
(1995) 09 MAD CK 0091

In the Madras High Court

Case No : Writ Petition No's. 9194 and 10469 of 1991 and 3400 of 1992

Vigneswara Nagar Residents Welfare Association and Others APPELLANT

Vs

The Special Tahsildar (Land Acquisition), Tamil Nadu Housing Board Schemes, The Collector and The State of Tamil Nadu RESPONDENT

Date of Decision : 26-09-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 3, 35, 4, 4(1), 5(A)

Tamil Nadu State Housing Board Act, 1961 — Section 89, 90, 91, 92

Citation : (1995) 09 MAD CK 0091

Hon'ble Judges : Jayasimha Babu, J

Bench : Single Bench

Advocate : T. Chengalvarayan for T. Kokilavani, for the Appellant; P. Sadasivam, Special Govt. Pleader assisted by M.G. Kalaiselvi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Jayasimha Babu, J.—Petitioners in these petitions are aggrieved by the declaration issued u/s 6(1) of the Land Acquisition Act on 7.6.1991 and gazetted on 11.6.1991. That notification was preceded by a notification issued u/s 4(1) of the Act dated 14.5.1990 which had been gazetted on 23.5.1990 and which also was published in the newspapers on 4.6.90 and 5.6.90. The enquiry u/s 5(A) of the Act was held on several days between 16.8.1990 and 26.2.1991. The Petitioners who objected to the acquisition of the lands were also heard thereafter by the authorities. The Petitioners therefore have rightly not raised any grievance relating to the procedure followed subsequent to the issue of the notification u/s 4(1) of the Act.

2. The Petitioners' grievance is that the stated purpose for which the land is being acquired is, according to them, bald and vague and therefore, the declaration u/s 6(1) of the Act is void. The other ground on which they assail the impugned Notification is that the Housing Board for whose benefit the acquisition

has been made is not authorized to acquire the land before the scheme is formulated and approved and the proposed acquisition is not permissible under the provisions of the Tamil Nadu Housing Board Act. It is also the contention of the Petitioners that the Housing Board being engaged in a commercial activity, in as much as it only lays out the sites and dispose of the same to others, that activity cannot be regarded as public purpose.

3. The fact that the compensation is to be paid out of the funds from the Housing Board, it is contended, invalidates the declaration as the Respondents have not followed prescribed procedures for the acquisition of the land for companies under Chapter VII of the Act.

4. Learned Senior Counsel Mr. T. Chengalvarayan appearing for the Petitioners urged the contentions, as aforementioned, and submitted that the impugned declaration u/s 6(1) is liable to be quashed. Submission so made for the Petitioners was rebutted by the learned Special Government Pleader who contended that the impugned declaration has been issued in accordance with law and there is no infirmity in the same.

5. The purpose for which the land of the Petitioners is being acquired is for the implementation of Sholinganallur Neighbourhood Scheme, Phase III, by the Tamil Nadu Housing Board. The purpose so stated would clearly indicate that the land is required for a scheme of the Tamil Nadu Housing Board; that the scheme has to be implemented in Sholinganallur and further that the nature of the scheme is Neighbourhood scheme. "NEIGHBOURHOOD" in this context, even as its dictionary meaning signifies, is a compact area or unit forming of community within the Town or City. It indicates an area comprising of dwelling houses whose occupants will form a community. In order to form a neighbourhood, the acquisition of land on which dwelling houses can be erected, and amenities required for the community living including civic, religious, recreational and educational activities can be provided is a necessary preliminary step. The Scheme, as indicated in the imputed modification is a "Neighbourhood Scheme" which necessarily implies acquisition of land as preliminary to the laying out of the sites civic, and other areas required in a neighbourhood.

6. The agency which is to undertake that task is the Housing Board. The purpose for which the Statutory Board was brought into existence, is clearly indicated in the Tamil Nadu Housing Board Act, and more particularly in the Preamble to the Act as also in Chapter VII of the Act. As stated in the preamble, the statute was enacted to provide for the execution of the housing and Improvement Schemes and for the establishment of the Housing Board to carry out such schemes. Section 35 of the Act enables the Board to undertake the works of the execution of such Housing or improvement schemes as it may consider necessary. The Board is also required to undertake the execution of such schemes whenever so required by the Government. Section 70 of the Act empowers the Board to acquire land for the schemes of the Housing Board. Section 70(2) of the Act permits the Board to acquire the lands, even before framing the housing or the

improvement schemes.

7. The contention of the Petitioners that the purpose stated in the Notification is vague, therefore, cannot be accepted. The public purpose stated in the declaration is clearly and sufficiently indicative of the purpose for which the land will be utilised. The Petitioners also did not have any doubt as to the purpose for which the land would be utilised. In the report submitted by the officer, who conducted enquiry u/s 5A of the Act, a copy of which report has been produced by the Petitioners, the nature of the objection that was raised by the Petitioners and others have also been set out. The objections so raised were that the Petitioners require the land for constructing the house or for carrying out other activities such as running industry or carrying out agriculture. Petitioners had not contended that the purpose was so vague, that Petitioners could not effectively formulate their objections.

8. The Petitioners were not prejudiced in formulating their objections to the proposed acquisition, on account of the manner in which purpose was described in the notification u/s 4(1). A Constitution Bench of the Supreme Court in the case of *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, upheld the notification for acquisition of large extents of land wherein the purpose as set out in the said notification, was the planned development of Delhi. The court pointed out at para 6 of that judgment that the question as to whether the description of the purpose given in the notification is sufficient to enable an objection to be filed u/s 5-A would depend upon the facts of each case. The Court observed at para 6 of the judgment.

We think that the question whether the purpose specified in a notification u/s 4 is sufficient to enable an objection to be filed u/s 5A would depend upon the facts and circumstances of each case.

9. In that judgment, the Court also notified the fact that Court had in the case of *Arnold Rodricks and Another Vs. State of Maharashtra and Others*, had held that a notification u/s 4 of the Act, which stated that the land was needed for "development and utilisation of the said lands as an industrial and residential area" was sufficient specification of public purpose.

10. On the facts and circumstances of this case, the purpose set out in the Notification was clearly sufficient to enable the Petitioners to file their objection and the Petitioners had in fact filed their objections to the proposed acquisition. Their objections so filed were duly considered and rejected.

11. Learned Senior Counsel for the Petitioners then submitted that it is for the court to exercise its own judgment in relation to the application of the terms of the statute to a particular fact situation, and that in order to enable the Court to discharge that function, the order to be reviewed should contain sufficient details so that such review, may be effective. Counsel relied on a passage in *Garner's Administrative Law (Fifth Edition)* at page 109 more particularly the following sentence; "The reviewing Court is thus entitled to its own judgment in relation to

the application of the terms of the statute to the particular factual situation in issue, with a view to ascertaining whether the administrative agency had acted ultra vires".

12. The description of the public purpose set out in the notification u/s 4(1) as also in the declaration u/s 6 of the Act, is sufficient to show that, that purpose is a public purpose, as defined in Section 3(f) of the Act. The provision of the land for development and for carrying out any housing scheme whether sponsored by the Government, or by the authority established by the Government for carrying out any scheme or with the prior approval of the Government, by the local authority, is a public purpose falling within the scope of Section 3(b)(iii), (3)(b)(vi) of the Act.

13. The Petitioners' contention is that it was not permissible for the Housing Board to have proceeded with the acquisition of the land without an approved scheme. While such a contention would have been upheld, in view of the decision of the Supreme Court in the case of State of Tamil Nadu and another Vs. A. Mohammed Yousef and others, on account of the subsequent amendment effected to the Tamil Nadu Housing Board Act by Tamil Nadu Act 5 of 1992 which has been given retrospective effect from 22.4.1961, that contention is no longer available to the Petitioner. Section 70(2) of the Act, after its amendment reads thus:

Notwithstanding anything contained in this Act, proceedings under the Land Acquisition Act, 1894, may be taken for acquiring any land or any interest therein under Sub-section (1), even before framing any housing or improvement Schemes.

15. The amendment so effected u/s 70(2) was challenged before this Court unsuccessfully. The challenge so made was rejected by this Court in the case of N.D. Rajan and Ors. v. State of Tamil Nadu and Ors. 1994 W.L.R. 748. A Division Bench of this Court upheld the validity of the amending Act and its retrospective effect.

16. The contention that the proposed acquisition is not a public purpose as the Housing Board will only resell the land after developing the same, also cannot be accepted. The planned development of lands from public funds as also the provision of the land for carrying out any housing scheme by a local authority or authority established by the Government constitute public purpose as it is defined in Section 3(f) of the Act. The neighbourhood scheme is meant for the benefit of the members of the public; the disposal of the developed land being subject to the provisions of the Housing Board Act, as also the Rules and Regulations made thereunder. The Housing Board being a statutory body is accountable and it cannot act arbitrarily. The Board is not established for the purpose of making profit. The object with which Board has been established is to render service to the public by formulating and implementing such needed housing schemes.

The compensation paid to the land owners, though paid by the Board, is deemed to be paid out of public revenues in view of Explanation 2 to Section 6.

17. It was next contended for the Petitioners that acquisition for the Housing Board can only be made by following the procedures in Chapter VII for acquiring land for companies. The Housing Board however is not a company as it is defined in Section 3(e) of the Act. It was therefore not necessary for the Government to have resorted to Chapter VII of the Act as that Chapter applies only to the acquisition of land for companies. The "Local Authority" as it is defined in Section 3(aa) of the Act includes a Town Planning Authority (by whatever name called) set up under any law for the time being in force.

18. As to whether an authority is a Local Authority u/s 3(a) has to be ascertained with reference to the relevant enactment under which the authority was brought into existence. Having regard to the purpose for which the Housing Board was brought into existence, the nature of the power conferred on the said Board and duties cast on the Board, the Board, is a Local Authority and the payment of compensation made from out of the funds of the Board is deemed to be a payment made out of the public revenue, in view of Explanation (2) to Section 6(1) of the Act. That Explanation reads as follows:

Explanation (2): Where the compensation to be awarded for such property, is to be paid out of the funds of a Corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.

19. The deeming provision in Section 6 in the Explanation (2) to Section 6 in the instant case also correctly reflects the reality as the funds of the Board or the funds made available to it by the Government. Section 89 of the Housing Board Act provides that the Board may accept grants, subventions, donations, and gifts from the Central or State Government. Section 90 provides that the Government may from time to time make subventions or advance loans to the Board for the purpose of this Act. Though the Board has power to raise or borrow u/s 91 of the Housing Board Act, Government may, in respect of such borrowings guarantee the repayment of such borrowings u/s 92. It is evident that the Housing Board is dependent primarily upon the Government for its funds. Even though it may generate funds from out of disposal of the sites and the houses that the Board may lay out or build, the amount so realised from the sale of such lands and buildings will be available to the Housing Board only after the acquisition is completed and the compensation for such acquisition is paid.

20. An argument was also advanced that Petitioners have been discriminated against as some lands belonging to others are not included in the declaration u/s 6 though it was included in the notification u/s 4(1). The counsel for Government explained the discrepancy by stating that on account of interim order of this Court in a writ petition filed by the owner of that land, it could not be included in the Section 6 notification and that the Government had not discriminated against the Petitioners.

21. None of the contentions advanced on behalf of the Petitioners can be accepted to invalidate the impugned declaration. These writ petitions are therefore dismissed, but in the circumstances of the case without costs.