

(1964) 09 MAD CK 0005

In the Madras High Court

Case No : Writ Appeal No. 363 of 1963, against of Srinivasan, J. in Writ Petition No. 869 of 1963

Valliammal

APPELLANT

Vs

State of Madras and Others

RESPONDENT

Date of Decision : 23-09-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 5

Citation : AIR 1967 Mad 332 : (1965) ILR (Mad) 388 : (1966) 79 LW 702

Hon'ble Judges : Natesan, J;Anantanarayanan, J

Bench : Division Bench

Judgement

Anantanarayanan, J.

(1) The appeal is instituted from the judgment of Srinivasan, J. in W. P. No. 869 of 1963, a proceedings before the learned Judge by a certain

Valliammal (petitioner) praying for the issue of a writ of certiorari quashing the notification published in the Official Gazette in regard to the

acquisition of S. N. 219/28 in Tiruvanmiyar village. The learned Judge went into the facts of the matter, at some length, and ultimately dismissed the

proceeding. He did so upon three main grounds, which are set forth in the judgment. The fact was that he was satisfied that the notification u/s 4(1)

of the Land Acquisition Act related to a "public purpose" concerning which the Government could legitimately exercise their powers of eminent

domain. In the absence of any established mala fides or colourable use of power the action of Government in acquiring this site for a burial and

cremation ground, could not be assailed in a court of law. The second ground was that, by virtue of certain previous proceedings, the matter was

really res judicata, as far as the petitioner was concerned; those proceedings of this court inhibited the petitioner from canvassing the property of

the present acquisition upto the stage of the issue of notices under S. 9(1) of the Act. The third ground was that the argument urged on behalf of

the petitioner could not be accepted, for reasons furnished by the learned Judge, that the urgency clause in S. 17(1) of the Act had been improperly

invoked by Government in this case. There was also a defence by Government (first respondent) that the petitioner was not a person arrived or

affected, who could properly maintain the proceedings, since the land sought to be acquired was not the land of the petitioner herself, but a land

adjacent thereto. But, on this ground the learned Judge observed that though there was a great deal of force in the contentions of the learned

Additional Government Pleader, he did not "think it necessary to express any concluded opinion thereon.

(2) The facts can be very briefly stated, and, for the most part, they are really not in controversy. There can be no doubt that, as represented

before us by learned counsel, there was an existing burial and burning ground in Tiruvanmiyar village, which Government decided to close down,

upon certain representations made by the authorities of the Kala Kshetra, a private Educational Trust with cultural objectives, as far as we can

gather, that the proximity of this burning ground to the Educational Institution was very injurious to the inmates of that Institution. Subsequently, as

we have indicated earlier, the Government proposed the acquisition of the site, which is now in controversy, and which adjoins the land of the

petitioner, Valliammal. The Panchayat Board of Tiruvanmiyar is the third respondent in these proceedings, at the stage of the writ petition and

appeal, and we shall have something to say about the attitude taken up by the Panchayat Board towards the proposed acquisition. However that

might be, the main contentions of the learned counsel for the writ appellant are really as follows:

(3) Firstly, learned counsel contends that the closure of the prior ground by Government was unauthorised and ultra vires the powers of

Government, as it was not the Panchayat Board of Tiruvanmiyur (third respondent) that moved for the closure, which should have been the proper

procedure under the law. When the closure itself was illegal, no justification really existed for the acquisition of the present proposed site, and this

will not be a "public purpose" within the scope of section 4(1) of the Act. That is one branch or limb of the argument. The other branch of it is that

the closure was really due to the persuasion or instigation of the authorities of the Kala Kshetra a private educational Trust. Hence, the action of

Government in closing the previous burial ground, and in proposing to acquire the present site, was mala fide, and a colourable exercise of the

powers of eminent domain. The third argument is that, in any event, the land ought to be really classified as "house-site" and not "arable waste"

with the consequence that Section 17(1) of the Act would really have no application to the facts; if that classification is accepted, then the urgency

clause would not apply. In that event, the Government could not have legally skipped over the stage of the section 5-A enquiry in the manner that

they have done. The skipping over of the Sec. 5-A enquiry has occasioned grave prejudice to the writ appellant, and that is another ground for

quashing the acquisition proceedings. Finally, it is urged that the Thiruvannamiyur Panchayat Board (third respondent) has been not merely neutral in

the proceedings, but implicitly opposed to the closure of the previous burial ground and to the acquisition of the present site. Government had

really no business, when there was no co-operation from the Panchayat Board, to take the steps that they have, as a matter of fact, taken in the

proceedings.

(4) Before dealing with the arguments, we shall briefly dispose of the two preliminary objections, which are technical in character and which have

also been urged by the learned Additional Government Pleader. The first is that the writ appellant is not a party affected by the proceedings, or so

interested therein, as to have a right to resort to Art. 226 of the Constitution for redress. Here, as we have observed, the learned Judge

(Srinivasan, J.) did not think it necessary to express any concluded opinion. But, we have no hesitation in holding that the writ appellant certainly

does possess such a right, upon the stated facts, and this is supported by available authority. It is not in dispute that the writ appellant has a site

immediately adjoining the site proposed to be acquired as a burial and burning ground; if the writ appellant builds a house thereon, and other

houses also spring up in his locality, the inmates of those houses may very well claim, as the Kala Kshetra authorities previously did, that the proximity

of this cremation and burial ground is an injury to health and hygiene. In that sense, the writ appellant is a person affected, and it is in accordance

with the principles of equity and law, that too rigid an interpretation of that term ought not to be adopted by courts. In the Queen v. Justice of

Surrey, 1870 5 QB 466 the court held that though certiorari is not a writ of closure, still, as that applicant had by reason of his local situation, a

peculiar grievance of his own, he was entitled to the writ ex debito That decision has been followed and approved by Ramachandra Iyer, J. (as he

then was) in Issardas Somamal Lulla Vs. The Collector of Madras and Additional Custodian of Evacuee Property, Madras, .

(5) Upon the matter of res judicata, we do not think it is necessary to come to any specific finding, which will bar the writ appellant from seeking

redress. Undoubtedly, there are the authorities referred to by the learned Judge, and he has indicated his view that the bar may operate. As we

said, we do not think it is necessary to decide the writ appeal on this ground, as we are convinced that it cannot be allowed on the merits, even

assuming that the entire scope of the merits could be pressed before us.

(6) The decision of the Supreme Court in Smt. Somavanti and Others Vs. The State of Punjab and Others, is clear authority for the view that

where, with regard to a public purpose, prima facie, the State is satisfied concerning its existence, that will ordinarily be binding on the courts, and

the courts will not be at liberty to substitute their judgment concerning the justification for the acquisition, for the judgment of the authorities, of the

State, who are entrusted with the power of eminent domain. The matter came up earlier in this court, in W. A. Nos. 55 and 56 of 1963 (Mad) to

which one of us was a party, and the relevant extract from Smt. Somavanti and Others Vs. The State of Punjab and Others, is set forth in that

judgment. To quote

But whether a particular purpose is beneficial or is likely to be beneficial to the community or not is a matter primarily for the satisfaction of the

State Government..... But the State Government has taken the view that the manufacture of these articles is for the benefit of the community. No

materials have been placed before us from which we could infer that the view of the Government is perverse, or that its action based on it

constitutes a fraud on its power of acquire land....

In the present case, the argument of learned counsel is not that the provision of a burial and burning ground for the use of the public of this village is

not a "public purpose", obviously it is, and that is irrefutable. The argument is that this power is not being exercised, or sought to be exercised bona

fide; under the circumstances, of the case, it is a mala fide or colourable exercise of the power of eminent domain. It is here that we think it is

essential to emphasise that an averment of that kind ought never to be a mere employment of a mechanical formula. It should never be merely

verbal; on the contrary, wherever it is advanced we are of the view that facts or grounds should be pleaded in support, which would show at least

some nexus between the party for whose benefit the power is sought to be exercised, and the authorities of the State, which could support a

reasonable suspicion that there has been an improper influence, or an improper exercise of power, or such exercise of power exceeding the ambit

of eminent domain, as to constitute a fraud. No such facts have even been alleged before us. As we shall indicate later, a situation may arise in

which parties like the present writ appellant may claim the very same right that the Kala Kshetra authorities have claimed namely, to persuade the

Government that the particular location of a burial and burning ground was injurious to private individuals, or an Educational Institution, and should,

therefore, be altered. The precaution of the authorities is no impropriety, and is not undue influence; the authorities, again, have a right to be so

persuaded. if the conviction is genuinely arrived at and is not the result of improper pressure of illegitimate influence. Those allegations have not

even been advanced in the present case. In our view, there is no foundation whatever for the imputation of mala fides. Since the purpose is

irrefutably a public one, and the imputation of mala fides has no justification, the proposed acquisition cannot be assailed on this ground.

(7) We may immediately proceed to the next point, that the closure of the previous burial ground was illegal and ultra vires the powers of

Government. Learned counsel draws our attention to a passage in the "Law of Municipal Corporation" by Sri P. D. Aiyangar, to the effect that,

ordinarily, it is the concern of the Panchayat Board to move for such closure of an existing burial ground. But, we take it that this does not imply

that the State has no power to close down an existing burial ground, when the State is convinced that the location of the burial ground is injurious

to the public, or a section of the public. Even if we assume that this matter is in controversy, it cannot affect the justification for the present

acquisition within the ambit of section 4(1) of the Act. It is not the law that there should be only one burial ground, and the State may well feel it

incumbent to provide more than one. With reference to the attitude of the Panchayat Board, we have heard the learned counsel for the third

respondent, who was impleaded at a later stage of the proceedings. We gather that the Panchayat Board is willing to accept the present selection

of site, and the proposed acquisition of it, subject to certain terms that they have placed before the Government. That is all their attitude, and we

do not gather that the Panchayat Board (third respondent) is either for or against the closure of the previous site, which was decided upon, after the

representations of the Kala Kshetra authorities. On this ground also, there is no room for interference.

(8) Finally, we may deal with the question of the classification of the land sought to be acquired, and the scope of section 17(1) of the Land

Acquisition Act, under which urgency clause the State has acted in the present case. Learned counsel for the writ appellant strongly relies upon the

judgment of Veeraswami J. in W. P. No. 14 etc. of 1963 (Mad). We have carefully gone through the relevant passage in that judgment, which

relates to classification of lands. The learned Judge, for reasons stated by him, does not decide this question at all but leaves it at large. The truth

would appear to be that, as the registry stands and as facts are at present, the land sought to be acquired like the land of the writ appellant, is

arable waste (dry) registered as such. Potentially, it may be very valuable house-site, in view of recent trends of urban expansion in the city of

Madras. But for that reason, the land cannot be classified separately from its present registration and character. Hence, the State was justified in

exercising the urgency powers under Sec. 17(1) of the Act. The learned Judge (Srinivasan J.) emphasises that it is the subjective satisfaction of the

State which is here relevant provided that that satisfaction could be reasonably defended. If the injury to the health of the inmates of Kala Kshetra

was so imminently dangerous as to justify the immediate closure of the previous site, it stands to reason that an alternative site should be urgently

provided for; otherwise, the entire village will be left without cremation and burial facilities. On this ground, resort to the urgency clause could be

legitimately defended.

(9) The result of the foregoing analysis is, that there is no justification, in this case, for the issue of any writ of certiorari quashing the notification. If

at a future date, houses do spring up in this locality, including a house upon the land of the writ appellant, it will then be time enough for persons

affected to move the State for closure of the present proposed burial and burning ground, and the shift of that facility to some other spot; no doubt,

the matter will then be dealt with upon its merits. The writ appeal is dismissed, accordingly. No order as to costs.

(10) Appeal dismissed.