
(1956) 02 MAD CK 0028
In the Madras High Court

V. Chockalinga Mudaliar

APPELLANT

Vs

State of Madras and Another

RESPONDENT

Date of Decision : 02-02-1956

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1956) ILR (Mad) 860 : (1956) 69 LW 380 : (1956) 2 MLJ 31

Hon'ble Judges : Govinda Menon, J

Bench : Division Bench

Judgement

Govinda Menon, J.—Krishnaswami Nayudu, J., before whom the learned Government Pleader on behalf of the State questioned the

correctness of the decision in P.S.B. Bommanna Chettiar and Another Vs. The Province of Madras and Another, , has referred these Second

Appeals to the Bench, as in his opinion there seem to be scope for argument, and that is how these appeals have come before us.

2. Though it is unnecessary to state in any detail, the facts, which are undisputed, for a proper appreciation of the points of law, arising, it is just

necessary to refer to them in a cursory way. Four small plots in Salem Town were acquired under the Land Acquisition Act, in the process of

laying out certain roads in pursuance of the improvement of the town under the provisions of the Town Planning Act. For that purpose the

notification informing the parties that these plots are to be acquired was made on 6th September, 1932, and an award fixing the price of the lands

was made on 26th August, 1935. Not being content with the value fixed by the Collector, the owners of the land requested for reference to the

Court u/s 18 of the Land Acquisition Act, which was made on 16th October, 1935. We do not think that any detailed reference to the subsequent

proceedings regarding the fixation of value by Court, and the appeal therefrom is of any use for the point involved here.

3. On 18th December, 1936, the Municipality took possession of all the four plots and the learned Government Pleader informs us that parts of

them have been converted into a public road, named after a previous Chairman of the Municipality. Subsequently the owners of two of the plots

filed a suit contesting the legality of the acquisition, and the taking over of possession by the Government. In those suits they were successful.

Animated by a desire that such success would ensure for the present appellants also, they filed O.S. No. 487 of 1948 on 24th June, 1948, and

O.S. No. 759 of 1948 on 4th December, 1948, for the recovery of possession of the plots taken away from them, on the ground that there has

been no acquisition within 3 years of the notification, and such being the case, the award given was void, with the result that the plaintiffs were

entitled to get vacant possession of the land. The learned District Judge in agreement with the trial Court held that since the award has not been set

aside, within the time allowed, by law proviso to Section 34 of the Town Planning Act cannot come into play, and therefore, the suits were

dismissed. Hence these Second Appeals.

4. The decision of Somayya, J., in P.S.B. Bommanna Chettiar and Another Vs. The Province of Madras and Another, , if correct, is an answer to

the contention raised by the learned Government Pleader who has not been able to convince us that it is necessary to set aside the award. Since

we are of opinion that if proviso to Section 34 applies the award becomes void and need not be set aside, the only question that need be

considered is, whether the proviso to Section 34 of the Town Planning Act allows the plaintiffs to recover possession of the land. Before we deal

with that decision we shall refer to the scheme and scope of the two Acts, with which we are concerned and which for the purpose of the present

litigation are inter-connected.

5. Firstly reference may be made to the Land Acquisition Act. The scheme of it need not be elaborately considered. Section 4 refers to the

publication of the preliminary notification, and the power of the officers thereupon. There is no dispute in the present case, that the provisions of

Section 4 have been complied with. The next section to be considered is Section

6, which deals with the declaration that the land is required for a public purpose, and Section 11 lays down that when such declaration and notification have been made as contemplated by Section 6 the Collector shall fix a day on which he shall enquire into the objections, if any, which any person interested has stated pursuant to the notification, and he shall then make an award regarding the true area of the land, the compensation which in his opinion should be allowed to the land, etc.

6. Section 12 lays down that such award shall be filed in the Collector's Office and shall be final and conclusive, except as stated in the latter parts of the Act, between the Collector and the persons interested whether they have appeared before the Collector or not; and what is final and conclusive is with respect to the true area and value of the land, and an apportionment of the compensation among the persons interested. The next section which is to be considered is Section 16, which deals with taking possession, and it lays down that when the Collector has made an award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances. In this case we are not concerned with Section 17 which deals with the Collector's power to take possession of the land in case of emergency, even before making an award.

7. The next section to be considered is Section 48, Clause (1) which is to the effect that except in the case provided for by Section 36, which is inapplicable here, the Government shall be at liberty to withdraw from the acquisition of land, of which possession has not been taken, and the result of such a withdrawal is mentioned in Section 48, Sub-section (2). When the Government withdraws from such acquisition, the Collector shall determine the amount of compensation for damage suffered by the owner in consequence, and the Government shall pay such amount with interest and costs to the person.

8. Now we shall consider the provisions of the Town Planning Act, where the provisions of the Land Acquisition Act have been made applicable.

Section 14 of the Town Planning Act speaks of the sanctioning of the scheme by the Government, with regard to the Town Planning and Sub-

section (3) of Section 14 is to the effect, that the State Government may after considering the objections and suggestions if any, and after making

such enquiry as it thinks fit, sanction the scheme with or without modification, or may refuse to sanction the scheme, etc. Sub-clause (5) of the

same section is to the effect, that the sanction of the State Government to a scheme under Sub-section (3) shall be published by a notification in the

Official Gazette, and such notification will state at what place and time the scheme will be placed for inspection to the public, etc., and Sub-section

(6) says that a notification published under Sub-section (5) shall be conclusive evidence that the scheme has been duly made and sanctioned. The

scheme shall have effect from the date of publication of such notification, and the scheme shall be commenced forthwith. This shows how a scheme

has to be initiated and sanctioned.

9. Chapter VII deals with Land Acquisition and it contains two sections, which are important so far as this case is concerned, and they are

Sections 33 and 34.

Section 33. - Immovable property required for the purposes of a town-planning scheme shall be deemed to be land needed for a public purpose,

within the meaning of the Land Acquisition Act, 1894 and may be acquired (a) under the said Act or (b) under the said Act as modified in the

manner hereinafter provided in this chapter.

Section 34. - In cases falling under Clause (b) of Section 33 a notification u/s 14 shall, notwithstanding anything contained in the Land Acquisition

Act, 1894, operate in respect of any land for the purposes of the scheme as a declaration u/s 6 of the said Act and no further declaration shall be

necessary, but it shall not be incumbent on the State Government, or officer authorized in that behalf, to take immediate steps for the acquisition of

such land. Provided that if the land is not acquired within three years from the date of the notification, it shall cease to have effect as a declaration

u/s 6 of the Land Acquisition Act, 1894.

10. We may also refer to Section 35(2), where the expression used is "land acquired". The argument on behalf of the learned Government Pleader

is, that the word "acquired" in the proviso to Section 34 refers to a point of time when the title in the land vests in the Government, and that is as a

result of the making of the award u/s 11, and since no suit has been filed within three years of that award, the suit is barred. In our opinion, the

word "acquired" in the proviso contemplates the entire process, beginning from

enquiry and notification and ending up with the taking up of possession. The dictionary meaning of the word "acquired" is the "action of gaining possession", etc., and it has been the subject of consideration with respect to the meaning of the term in Article 31 of the Constitution, in the decision in *The State of West Bengal Vs. Subodh Gopal Bose and Others*, at pp. 98 and 99 (S.C.). There His Lordship the Chief Justice says that the word "acquisition" is not a term of art, and it obviously means "coming into possession of", "gaining or getting as one's owner". That being the dictionary meaning of the term, the question that has to be considered is, whether taking possession as argued by Mr. Ramaswami Ayyangar for the appellants is the acquisition or whether the making of the award is the acquisition as is urged by the learned Government Pleader. We have no doubt whatever that the word "acquired" in the proviso should be understood as referring to the entire process beginning with the enquiry and notification and culminating with the taking of possession. The making of the award is only partial acquisition and the acquisition is complete only when possession is taken. Otherwise in Section 48 of the Land Acquisition Act the Legislature would not have used the expression "shall withdraw from the acquisition of any land of which possession has not been taken". They make a distinction between taking possession and acquisition. Taking possession is one of the incidents necessary for acquisition, just like making an award is another incident necessary for acquisition. Our attention has been drawn to Section 9 of the Town and Country Planning Act, 1947, in English Statutes, but we do not think that any useful information can be got from a comparison of that Act.

11. Mr. Ramaswami Ayyangar, for the appellants, has invited our attention to the decision in *Mantharavadi Venkayya v. The Secretary of State for India in Council* (1903) 14 M.L.J. 173 : ILR Mad. 535, where a question regarding the meaning of the term in Article 18 of the Land Acquisition Act was the subject of discussion. We do not think that any useful guidance can be got from that judgment also. It seems to us that, as we have stated already, mere giving of the award is not acquisition; nor is taking possession alone acquisition and if the interpretation which we have put upon the term "acquisition" as contemplating the entire process from the enquiry right up to taking possession is the correct one, the suit is not

barred. We are of opinion that the decision of Somayya, J., in P.S.B. Bommanna Chettiar and Another Vs. The Province of Madras and Another,

, is correct on the facts of the case, though we do not go to the extent of holding, that taking possession alone is acquisition.

12. It has been represented to us by the learned Government Pleader that the land had been converted into a road for a long time, and that the

result of our decision would be very much to prejudice the inhabitants of the locality. If that is so, there is no reason why the Government, if so

advised should not make a further notification and take possession of the land.

13. The second appeals are allowed, and the plaintiffs are given decrees for possession. We agree with the lower Court, that no damages are

allowable to the plaintiffs. There will be no order as to costs throughout. The decree for possession will be conditional upon the plaintiffs

redepositing the amount withdrawn as a result of the award.