-7-1979, the Government

requested the Collector to send his report. Thereupon, on 26-7-1979, the Deputy Collector (Revenue) called for certain particulars from the

Industrial Corporation. The Industrial Corporation furnished the particulars on 6-9-1979. On 17-10-1979, the Deputy Collector submitted his

report to the Government. On 26-10-1979, the Government constituted a Committee and asked it to tender its advice and the Committee

tendered its advice in favour of the acquisition of the land. Thereupon, the Government of Pondicherry by G.O. Ms. No. 154, dated 22-11-1979,

notified, u/s 4(l) of the Land Acquisition Act (hereinafter referred to as the Act), the proposal to acquire the land and the buildings forming the

subject-matter of the acquisition. That may be extracted here, because there is a purpose in the same.

G.O. Ms. No. 154, dated 22nd Nov. 1979.

Notification

Whereas it appears to the Government of Pondicherry that the land and buildings specified in the Schedule below are needed for a public purpose

to set up a Trade Centre to exhibit and display quality products of small-scale industries, notice to that effect is hereby given to all, whom it may

concern, in accordance with the provisions of Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) and the

Lieutenant-Governor, Pondicherry hereby authorises the Deputy Collector (Revenue), Pondicherry, his staff and workmen to exercise the powers

conferred by Sub-section (2) of Section 4 of the said Act. u/s 3(c) of the said Act, the Lieutenant-Governor, Pondicherry appoints the Deputy

Collector (Revenue), Pondicherry to perform the functions of a Collector u/s 5 of the said Act.

SCHEDULE

Name of the Taluk: Pondicherry

Taluk: Pondicherry.

Classification R.S. Name of Extent

No. the Present underacquisition

enjoyers/interested

persons.

(1) (2) (3) (4)

Habitation Door 1. Thiru

Nos. 17, Victor Swaminathan,

17A S/o. Rajan

2. Thiru

T.K. Sambanda

Rao. 9, Kalatheeswaran

Koil

Street,

Pondicherry.

3. M/s.Lakshmi

Agencies,

Pondicherry.

4. Mary

Prema Lalitha,

D/o.Late

Shri Victor

Swaminathan.

5. Francis

Jayakumar,

S/o. Late

Victor Swaminathan.

6. Elizabeth 185-60

Fathima Santhi, Sq.m

D/o.Late

Victor Swaminathan.

7. Louis

Angaline

Neetha

and

8. Marie Joseph

Pravin

Kumar, S/o. Late

Shri Victor

Swaminathan.

2. On 4-12-1979, this Notification was published in the Pondicherry Government Gazette. On 4-3-1980, notice of the enquiry u/s 5-A of the Act

was served on the owner of the properties as far as Writ Petition No. 737 of 1983 is concerned. The owner, when he appeared for the enquiry on 19-3-1980, testified to the fact that he was the owner of the properties sought to be acquired and further, he agreed to the acquisition. Thereupon, the Government proposed to acquire the properties under Part VII of the Act and entered into an agreement on 11-9-1980 with the Managing Director of the Industrial Corporation. Pursuant to this, the declaration u/s 6 of the Act was published in the Gazette and the notices u/s 9(3) and Section 10 of the Act were served on 4-5-1982 on the petitioner in Writ Petition No. 725 of 1983 who was a tenant of the property under acquisition. The petitioner in W.P. No. 725 of 1983, i.e., the tenant in the property sought to be acquired, would contend that there was no notice served on him of the acquisition. However, it is worthwhile to recall here that both the owner of the properties as well as Messrs. Lakshmi Agencies, a sub-tenant of the properties were served with the notices and they put forward their objections. On 27-5-1982, the award enquiry took place. On 21-12-1982, the award was passed and the notice u/s 12(2) of the Act was served on 3-1-1983. It is under these circumstances the tenants, who state that they are in actual possession of the properties, have come forward with these writ petitions.

3. As far as the main writ petition, viz., W.P. No. 725 of 1983, is concerned, it is the case of the writ petitioner that its tenancy could be determined and the petitioner could be ejected only by due process of law and not by a mere notice u/s 4(1) of the Act and resort to Section 16 of the Act. To-day, a copy of the affidavit is produced before me proposing to implead the Union of India as a party to the writ petition challenging the validity of Section 16 of the Act. I permitted the learned Counsel for the Writ Petitioner, notwithstanding the miscellaneous petition, filed for the purpose, having not been numbered, to put forth his arguments on his application to implead the Union of India. His argument is that Section 16 of the Act does not provide for any guidelines for taking possession and therefore, it is ultra vires and arbitrary.

4. Learned Counsel for the petitioners in Writ Petitions Nos. 737 and 738 of 1983, Mr. Habibullah Badsha, argues that in so far as his clients are tenants and hence persons interested in the property, it is incumbent upon the Government to serve the notice on them so that they could put forth

their objections in the enquiry u/s 5-A and all the more so when they are the statutory tenants and their statutory right cannot be taken away

without their having been heard in the matter. It is further urged that Section 5-A states that all persons interested can put forth their objections and

if the petitioners were persons interested within the meaning of Section 3(b) of the Act, they have a right to receive compensation u/s 23 and they

cannot but be heard. The further statement is that the Section 4(1) notification is vague, as it does not give any particulars as to the property

excepting to state the Door Number, without mentioning the other particulars of description. Lastly, it is submitted that in so far as the acquisition is

under Part VII, the necessary rules have not been properly followed and hence the acquisition is bad.

5. The learned Government Pleader (Pondicherry) submits that the writ petitioners herein are merely tenants and they are not the owners of the

property which is the subject-matter of acquisition. The very object of the acquisition is extinguishment of private ownership and converting into

public ownership by the use of the power of eminent domain. In these circumstances, there is absolutely no scope for a tenant who is merely a

person interested in relation to compensation, to come and put forth his objections to the acquisition. This will be, notwithstanding the use of the

words "persons interested" in Section 5-A of the Act. Even assuming that to be so, in so far as the writ petitioners in W.P. Nos. 737 and 738 of

1983 are concerned, the relevant notices have been served on them and there has been every compliance.

6. There is nothing arbitrary as far as Section 16 is concerned. The section says that after the award is passed, the Collector is at liberty to take

possession. There cannot be any procedure excepting to inform the parties concerned, as has been done in the case of Writ Petition No. 725 of

1983, where the notice u/s 9(3) intimating the , proposal to take possession of the property, has been duly served by the Tahsildar, Taluk Office,

Pondicherry, by his Memorandum No. 14296/82-A, dated 7-1-1983. Therefore, this argument is wholly untenable.

7. As regards the vagueness in the Section 4(l) notification, so long as the owner of the property knew of the acquisition, and he put forward his

objections in the Section 5-A enquiry and, likewise, the person in actual possession, namely Lakshmi Agencies, put forth its objections, this

contention will have to be discountenanced, because these writ petitioners in W.P. Nos. 737 and 738 of 1983, are merely persons entitled to compensation.

8. All the rules relating to acquisition, under Part VII of the Act, have been fully complied with and the correctness of the same, assuming

otherwise, cannot be gone into, and these writ petitions, filed at the instance of the tenants, have to fail.

9. There is one important fact which stares at the face, in these writ petitions. That is the fact that the petitioners are tenants. No doubt, u/s 3(b) of

the Act, they are merely persons interested. This means, they are persons interested in the compensation with reference to their right to possession

and enjoyment. The whole purpose and intent of the Land Acquisition Act is to put an end to private ownership and to convert it into public

ownership. That is well permissible by the use of the power of eminent domain. Where, therefore, the displacement of ownership or extinguishment

of private ownership and converting it into public ownership is the object of the Land Acquisition Act, I am unable to see how a tenant can come

and say that he has a right to object to the acquisition as such. For a moment, it is not to be confused that I disallow the plea of the tenants to claim

compensation. Of course, they can spouse their right, namely right to possession and enjoyment, which is one of the corporeal rights, in relation to

property, which is put and end to. To the limited extent, they can claim compensation. However, they have absolutely no right whatever in saying

that the property cannot be acquired My task has been rendered easy because, earlier I have dismissed a similar writ petition in W.P. No. 3802 of

1982, Sellappa Gounder and Others v. The Govt. of Tamil Nadu by its Secretary, R.D.L.A., Madras-9 and Ors. by order dated 9-7-1982,

referring to a still earlier ruling in W.P. Nos 5636 and 5700 of 1980-Venkatachalam v. The Secretary, Harijan Welfare Dept., Govt. of Tamil

Nadu, F.S.G., Madras-9 and Ors. The case cited also referred to an elaborate order of my learned brother Padmanabhan, J., in Writ Petition No.

665 of 1977. Therefore, these writ petitions are not maintainable, because the tenants have no locus standi to put forth objections to the

acquisition.

10. As far as the petitioners in Writ Petition Nos. 737 and 738 of 1983 are

concerned, it cannot be gainsaid that the owner had put forth his objections and he did not represent to the Collector that these petitioners were tenants in the property. On the contrary, he said that there was a sub-lease in favour of Lakshmi Agencies. Thereupon, notice was sent to Lakshmi Agencies which put forth its objections. Therefore, apart from the fact that the writ petitioners have no locus standi, there has been every compliance with the statutory provisions including the notice u/s 5-A.

11. The vagueness of Section 4(1) notification does not matter at all, because the owner knew that the property was what was proposed to be acquired, while he put forth his objections during the enquiry u/s 5-A and, likewise, Lakshmi Agencies also put forth its objections. The procedure under Part VII of the Act has been fully complied with. Even this question, as has been rightly contended by the learned Government Pleader, cannot be gone into at the instance of persons who did not have the locus standi to file the writ petitions. Therefore, Writ Petition Nos. 737 and 738 of 1983 carry no merit.

12. Turning to Writ Petition No. 725 of 1983, the argument put forth is that it is only under due process of law that the right of tenancy can be put an end to. In this case, it has to be carefully noted that the notices under Sections 9(3) and 10 of the Act were served on 4-5-1982. All that Section 16 to my mind, says is that the Collector is at liberty to take possession and upon such taking of possession, the property shall vest absolutely in the Government free from all encumbrances. Now, the question is, what is the procedure to be followed. The procedure is traceable to Section 9(3). It says that the Collector shall serve, on the occupier of the land proposed to be acquired and on all such persons having interest in the property, a notice to the effect that the Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him. I am unable to think as to what other procedure is required to be followed, excepting that the owner or the person in actual possession has to be intimated of the proposal to take possession of the land. That is exactly what is required to be done and has been done in this case. There is absolutely no arbitrariness in Section 16 of the Act. What guidelines can be thought of? When once a property has been acquired, the acquisition has crystallised by reason of the declaration u/s 6,

because Section 6(3) says that the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company. In Smt. Somavanti and Others Vs. The State of Punjab and Others, , their Lordships of the Supreme Court have categorically stated that if the declaration is so conclusive u/s 6(3), it is conclusive with reference to two factors, namely (i) a public purpose and (ii) the need. When that is as such settled, the owner is given a notice u/s 9 of the intention to take possession, which possession is taken after the award, except in case of emergency, which is not the case here. That procedure has been properly followed. As a matter of fact, the Tahsildar Taluk Office, Pondicherry, gave intimation of the proposal to take possession on 27-1-1983 at 10 A.M., by his Memorandum No. 14296/82-A, dated 7-1-1983. There is absolutely nothing arbitrary as far as Section 16 is concerned. If, as I have already pointed out, the petitioners have no locus standi to file the writ petitions, the question of considering the vires of Section 16 does not at all arise. On the question that the right of tenancy cannot be put an end to except by due process of law, the Land Acquisition Act is itself the due process of law under which, by the right of eminent domain, the ownership of the property which is the sum total of the property rights, is acquired. Therefore, this petition also carries no merit.

13. Accordingly, all these writ petitions are dismissed. However, I direct no orders as to costs.