

(1996) 11 MAD CK 0067
In the Madras High Court

U.R. Narayanasamy

APPELLANT

Vs

The District Collector and Another

RESPONDENT

Date of Decision : 29-11-1996

Acts Referred:

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4(1)

Citation : (1997) 1 MLJ 194

Hon'ble Judges : K.A. Swami, C.J

Bench : Division Bench

Judgement

K.A. Swami, C.J.—This appeal is preferred against the order dated 24.4.1995 passed by the learned single Judge dismissing the Writ Petition No. J 769 of 1996 and W.M.P. Nos. 2724 and 2725 of 1996. In. the writ petition, the petitioner sought for quashing the acquisition proceedings initiated and completed under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act XXXI of 1978 (hereinafter referred to as "the Act") The acquisition proceeding was initiated by publication of the notification u/s 4(1) of the Act on 20.5.1990. The acquisition also came to be finalised by passing the award on 20th March 1981, in award No. 5/81-A by the Special Tahsildhar, (HW) Coimbatore.

2. The learned single Judge has declined to exercise his jurisdiction on the ground that the petitioner is guilty of laches, as he come forward with the writ petition only in the year 1996, in respect of the acquisition proceedings, which had became final in the year 1991.

3. The contention put forth before us is that the petitioner could not have approached this Court earlier to the date he has, filed the writ petition in the year 1996 because the Act itself was struck down, as being ultra vires of the constitution, by a Division Bench of this Court in W.P. No. 757 of 1980 decided on 9.9.1981, inasmuch as the Act did not enjoy the protection of Article 31 or 31-A and that it was violative of Articles 14, 19 and 300-A of the Constitution. It is relevant to notice that in an appeal preferred against the aforesaid judgment in

Civil Appeal No. 3312 of 1981 dated 22.11.1994 reported in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , the Supreme Court has reversed the judgment of this Court and has held that the Act is intra vires the Constitution except the provisions contained in Section 11(1) and (2) after the words "in a lumpsum" occurring in Section 11(1). The relevant portion of the judgment as contained in Para.20 reads thus:

...The appeal is allowed Article The judgment and order under appeal is set aside. Except for the provisions of Section 1(1) of the said Act in so far as they provide for payment of the compensation amount in instalments, the said Act is intra vires the Constitution. Section 1(1) is valid only to this extent:

11. Payment of amount - (1) After the amount has been determined, the prescribed authority shall tender payment of the amount to the persons entitled thereto and shall pay it to them -

(1) in a lump sum

The rest of Section 11(1) is ultra vires the constitution.

4. In para 18 of the judgment, extracted below, the Supreme Court saved the acquisition which had taken place under the Land Acquisition Act in which the awards had been passed on or before the date of the aforesaid judgment of the Supreme Court.

...Section 20 of the said Act states that the provisions of the Land Acquisition Act, save as expressly provided in the said Act, shall cease to apply to any land which is required for the purpose specified in Section 4(1) and such land shall be acquired only in accordance with the provisions of the said Act. Consequently, Section 22 makes the provisions of the said Act applicable also to cases in which proceedings have been started before the commencement of the said act under the Land Acquisition Act for the purposes of Harijan Welfare Scheme, provided that no awards have been made under the Land Acquisition Act. We see no unreasonableness in this provision, particularly having regard to the terms of Section 20. We must, however taken into account the fact that the judgment under appeal striking down the said Act was delivered as far as back as September 1981, and no stay thereof was obtained from this Court. It is likely, therefore, that in cases where proceedings under the Land Acquisition Act had already been started to acquire lands for Harijan Welfare Schemes, they might have been revived and completed in the interregnum. We, therefore, make it clear that the provisions of Section 22 shall have no effect in such cases where awards have been made.

The position in the instant case is different. Here the acquisition proceedings were initiated under the Act and became final by the passing of the award on 20th March 1981, when the Act had not been struck down by this Court, The writ petitioner did not choose to challenge the acquisition proceeding within a reasonable time. The fact that several months after the passing of the award the

Act came to be struck down by this Court, cannot accrue to the benefit of the writ petitioner and he cannot take advantage of the same, as the said Act has been held as valid by the Supreme Court in the aforesaid decision on 22.11.1994 itself, where as the writ petition has been filed in the month of February, 1996, thus, the delay in approaching this Court, even after the judgment of the Supreme Court came to be delivered, should operate against the petitioner and this ground is sufficient to decline to exercise jurisdiction in favour of the petitioner. Apart from that, no content ion is urged on the merits.

5. When once the validity of the Act has been upheld by the Supreme Court and the proceedings in question were taken out and completed when the Act had not been struck down by this Court, the said proceedings held good as the same were not set aside at any time. Therefore, we see no reason too interfere with the acquisition proceedings, which had became final 15 years ago. Accordingly, the writ appeal is rejected in so far as it relates to the acquisition proceedings, subject to the following directions as to payment of the compensation amount;

6. As far as the compensation amount is concerned as per the terms of the award, it has been deposited under C.C.D. in favour of the 13 persons named in the award. The expenditure has, also been debited under "288 Social Welfare etc., Houses for Harijans" Now that the provisions of Section 11(1) and (2) subsequent to the words "in a lump sum" occurring in Section 11(1)(i) are struck down, it is open to the writ petitioner and others in whose favour the award is passed, to withdraw the amount as per the award, if there is no reference pending in the Civil Court on production of a copy of this judgment and a copy of the award. If any reference is pending, it is open to them to seek appropriate directions from the civil Court, in which the reference is pending, to withdraw the same. The order of the learned single Judge stands modified accordingly. No costs.