

(1991) 01 MAD CK 0035

In the Madras High Court

Case No : Writ Appeal No. 591 of 1988 and Writ Petition No. 1987

T.K. Singaram

APPELLANT

Vs

Urban Land Ceiling Tribunal Chepauk, Madras and others

RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 2, 5A, 6
Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 — Section 4
Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 — Section 43, 9(4)

Citation : AIR 1992 Mad 180 : (1992) 1 LW 561 : (1991) 2 MLJ 428

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

Bench : Division Bench

Advocate : D. Narayanan, for M/s. K.V. Prakash and K. Gopal, for the Appellant;
Govt. Pleader, for the Respondent

Judgement

1. The judgment will dispose of Writ Appeal No. 591 of 1988 which is directed against the judgment of a learned single Judge in Writ Petition No.

2553 of 1981 decided on 21st March, 1988 and Writ Petition No. 6390 of 1987. Before dealing with the two cases, it would be desirable to

notice the relief claimed by the appellant in Writ Appeal No. 591 of 1988, in the Writ Petition No. 2553 of 1981 as well as the relief claimed Writ

Petition No. 2553 of 1981 is as follows:

For the reasons set out in the affidavit of the petitioner hearing it is prayed that this Hon'ble Court may be pleased to call for all records connected

with order D.Dis. 23367/ 79 dated 22-3-81 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 22-3-81 sought to be quashed"".

The relief claimed in Writ Petition 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 of certiorari 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 II grounds 2164 sq. ft. which is equivalent to 2654 sq. metre 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

whereafter 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

Writ Petition No. 2553 of 1981 which was dismissed by the learned single Judge.

3. So far as Writ Petition 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 11A 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 Writ Petition 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 Land Acquisition Act before the coming into force 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 Writ Appeal 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 have 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

Acquisition Act. The learned single Judge therefore, while deciding writ petition 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 Writ Petition o. 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 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. Writ Appeal

No. 591 of 1988 consequently must fail and is hereby dismissed.

6. So far as Writ Petition No. 6390 of 1987 in 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 5A enquiry. It was published in the gazette on 23-7-

1975. While the award enquiry was on, the Urban Ceiling Act, came into force with effect from 3-8-1976. Section 11A was introduced in the

Land Acquisition Act, 1894 by Act 68 of 1984. That section provides that the Collector shall make an award u/s 11 within a period of two years

from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land

shall lapse. A proviso has been added to Section 11A to take care of those proceedings which were pending on the date the Land Acquisition

(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 11A 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 respondent 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 Urban

Land Acquisition Act came into force in respect 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 Writ Appeal No. 591 of 1988 or in Writ Petition No. 6390 of 1987.

9. Order accordingly.