

(1972) 11 MAD CK 0055

In the Madras High Court

Case No : Writ Appeal No's. 279 of 1966, 34 and 35 of 1967

V.S. Kumaraswami Mudaliar and Others

APPELLANT

Vs

The State of Madras and Others

RESPONDENT

Date of Decision : 07-11-1972

Acts Referred:

Land Acquisition Act, 1894 — Section 35, 36, 37

Tamil Nadu Requisitioning and Acquisition of Immovable Property Act, 1956 — Section 3, 8, 8(1), 8(2), 8(3)

Citation : AIR 1974 Mad 126 : (1973) 86 LW 437

Hon'ble Judges : K. Veeraswami, C.J;Paul, J

Bench : Division Bench

Judgement

Veeraswami, C.J.—There is little substance in these appeals. In each one of them, a piece of land has been requisitioned in exercise of the powers u/s 3 of the Madras Requisitioning and acquisition of Immovable Property Act (Madras Act 42 of 1956). The requisitioning was for the purpose of providing a seed farm, a public purpose. The validity of the requisitioning was unsuccessfully canvassed before Venkatadri, J. It is said that Section 8(3)(b), as held by the Bombay High Court in Kamalabai Harjivandas Pareka Vs. T.B. Desaid and Another, is illegal. But that provision applies only to acquisition and not to requisition. We are told, next, that Section 8(1)(e) read with sub-section (2) clause (b) is bad, inasmuch as principles for determination of compensation have not been laid down. This contention, again, has no substance. Section 8 itself is headed as principles and method of determining compensation. Sub-section (1) directs that, in a case of requisitioning of property, compensation should be paid. The amount of compensation should be determined in the manner and in accordance with the principles thereafter laid down in the section. If compensation is agreed to, it shall be paid accordingly. But, where, there is no agreement, the Government shall appoint an arbitrator who is or has been or is qualified for appointment as a Judge of High Court. The arbitrator will be assisted in his task by an expert who has special knowledge as to the nature of the property requisitioned. In such a

case, the person to be compensated may nominate an assessor for the same purpose, after hearing the dispute, the arbitrator shall make an award determining the amount of compensation which appears to him to be just. The amount compensable for the requisitioning shall consist of a recurring payment, in respect of the period of requisition, of a sum equal to the rent which would have been payable for the use and occupation of the property, if it has been taken on lease for that period, pecuniary loss due to requisitioning, expenses on account of vacating the requisitioned premises, expenses on account of reoccupying the premises, expenses on account of reoccupying the premises upon release from requisition and damages caused to the property during the period of requisition, including the expenses that may have to be incurred for restoring the property to the condition in which it was at the time of requisition. We, therefore, fail to understand the criticism that no principles determining compensation have been laid down. The overall condition indicated by the statutory provision is that compensation, after applying these principles, should be just. In our opinion Section 8 is not shown to be arbitrary or invalid for any reason.

2. The next contention is that, where there are two procedures laid down by similar enactments, one more drastic than the other, and the choice of the procedure is left to the sweet will and pleasure of the authority concerned, the act of requisitioning is liable to be struck down on ground of discrimination or arbitrariness. Reference is made in Sections 35 to 37 of Land Acquisition Act, which provide for temporary occupation of land. Section 35(1) authorises requisitioning for a limited period of three years, if the land is required for a public purpose, and the Collector is empowered to determine the compensation by agreement with the person concerned. In the absence of an agreement, the Collector shall refer the difference of the decision of the Court. We do not see how Section 8 of Madras Act 42 of 1956 is more drastic than Section 35 of the Land Acquisition Act. If at all, it seems to us that the procedure provided by Section 8 of Madras Act 42 of 1956 is more advantageous to the appellant. Section 35 of the Land Acquisition Act leaves the matter to the court eventually to determine the compensation without even indicating the principles which we find stated in Section 8 of Madras Act 42 of 1956. Also, we do not think that any arbitrary choice of the procedure is involved, because Section 35(1) can be invoked only when the requisitioning is not for more than three years. In the instant case, the requisitioning was not for a limited period. In fact, no period was stated in the notification. It is true that Madras Act 42 of 1956 was a temporary Act meant to operate in the first instance for a period of ten years. But Madras Act 24 of 1966 has extended the life of the Act for a further period of ten years. We do not think that there is any force in the contention, that, because the requisition was made in this case for a period just less than three years before the expiry of the Act as it originally stood, the requisitioning could well have been made under S. 35 of the Land Acquisition Act. The point is that, where no period was in contemplation for requisitioning, the proper Act to be

invoked was Madras Act 42 of 1956, and that was what was done in this case.

The appeals are dismissed with costs in each one of them, counsel's fee Rs. 150 in each one of the appeals.

3. Appeals dismissed.