
(2011) 01 MAD CK 0418

In the Madras High Court

Case No : Writ Petition (MD) No. 7575 of 2005 and W.P.M.P. (MD) No. 8216 of 2005

V. Rajendran

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 06-01-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 11A, 16, 4, 4(1), 48

Citation : (2011) 6 RCR(Civil) 1896

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : A. Haja Mohideen, for the Appellant; D. Sasikumar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—The Petitioner has filed this writ petition seeking a Writ of Certiorari calling for the records relating to the notification u/s 4 (1) of the Land Acquisition Act issued under G.O.(3D) No. 36, dated 01.06.1995 by the second Respondent published in the Gazette on 28.06.1995 and the declaration u/s 6 of the Act issued under G.O.(3D) No. 54 dated 04.07.1996 by the first Respondent published in the Gazette on 05.07.1996 and quash all the proceedings.

2. It is the contention of the learned Counsel for the Petitioner that the Petitioner is the owner of the land measuring an extent of 5 cents in Survey No. 283/3A2 at Kattuparamakudi Village, Paramakudi Village, Paramakudi Taluk, Ramnad District. The Petitioner has purchased the land by means of a sale deed dated 06.01.1993 for a valid sale consideration from one Haj Mohamed, s/o.A. Kasim Rawther of Paramakudi Town.

3. The learned Counsel for the Petitioner urges before this Court that the notification as per Section 4(1) of the Land Acquisition Act, 1894, has been issued under G.O.(3D) No. 36 dated 01.06.1995 and the same has been

published in the newspaper on 01.07.1995 and the said notification has been published in the Gazette on 28.06.1995.

4. According to the learned Counsel for the Petitioner, the declaration as per Section 6 of the Land Acquisition Act, 1894, has been made as per G.O(3D) No. 54 dated 04.07.1996 and the same has been published in the Gazette on 05.07.1996.

5. The contention of the learned Counsel for the Petitioner is that as per Section 6(2) of the Land Acquisition Act, 1894, the declaration that the land is required for a public purpose must be published after the commencement of the Land Acquisition Act, 1894, after expiry of one year from the date of publication of notification u/s 4(1) of the Land Acquisition Act, 1894 and in the present case on hand, Section 6 declaration as per the Land Acquisition Act, 1894, has been published on 05.07.1996 in the Gazette which is more than one year and 8 days from the date of publication of Section 4(1) notification in the Gazette on 28.06.1995 and therefore, all further proceedings are illegal and unconstitutional.

6. It is to be noted that the aim of a notification as per Section 4 of the Land Acquisition Act, 1894, is to give a public notice that it is proposed to acquire the land stated in the notification and any individual who deals in respect of that land subsequent to the notification will do so at his own risk as per the decision of the Honourable Supreme Court in *Pt. Lila Ram Vs. The Union of India and Others*, . A notification as per Section 4 of the Land Acquisition Act, 1894, fulfills two objectives; (i) It is a public announcement by the concerned Government and further a public notice by the Collector in respect of the land being needed or likely to be needed by the Government for a public purpose. (ii) It authorises the Officers of a local authority or the departmental Officers or a company to survey and do further acts by entering into the land. A notification as per Section 4 of the Land Acquisition Act, 1894, cannot be invalidated for non-compliance of Section 6 of the Land Acquisition Act, 1894, as per the decision of the Honourable Supreme Court in *State of Haryana and Another Vs. Raghubir Dayal*, .

7. As a matter of fact, a valid notification as per Section 4(1) of the Land Acquisition Act, 1894, is a condition precedent to the making of a declaration as per Section 6(1) of the Act as per the decision of the Honourable Supreme Court in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, .

8. It is not out of place for this Court to make a significant mention that the publication of the notification in the Official Gazette as per Section 4 of the Land Acquisition Act, 1894, is a mandatory requirement for initiating acquisition proceedings. Without such publication falling back upon the other modes of publication will have little effect, in the considered opinion of this Court.

9. Indeed, as per Sections 4 and 6 of the Land Acquisition Act, 1894, the notifications in substance ought to convey some public purpose. The change/difference in terminology is not a relevant factor. The public purpose mentioned in Sections 4 and 6 of the Land Acquisition Act, 1894, need not be identical. It

will suffice if they are analogous as per the decision in *Shyam Swarup Saksena Vs. State of Uttar Pradesh and Others*, .

10. A cancellation of notification as per Section 6 of the Land Acquisition Act, 1894, realising that it is defective does not amount to withdrawal of the Government from acquisition proceedings as contemplated as per Section 48 of the Land Acquisition Act, 1894. It means only that the Government has not effectively exercised its powers as per Section 6 of the Land Acquisition Act, 1894. By means of effective fresh exercise of power, the Government can issue a new notification as per Section 6 of the Land Acquisition Act, 1894 and the law does not require its support by fresh notification as per Section 4 of the Land Acquisition Act, 1894.

11. Also, withdrawal of notification as per Section 6 of the Land Acquisition Act, 1894, when found by the Government itself or by the Court to be invalid, ineffective or erroneous one, does not render the earlier notification as per Section 4 of the Land Acquisition Act, 1894, inoperative and infructuous. However, when a valid notification as per Section 6 of the Land Acquisition Act, 1894, is withdrawn, a notification as per Section 4 of the Land Acquisition Act, 1894, will get exhausted as per the decision of the Honourable Supreme Court in *Raghnath and Others Vs. State of Maharashtra and Others*, .

12. Moreover, the act of the Government in issuing a notification as per Section 6 of the Land Acquisition Act, 1894, is administrative and not a quasi-judicial act. The inquiry as per Section 6-A of the Act is a step in the process leading up to the exercise of such administrative function will ordinarily in the absence of other material factors be an administrative inquiry, in the considered opinion of this Court.

13. To put it precisely, a notification as per Section 6 of the Land Acquisition Act, 1894, will not vest the land in Government. A right of a party to deal with the property is affected. The vesting stage is not reached till the Collector as per Section 16 of the Land Acquisition Act, 1894, derives the power to take the possession of the land acquired which thereupon vests absolutely in the Government as per the decision in *Dau Dayal and Others Vs. State of Uttar Pradesh and Others*, .

14. It is to be remembered that as per Section 6 of the Land Acquisition Act, 1894, the Government is to make a declaration after its own subjective satisfaction in regard to the need for acquiring the land and of the public purpose for which it is acquired, as per the decision in *Patel Gandhal Somnath v. State of Gujarat* reported in AIR 1963 Guj 50.

15. At this stage, this Court worth recalls the decision of the Honourable Supreme Court in *Smt. Somavanti and Others Vs. The State of Punjab and Others*, , wherein it is held as follows:

The declaration u/s 6 that a particular land is needed for a public purpose or for a

company is not to be made by the Government arbitrarily, but on the basis of materials placed before it by the Collector. The provisions of sub-section (2) of Section 5A make the decision of the Government on the objections final while those of sub-section (1) of Section 6 enable the Government to arrive at its satisfaction. Sub-section (3) of Section 6 goes further and says that such a declaration shall be conclusive evidence that the land is needed for a public purpose or for a company. The conclusiveness or finality attached to the declaration of Government is not only as regards the fact that the land is "needed" but also as regards the question that the purpose for which the land is needed is in fact a public purpose or what is said to be a company is really a company.

The Act has empowered the Government to determine the question of the need of land for a public purpose or for a company and the jurisdiction conferred upon it to do so is not made conditional upon the existence of a collateral or extraneous fact. It is the existence of the need for a public purpose which gives jurisdiction to the Government to make a declaration u/s 6(1) and makes it the sole judge whether there is in fact a need and whether the purpose for which there is that need is a public purpose. The provisions of Sub-section (3) preclude a court from ascertaining whether either of these ingredients of the declaration exists.

Whether in a particular case the purpose for which land is needed is a public purpose or not is for the State Government to be satisfied about. If the purpose for which the land is being acquired by the State is within the legislative competence of the State the declaration of the Government will be final subject, however, to one exception. That exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party. If it appears that what the Government is satisfied about is not a public purpose but a private purpose or no purpose at all, the action of the Government would be colourable as not being relatable to the power conferred upon it by the Act and its declaration will be a nullity. To such a declaration the protection of Section 6(3) will not extend. For the question whether a particular action was the result of a fraud or not is always justiciable, provisions such as Section 6(3) notwithstanding. AIR 1914 PC 20, Dist: AIR 1919 PC 155 and Vedlapatla Suryanarayana Vs. The Province of Madras, and Mst. Sulochana Bhumiz and Others Vs. Bhat Kurmi, and V. Gopalakrishna Vs. The Secretary, Board of Revenue, Madras and Another, and Sree Raja Kandregula Srinivasa Jagannadha Rao Pantulu Bahaddur Vs. State of Andhra Pradesh and Another, and Secretary of State for India in Council Vs. Akbar Ali and Another, Rel,on: 1956 AC 736, Not followed.

16. The learned Counsel for the Petitioner relies on the decision of the Honourable Supreme Court in Srinivas Ramnath Khatod v. State of Maharashtra and Ors. reported in 2001 (4) CTC 699, at page 703, wherein it is laid down thus:

12. In our view the wordings of Sections 4,6 & 11-A leave no room for doubt that

the Land Acquisition Act made a distinction between a "declaration" and "publication". To be noted that u/s 4 the notification has to be published. Again u/s 11-A the period of two years has to be commuted from the date of "publication of the declaration". As distinct from this under the first proviso to Section 6(1) a "declaration" cannot be made after the expiry of one year from the date of "publication of the notification u/s 4". The words "published" in Clauses (i) and (ii) of the first proviso to Section 6(i) refer to the publication of notification u/s 4. A plain reading of Section 6 shows that a distinction is made between a "declaration " and a "publication". Viewed from this angle the wordings of the first proviso to Section 6(1) become important. The proviso lays down that "no declaration (under Section 6) shall be made after expiry of three years (under Clause (i) where the notification u/s 4 is published before the commencement of the Land Acquisition Act, 1984 and after expiry of one year (under Clause (ii)] where notification u/s 4 was published after commencement of Land Acquisition Act, 1984. Thus the proviso clearly talks of "publication" in respect of notification u/s 4 and then provide a time for "making of declaration" u/s 6. The legislature is purposely omitting to use the words "Publication of declaration" in the proviso to Section 6.

13. In our view, it is clear that the "declaration must be made" within one year from the date of "last publication of the Notification" u/s 4. Thereafter the publication u/s 6(2) may take place at a later date as it is merely a ministerial act.

17. Inasmuch as Section 6 declaration has been published in the Government Gazette on 05.07.1996 and Section 4(1) notification being published on 28.06.1995, admittedly Section 6 declaration has been published after the lapse of one year and 8 days and therefore, in the instant case on hand, the first Respondent/Government has not exercised its powers as per Section 6 of the Land Acquisition Act, 1894, properly and therefore, Section 6 declaration dated 05.07.1996 is invalid and inoperative one and accordingly, without delving deep into the other aspects of the matter, this Court allows the present writ petition in the interest of justice.

18. In the result, this writ petition is allowed. Resultantly, Section 6 declaration under G.O.(3D) No. 54 dated 04.07.1996 by the first Respondent published in the Gazette on 05.07.1996, is hereby quashed. It is open to the Government to issue fresh valid declaration as per Section 6 of the Land Acquisition Act, 1894 and to proceed further as it deems fit and proper based on the facts and circumstances which float on the surface. Consequently, the connected Miscellaneous Petition is closed. However, in the facts and circumstances of the case, there is no order as to costs.