

(2009) 04 MAD CK 0084

In the Madras High Court

Case No : Writ Petition No. 3849 of 1998

Vijaya and Others

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 15-04-2009

Acts Referred:

Constitution of India, 1950 — Article 19(1), 21, 300A, 46
Land Acquisition Act, 1894 — Section 20, 21, 4(1), 5A, 6

Citation : (2009) 04 MAD CK 0084

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M.M. Sundaresh, for the Appellant; A. Arumugam, Spl. G.P., for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The writ petition is filed by the petitioners seeking to challenge the proceedings of the first respondent in G.O.Ms. No.

171, dated 10.2.1995 as well as the declaration made u/s 6 of the Land Acquisition Act (Central Act 1 of 1894) by G.O.Ms. No. 185 dated

26.3.1996 and to quash the same in respect of the petitioners' lands purchased in Survey No. 502/8.

2. It is stated by the learned Counsel for the petitioners that the petitioners during February and March 1995 purchased housesites in R.S. No.

502/8 from the land owners by way of registered sale deeds. The site was purchased for the purpose of building houses. Some of them are having

tilled houses and others are having thatched houses. They are also having electricity connection to their houses. When the petitioners came to know

that the first respondent State issued notification u/s 4(1) of the Land Acquisition Act vide G.O.Ms. No. 171, Housing and Urban Development

Department, proposing to acquire the lands for the purpose of constructing houses by the Tamil Nadu Housing Board, the petitioners made

representations to exclude their plots from the Housing Board as they belonged to Scheduled Caste community and are also living in the said lands.

The lands owned by the petitioners were on the periphery of the Scheme made by the respondent Housing Board and, therefore, the exclusion will

not result in the scheme getting altered. It is stated by them that without considering their objections, the State Government issued G.O.Ms. No.

185, Housing and Urban Development Department, dated 23.6.1996 u/s 6 of the Land Acquisition Act. Therefore, they have approached this

Court challenging the notification issued by the State Government raising various grounds. The objection raised by the petitioners are set out in their

written representations dated "nil" enclosed in page 9 of the typed set.

3. This Court admitted the writ petition on 03.4.1998 and also granted an interim-stay of dispossession, if not possession already taken over by

the respondents. Subsequently, the interim order came to be extended by various orders and on 30.12.2002, the interim-stay was made absolute.

4. The respondents did not file any counter affidavit except written instruction dated 16.10.2007 given to the counsel, which was produced along

with the original records. It is stated in the counter affidavit that the lands were acquired for the purpose of Muthampalayam Neighbourhood

Scheme to be developed in several places. The Phase V and Phase V-A comprised of 842 plots to the extent of 51.72 acres. It is only within that

area, Survey Number in R.S. 502/8 is situated. Though it is stated that the developed plots were allotted to public in respect of the petitioners"

land, the following statement is made:

In the abovesaid schemes, the petitioners" land covered in Phase V & VA lay-out and located in the western side of the said scheme and the land

could not be developed since the Hon"ble High Court has given absolute stay. The said land is part and parcel of the Phase V and VA of

Muthampalayam Neighbourhood Scheme, Erode, the land is very very essential of housing scheme since the adjacent lands have already been

developed and allotted to the public.

The said land, the Land Acquisition Officer has passed award in Award No. 1/98, dated 25.3.1998 and not taken over by Tamil Nadu Housing

Board since the Hon"ble High Court has given stay on 03.4.1998.

5. It is also stated by them that the notification u/s 4(1) was made on 10.2.1995. It is also published in the Tamil Nadu Government Gazette on

15.3.1995. On 20.3.1995, newspaper publication was made in two newspapers having circulation in the area. The local publication was made on

30.3.1995. Section 5A enquiry notice dated 28.3.1995 was served on the land owners. The enquiry report was made on 08.1.1996. The draft

declaration was issued on 26.3.1996 by G.O.Ms. No. 185. The same was published in the Government Gazette on 27.3.1996 and a newspaper

publication was made in two newspapers on 28.3.1996. The local publication was made on 29.3.1996. Section 9(1) notice dated 19.1.1998 and

Section 9(3) notice, which is also of the same date, was served on the affected on the affected parties on 19.1.1998. An award was passed being

Award No. 1/98 on 25.3.1998. It was thereafter the petitioners have moved and obtained stay of dispossession on 03.4.1998. However, this

Court granted permission to proceed with the enquiry.

6. In respect of S. No. 502/8, notices were issued in the name of M/s. Poosappa Gounder and 40 other persons. Poosappa Gounder, son of

Nachimuthu Gounder who appeared in the enquiry only objected to the acquisition in respect of S. No. 503/5 and no other information or

objection was received in respect of the said survey number, as the erstwhile land owner had already sold the lands to several persons including

the petitioners. The petitioners had appeared before the authorities and gave their registered sale deeds of varying dates from 28.2.1995 to

12.9.1995 before the authorities. The authorities did not consider their objections but merely stated that since the total area given by the petitioners

did not tally, the compensation amount could not be granted to them and it was deposited in Court in respect of the entire survey number. The

petitioners have objected during Section 5A enquiry for the acquisition of their lands and requested for the exclusion of the said lands. The

petitioners were originally living in some other place and the housesites in which they were living were taken over by the land owners and therefore

they had purchased the present land and they belonged to Scheduled Caste and they do not have any land in the area. Therefore, they sought for

retention of their lands by excluding the lands purchased by them from the

acquisition proceedings. However, their objections were overruled on the ground that appropriate compensation will be given and the exclusion will result in affecting the scheme conceived by the respondents.

7. Mr. M.M. Sundaresh, learned Counsel for the petitioners submitted that the ""right to shelter"" is traceable to Article 21 of the Constitution.

When the petitioners themselves purchased plots and built their own houses, it will be a mockery for the State to have acquired the very same land

for the purpose of a neighbourhood housing scheme. In this context, it is necessary to refer to the following judgments of the Supreme Court.

8. The Supreme Court in more than one decision had emphasized the ""right to shelter"" as part of the Fundamental Right guaranteed under Article

21 of the Constitution. The Supreme Court in *M/s. Shantistar Builders Vs. Narayan Khimalal Totame and others*, in paragraphs 9 to 11 and 13

held as follows:

Para 9. : Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized

society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation

to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare

protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental

and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It

is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India

can even be mud-built thatched house or a mud-built fire-proof accommodation.

Para 10. : With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses

in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people

in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to

cities. Industrialisation is equally responsible for concentration of population around industries. These are features which are mainly responsible for

increase in the homeless urban population. Millions of people today live on the pavements of different cities of India and a greater number live

animal-like existence in jhuggis.

Para 11. : The Planning Commission took note of this situation and was struck by the fact that there was no corresponding rise in accommodation

with the growth of population and the shift of the rural people to the cities. The growing realisation of this disparity led to the passing of the Act and

acquisition of vacant sites for purposes of housing. Considerable attention has been given in recent years to increasing accommodation though

whatever has been done is not at all adequate. The quick growth of urban population overshadows all attempts of increasing accommodation.

Sections 20 and 21 of the Act vest power in the State Governments to exempt vacant sites from vesting under the Act for purposes of being taken

over if housing schemes are undertaken by owners of vacant urban lands. Section 21 specifically emphasises upon weaker sections of the people.

That term finds place in Article 46 of the Constitution and Section 21 uses the same language. "Weaker sections" have, however, not been defined

either in the Constitution or in the Act itself. An attempt was made in the Constituent Assembly to provide a definition but was given up. Attempts

have thereafter been made from time to time to provide such definition but on account of controversies which arise once the exercise is undertaken,

there has been no success. A suggestion for introducing economic criterion for explaining the term was made in the approach to the Seventh Five

Year Plan (1985-1990) brought out by the Planning Commission and approved by the National Development Council and the Union Government.

A lot of controversy was raised in Parliament and the attempt was dropped. In the absence of a definition perhaps a proper guideline could be

indicated but no serious attention has been devoted to this aspect.

... ..

... ..

Para 13. : In recent years on account of erosion of the value of the rupee, rampant prevalence of black money and dearth of urban land, the value

of such land has gone up sky-high. It has become impossible for any member of the weaker sections to have residential accommodation anywhere

and much less in urban areas. Since a reasonable residence is an indispensable

necessity for fulfilling the constitutional goal in the matter of development of man and should be taken as included in "life" in Article 21, greater social control is called for and exemptions granted under Sections 20 and 21 should have to be appropriately monitored to have the fullest benefit of the beneficial legislation....

9. Similarly, the very same view was reiterated in U.P. Avas Evam Vikas Parishad and another Vs. Friends Co-op. Housing Society Ltd. and

another, . It is necessary to refer to the following passage found in para 8 of the said judgment.

Para 8 : "...Right to shelter is a fundamental right, which springs from the right to residence assured in Article 19(1)(e) and right to life under Article 21 of the Constitution....

10. The learned Counsel submitted that the petitioners have objected to the acquisition of land on the ground that they have already built houses in

the land in question and, therefore, it should not be acquired for the purpose of an housing scheme. The respondent did not consider their

objections in an objective manner. On the contrary, they have overruled the objections without any justification. He submitted that the Court can

go into the satisfaction of the Government and find out whether the satisfaction arrived at was in accordance with the requirements of law.

11. In this context, he referred to the decision of the Supreme Court in Bhikhubhai Vitlabhai Patel and Others Vs. State of Gujarat and Another, .

The following passage found in paragraph 33 was relied upon, which reads as follows:

Para 33. ""The court is entitled to examine whether there has been any material available with the State Government and the reasons recorded, if

any, in the formation of opinion and whether they have any rational connection with or relevant bearing on the formation of the opinion. The court is

entitled particularly, in the event, when the formation of the opinion is challenged to determine whether the formation of opinion is arbitrary,

capricious or whimsical. It is always open to the court to examine the question whether reasons for formation of opinion have rational connection

or relevant bearing to the formation of such opinion and are not extraneous to the purposes of the statute.

12. The learned Counsel also placed reliance upon a decision of the Supreme

Court in Sube Singh and Others Vs. State of Haryana and Others, .

He has stated that in that case the owners of the lands objected to the acquisition on the ground that structures in the land had already come up and therefore their lands should be excluded from the acquisition. When the Government refused to accede to their request, the Supreme Court found fault with the stand of the State Government and observed in paragraphs 11 and 12, which is as follows:

Para 11. On the facts and circumstances of the case revealed from the records, we are persuaded to accept the contention raised on behalf of the appellants that the rejection of the request of the appellants for exclusion of their land having structures on them was not based on a fair and reasonable consideration of the matter. We are of the view that such action of the Government is arbitrary and discriminatory. Unfortunately, the High Court failed to judge the cases in their proper perspective.

Para 12. "In the result, the appeals are allowed. The judgments under challenge are set aside, the orders passed by the State Government rejecting the representation of the appellants are quashed. The Secretary, Urban Estates Department, State of Haryana, Respondent 1 herein, is directed to consider the objection petitions filed by the appellants for exclusion of their properties from acquisition and pass appropriate order excluding such lands having structures on them excepting any land which is required for construction of a road or hospital. Respondent 1 shall give opportunity of hearing to the appellants before taking the decision.

13. The said decision came to be quoted with approval in the subsequent decision of the Supreme Court in Jagdish Chand and Anr. v. State of Haryana and Anr. reported in (2005) 10 SCC 162. But, in that case, though the relief was granted only to persons who had put up structures before the issuance of Section 4(1) notification, the learned Counsel argued that the case of the petitioners had also received consideration by this Court since objections were raised by the petitioners even during Section 5A enquiry and that had not received due consideration by the State. It is submitted that the enquiry u/s 5A must be real and meaningful.

14. The learned Counsel relied upon the decision of the Supreme Court in Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, and placed reliance upon paragraph 9 of the said decision, which is as

follows:- Para 9. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regards the public purpose as also suitability thereof must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act confers a valuable important right and having regard to the provisions contained in Article 300A of the Constitution it has been held to be akin to a fundamental right.

15. The respondents have not come forward to show to the satisfaction of the Court that the lands under acquisition in respect of the petitioners will really hamper the entire scheme if the lands of the petitioners are excluded. Further it is an admitted case that the petitioners have produced copies of the sale deeds in having purchased the lands in question before the enquiry u/s 5A of the Land Acquisition Act and they had also participated in the said enquiry and objected to the acquisition. These objections have not received due consideration. In the present case the acquisition is for a public purpose of providing an housing scheme and not for any other purpose. The fact that the petitioners had obtained an interim stay for the last ten years and are also living in the said land all these years will show that the neighbourhood scheme put up by the second respondent can exist even without these lands in question.

16. In the light of the above, the writ petition will stand allowed and the acquisition notification in respect of the petitioners will stand quashed.

However, there will be no order as to costs.