

(1991) 01 MAD CK 0065
In the Madras High Court

T.K. Singaram

APPELLANT

Vs

The Urban Land Ceiling Tribunal and Others

RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 7

Citation : (1991) 2 MLJ 428

Hon'ble Judges : A.S. Anand, C.J

Bench : Division Bench

Judgement

A.S. Anand, C.J.—The judgment will dispose of Writ Appeal No. 591 of 1988 which is directed against the judgment of a learned single Judge in W.P. No. 2553 of 1981 decided on 21st March, 1988 and W.P. No. 6390 of 1987. Before dealing with the two cases, it would be desirable to notice the relief claimed by the appellant in W.A. No. 591 of 1988, in the W.P. No. 2553 of 1981 as well as the relief claimed. W.P. No. 2553 of 1981 is as follows:

For the reasons set out in the affidavit of the petitioner herein it is prayed that this Hon''ble Court may be pleased to call for all records connected with order D.Dis.23367/79, dated 22.3.1981 on the file of the first respondent and quash the same as illegal by issuance of a writ of certiorarified mandamus or any other appropriate writ or order and direct the respondents 1 and 2 to forbear from taking any further proceedings pursuant to the impugned order D.Dis.23367/79, dated 22.3.1981 sought to be quashed.

The relief claimed in W.P. No. 6390 of 1987 is as follows:

For the reasons set out in the affidavit of the petitioner, it is prayed that this Honourable Court may be pleased to call for the records relating to the notification issued u/s 7 of the Land Acquisition Act, published under the heading Housing and Urban Development Department, at page 4 in the Tamil Nadu Government Gazette, Part II Section 2 (Supplement) dated 11.6.1986 to acquire the petitioner''s land in T.S. No. 28/1, Block No. 30 Ayanavaram Village, Madras

and issue a writ at certiorarified or any other appropriate writ, order or direction quashing the same in so far as it affects the petitioner in the interests of justice and forbear the respondent from proceeding further under the Land Acquisition Act.

2. The controversy in both the cases revolves round land measuring 2 grounds, 2,164 sq.ft. which is equivalent to 2,654 sq.mt. in T.S. No. 28/1, in Ayanavaram village, Madras. Land Acquisition proceedings were commenced for acquisition of 2654 sq. metres of land. While the proceedings under the Land Acquisition Act were pending and were at the award enquiry stage. Tamil Nadu Urban Land Ceiling Act came into force on 3.8.1976. Notice was issued to the appellant u/s 9(4) of the Urban Land Ceiling Act on 11.11.1978. The appellant submitted his reply to the notice where after an order under the Urban Land Ceiling Act came to be made on 20th of April, 1979. The appellant questioned the order by an appeal, and the Urban Land Ceiling Tribunal dismissed the appeal on 22.3.1981. The order of the Urban Land Ceiling Tribunal was called in question in W.P. No. 2553 of 1981 which was dismissed by the learned single Judge.

3. So far as W.P. No. 6390 of 1987 is concerned, the case projected by the appellant as canvassed at the Bar is that after the coming into force of the Urban Land Ceiling Act as well as by the amendment, by introduction of Section 11-A by Act 68 of 1984, in the Land Acquisition Act, 1894 since the Collector had failed to make an award within a period of two years from the date of commencement of the Land Acquisition (Amendment) Act, 1894, in terms of Section 11-A, the proceedings under the Land Acquisition Act had lapsed.

4. From a perusal of the record we find that on the date when the proceedings under the Urban Land Ceiling Act were commenced, the land acquisition proceedings were already pending. According to the learned Counsel the proceedings under the Land Acquisition Act should have been taken to the logical completion as canvassed in W.P. No. 2553 of 1981, since better compensation would be available to the appellant under the Land Acquisition Act as compared to under the Urban Land Ceiling Act. Reliance has been placed by the learned Counsel in support of his submission to State of Tamil Nadu and Others Vs. Narendra Dairy Farms (P) Ltd. and Another, , wherein, while considering the initiation of acquisition proceedings under the Land Acquisition Act before the coming into force of Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 it has been held that the Government cannot drop the proceedings under the Land Acquisition Act and resort to acquisition under the ceiling proceedings under the Land Reforms Act because the compensation payable under the Land Acquisition Act is more beneficial so far as the person whose lands are sought to be acquired is concerned.

5. The Judgment reported in State of Tamil Nadu and Others Vs. Narendra Dairy Farms (P) Ltd. and Another, , on the first blush does support the case of the appellant in so far as W.A. No. 591 of 1988 is concerned. That judgment, however, in our opinion, cannot advance the case of the appellant. Section 43 of

the Tamil Nadu Urban Land Ceiling Act provides thus:

43. Act to override other laws : The provisions of this Act shall have effect notwithstanding anything inconsistent therewith in any other law for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority.

As would be seen from a plain reading of the section, the Urban Land Ceiling Act overrides the other laws for the time being in force or any custom, usage or agreement or decree or order of a court, tribunal or other authority. In view of Section 43 of the Urban Land Ceiling Act, the Urban Land Ceiling Act has to be given a full play and any proceedings which are pending on the date when the Urban Land Ceiling Act comes into force would have to cease in case the Urban Land Ceiling Act applies to those proceedings, to the extent of such application and declaration of the excess land. A provision similar to Section 43 of the Urban Land Ceiling Act is available in Section 4 of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961. The Division Bench in *State of Tamil Nadu and Others Vs. Narendra Dairy Farms (P) Ltd. and Another*, however, did not advert to the effect of Section 4 on the proceedings under the Land Acquisition Act. It appears that the provisions of Section 4 were not brought to the notice of the learned Division Bench for, had the same been brought to its notice, the overriding effect of Section 4 could not have been ignored and the judgment would then perhaps been different. We, therefore, do not find it possible to apply the ratio laid down in *State of Tamil Nadu and Others Vs. Narendra Dairy Farms (P) Ltd. and Another*, to the present case in view of Section 43 of the Urban Land Ceiling Act. The learned single Judge therefore, while deciding W.P. No. 2553 of 1981 rightly arrived at the conclusion that the pendency of the proceedings under the Land Acquisition Act could not in any way affect the proceedings taken under the Urban Land Ceiling Act. Thus, for the additional ground that we have referred to above based on the interpretation of Section 43 of the Urban Land Ceiling Act, we are of the view that the judgment of the learned single Judge in W.P. No. 2553 of 1981 calls for no interference and we hold that the action of the State in not pursuing the acquisition proceedings at any point of time in view of the provisions of the Urban Land Ceiling Act is not open to question nor could the authorities under the Urban Land Ceiling Act be denied of their powers to proceed against those covered under the Act. W.A. No. 591 of 1988 consequently must fail and is hereby dismissed.

6. So far as W.P. No. 6390 of 1987 is concerned, we have already reproduced in the earlier part of this judgment the relief prayed for by the petitioner in the writ petition. The notification u/s 4(1) of the Land Acquisition Act was issued on 14.9.1972 and the same was published on 11.10.1972. The declaration thereafter u/s 6 of the Act was made on 3.7.1975 after Section 5-A enquiry. It was published in the gazette on 23.7.1975. While the award enquiry was on, the Urban Land Ceiling Act came into force with effect from 3.8.1976. (Amendment) Act, 1984 came into force with effect from 24.9.1984. It has provided that in

case where the declaration had been published before the commencement of the Amendment Act, that is before 24.9.1984, the award shall be made within a period of two years from such commencement. The explanation to Section 11-A provides that in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court shall be excluded. In the instant case no order of stay was made by the Court staying action pursuant to the declaration u/s 6 of the Land Acquisition Act and, therefore, computing the period of two years from the commencement of the Land Acquisition (Amendment) Act, 1984 that is from 24.9.1984 the award was required to be made on or before 23.9.1986. Admittedly no award has been made till date. The effect of this inaction on the part of the respondents is that the entire proceedings for the acquisition of land shall lapse.

7. That apart, even u/s 43 of the Urban Land Ceiling Act, the land acquisition proceedings would cease with effect from the date of the of the land declared excess thereunder. Thus, on both these counts the land acquisition proceedings initiated for the acquisition of the land in T.S. No. 28/1 referred to above shall lapse. The writ petition, consequently has to be ordered in those terms and is so ordered.

8. There shall, however, be no order as to costs either in W.A. No. 591 of 1988 or in W.P. No. 6390 of 1987.