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Kuresh A. Kapadia Vs. the State of Tamil Nadu Rep. by Its Secretary Housing and Urban Development Department and ors.

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Court : Chennai

Decided On : Jan-29-2004

Reported in : (2004)1MLJ630

Judge : P.D. Dinakaran, J.

Acts : Constitution of India - Article 226

Appeal No. : W.P. Nos. 9075, 9180 to 9189 and 9967 to 9978 of 1997

Appellant : Kuresh A. Kapadia;s.L. Vishnu Mukundhn and ors.

Respondent : The State of Tamil Nadu Rep. by Its Secretary Housing and Urban Development Department and ors.;the

Advocate for Def. : M.S. Palanisamy, AGP for respondents 1 to 3 in WP: 9075/1997, ;D. Veerasekaran, Adv. for 4th respondent, ;M.S. Palanisamy, AGP for 1st respondent and ;D. Veerasekaran, Adv. for 2nd respondent in WP: 9

Advocate for Pet/Ap. : R. Mukundan, Adv. in WP: 9075/1997

Disposition : Petition dismissed

Judgement :
ORDER

P.D. Dinakaran, J.

1. In these batch of writ petitions, the petitioners are challenging the acquisition of their lands by the respondents, which are sought to be acquired pursuant to the notification issued under Section 4(1) of the Land Acquisition Act (for brevity 'the Act') in G.O.Ms.No.433, Housing and Urban Development Department, dated 14.5.1990, passed by the first respondent, published in the Tamil Nadu Government Gazette Part-II, Section 2, supplement on 23.5.1990 for a housing scheme called Sholinganallur Neighborhood scheme Phase-III.

2. It is not in dispute that the notification issued under Section 4(1) of the Act on 14.5.1990, was published in the Tamil Nadu Government Gazette on 23.5.1990, in two tamil dailies, viz., Dinakaran on 4.6.1990 and Morosely on 5.6.1990. The local publication of the said notification was also made on 19.6.1990.

3. Pursuant to the said notification under Section 4(1) of the Act, concededly, the petitioners were served with a notice for an enquiry under Section 5A of the Act, which was reportedly served on the petitioner in W.P.No.9967 of 1997 on 2.2.1991, the petitioner in W.P.No.9968 of 1997 by registered post with acknowledgment due, the petitioner in W.P.No.9970 of 1997 on 2.2.1991, the petitioner in W.P.No.9971 of 1997 on 28.7.1990, the petitioner in W.P.No.9973 of 1997 on 31.7.1990, the petitioner in W.P.No.9974 of 1997 by registered post with acknowledgment due, the petitioner in W.P.No.9975 of 1997 on 2.2.1991, the petitioner in W.P.No.9976 of 1997 on 31.7.1990, the petitioner in W.P.No.9977 of 1997 on 4.2.1991. The service of the notices on the petitioners is not disputed at all. Thereafter, an enquiry under Section 5A of the Act was held on 26.2.1991 in the case of the petitioners in W.P.No.9973 of 1997, on 25.2.1991 in the case of the petitioners in W.P.No.9974 of 1997, and some of the petitioners, viz., the petitioners in W.P.No.9975 of 1997 and W.P.Nos.9977 of 1997, who could not attend the enquiry sent their objections on 9.2.1991 and 7.2.1991 respectively.

4. After complying with the procedure contemplated under Rule 3(b) of the Land Acquisition Rules, communicating the remarks of the Acquisition Authority to the land owners and considering their objections in that regard, a declaration was passed under Section 6 of the Act on 7.6.1991 in G.O.Ms.No.948, Housing and

Urban Development Department and the same was published in the Tamil Nadu Government Gazette on 11.6.1991; in the locality on 12.6.1991 and in the local dailies, viz., Malaimalar on 13.6.1991 and Dinamalar on 14.6.1991.

5. At this stage, M/s.Vigneswara Nagar Association filed W.P.No.9194 of 1991 before this Court challenging the impugned land acquisition proceedings and also obtained an order of stay on 12.11.1991, but the said writ petition was dismissed by this Court on 26.9.1995. Thereafter, a notice for award enquiry as contemplated under Section 9(3) of the Act was served on the petitioners, and ultimately an award was passed on 23.4.1997. When a notice under Section 12(2) of the Act was served on the petitioners on 12.5.1997, the petitioners have chosen to file these writ petitions in the year 1997, challenging the notifications made under Section 4(1) of the Act and the consequential declarations made under Section 6 of the Act.

6. The main contentions raised on behalf of the petitioners in these writ petitions are:

(i) the petitioners were not granted sufficient opportunity to put forth their cases in the enquiry under Section 5A of the Act; and

(ii) the award was passed beyond the period of two years from the date of declaration and therefore, in view of Section 11A of the Act, the entire acquisition proceedings are lapsed.

7.1. Per contra, Mr.M.S.Palanisamy, learned Additional Government Pleader and Mr.D.Veerasekaran, learned counsel for the respondent/Board submits that all the petitioners have been served with the notice for the enquiry under Section 5A of the Act and that some of them appeared for the enquiry and some of them sent their objections by post.

7.2. Even though the petitioners allege that some of them sought adjournment of the enquiry contemplated under Section 5A of the Act and that they were not given a fair and reasonable opportunity to put forth their objections, the counsel for the respondents submit that the petitioners were served with the notice for the enquiry

under Section 5A of the Act, but they failed to avail such opportunity effectively, and therefore, the same would not amount to a denial of a fair and reasonable opportunity to put forth their objections in the enquiry contemplated under Section 5A of the Act.

7.3. With regard to the second contention of the learned counsel for the petitioner that the entire acquisition proceedings lapse as the award was passed after a period of two years, the learned counsel for the respondents submit that, there is no delay in passing the award attracting Section 11A of the Act for the lapse of the entire impugned acquisition proceedings. It is contended that, assuming the award is alleged to be passed beyond the period of two years, taking the date of declaration under Section 6 of the Act as relevant date for computing the period of two years, as provided under Section

8. I have given careful consideration to the submissions of both sides.

9. A careful perusal of the relevant records regarding the acquisition proceedings reveals that all the petitioners have been served with a notice for an enquiry as contemplated under Section 5A of the Act and in fact, as rightly pointed out by Mr.M.S.Palanisamy, learned Additional Government Pleader, some of the petitioners had participated in the enquiry and some of them submitted their objections through post.

10. The isolated case of few of the petitioners that they have sought for an adjournment of the enquiry, as rightly contended by the Mr.M.S.Palanisamy, learned Additional Government Pleader, would not be a denial of an opportunity contemplated under Section 5A of the Act, as it is a clear case that the petitioners failed to avail the opportunity extended to them in compliance of the Section 5A of the Act.

11.1. With regard to the second contention raised on behalf of the petitioners, as to the violation of Section 11A of the Act, I am obliged to refer the following relevant dates for the risk of repetition:

Declaration under Section 6 of the Act was published in:the Tamil Nadu Government Gazette on: 11/6/1991 the locality on: 12/6/1991the tamil daily Malai Malar on: 3/6/1991 the tamil daily Dinamalar on: 14/6/1991

11.2. As per Section 6(2) of the Act, only the last date of such publication and giving such public notice of the declaration under Section 6 of the Act shall be the date of the publication of the declaration, and in which case the declaration made under Section 6 of the Act published in tamil daily, viz., on 14.6.1991 in Dinamalar, shall be the date of declaration under Section 6 of the Act.

11.3. In the instant case, concededly, M/s.Vigneswara Nagar Association moved this Court in W.P.No.9194 of 1991 and obtained stay of all further acquisition proceedings by order dated 12.11.1991, and finally the said writ petition was dismissed on 26.9.1995 and thereafter, an award under Section 12(2) of the Act was passed on 23.4.1997. Therefore, the period of two years, from the date of publication of the declaration under Section 6 of the Act till the date of passing of the award, for the purpose of Section 11A of the Act, is computed as follows:-

From the publication of the declaration under Section 6 of the Act in the tamil daily Dinamalar, viz., on 14.6.1991 till the order of stay dated 12.11.1991:151 days From the date of dismissal of the writ petition, viz., 26.9.1995 till the date of award, viz., 23.4.1997 - 575 days Total 726 days

It is, therefore, obvious that the award was passed within the period of two years, viz., 730 days from the date of publication of the declaration under Section 6 of the Act on 14.6.1991 in tamil daily, viz.,Dinamalar.

11.4. In view of the materials available on record, the contention made on behalf of the petitioners that the entire acquisition proceedings lapse on the ground that the award was passed beyond the period of two years attracting Section 11A of the Act is not sustainable in law.

11.5. For the sake of further clarity, a reference to the ratio laid down by the Apex Court in N.Narasimhaiah v. State of Karnataka, referred supra, is more appropriate:

'the intervention of the Court in the land acquisition proceedings would prevent the period of limitation from running and the date of final orders of the Court would be the fresh date of start of limitation for the purpose of Section 11A of the Act.'

No doubt, the Constitution Bench of the Apex Court in PADMA SUNDARA RAO v. STATE OF T.N., referred supra, overruled the said decision in N.Narasimhaiah v. State of Karnataka, referred supra, but the Constitution Bench made it clear that the ratio laid down in PADMA SUNDARA RAO v. STATE OF T.N., referred supra, shall operate only prospectively. Since in the instant case, the award has already been passed as early as 23.4.1997, the ratio laid down in N.Narasimhaiah v. State of Karnataka, referred supra, would alone be governing. In which event, when W.P.No.9194 of 1991 filed by M/s.Vigneswara Nagar Association was dismissed by this Court only on 26.9.1995, the award was passed on 23.4.1997 falls within the period of two years from the date of the order of the Court, which shall be the date of declaration under Section 6 of the Act, for the purpose of calculating the limitation prescribed under Section 11A of the Act, as per the ratio laid down in N.Narasimhaiah v. State of Karnataka, referred supra.

Hence, finding Section 11A of the Act is not attracted, I do not see any reason to interfere with the impugned acquisition proceedings and therefore, these writ petitions are dismissed. No costs.

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