

Shanmugadurai Vs. State of Tamil Nadu, Rep. by Its Secretary and Commissioner, Department of Housing and Urban Development Ud Iii(1), Fort St. George, Chennai-9 and 2 Others

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Court : Chennai

Decided On : Mar-23-2001

Reported in : (2001)2MLJ202

Judge : K. Narayana Kurup and ;A. Ramamurthi, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), 5-A and 6 - Rule 3

Appeal No. : W.A. Nos. 1130 and 1233 to 1244 of 1999

Appellant : Shanmugadurai

Respondent : State of Tamil Nadu, Rep. by Its Secretary and Commissioner, Department of Housing and Urban Dev

Advocate for Def. : Mr. S. Natarajan, Additional Government Pleader and ;Mr. R. Gowthaman Narayanan, Adv.

Advocate for Pet/Ap. : Mr. K. Chandru, ;Senior Counsel for M/s. B. Saravanan, Adv.

Judgement :

ORDER

K. Narayana Kurup, J.

1. Pursuant to the requisition made by the Madras Metropolitan Development Authority (M.M.D.A.) for the acquisition of an extent of 33.16 acres of wet lands (13.42.0 hectares) in S.No.702/1, etc., in Madhavaram Village, Saidapet Taluk, Chengalpattu District, Government of Tamil Nadu issued a notification under Section 4(1) of the [Land Acquisition Act, 1894](#) (Central Act 1894) (hereinafter referred to as the Acquisition Act') in G.O.Ms.No.958, Housing and Urban Development Department, dated 10.6.1991. The said notification was also published in the Tamil Nadu Government Gazette, Part II-Section 2 (Supplement), dated 26.6.1991, at pages 12 to 14. The notification was also published in the Tamil dailies 'Makkal Kural' and 'Malai Malar', dated 26.6.1991, and in the locality on 4.7.1991 and 5.7.1991. The notice calling on the appellants to attend the enquiry under Section 5-A of the Acquisition Act was duly served and the appellants appeared for the enquiry on various dates, and filed written statement objecting to the acquisition, which was communicated to the requisitioning authority for remarks. The requisitioning authority sent remarks on the objection petitions. The remarks, offered by the requisitioning authority were communicated to the appellants for further enquiry under Rule 3(b) of the Rules framed under the Acquisition Act. The further enquiry under Rule 3(b) was conducted on 10.3.1992. The objection petitions filed by the appellants at the time of enquiry under Section 5-A of the Acquisition Act, the remarks of the requisitioning authority (M. M. D. A.) and the further objection petitions filed by the appellants at the time of enquiry under Rule 3(b), were considered, and finally it was decided to recommend to the Government to over-rule the objections and to approve the draft declaration under Section 6 of the Acquisition Act. The Government approved the declaration in G.O.Ms.No.412, Housing and Urban Development Department, dated 3.7.1992. The declaration under Section 6 of the Acquisition Act was published in the Tamil Nadu Government Gazette on 3.7.1992. The draft declaration under Section 7 of the Acquisition Act was approved by the Government in Lr.No.38245/XD III/A/12-1, dated 17.7.1992 and was published in the Tamil Nadu Government Gazette, Part-II- Section 2, dated 12.8,1992, The appellants then moved this Court in various writ petitions to call for the records relating to the aforesaid acquisition and quash the same by issuance of appropriate writ or order, on the ground inter-alia

that the purpose mentioned in Section 4(1) notification is vague and that unless the purpose is clearly spelt out in clear and unambiguous terms, the appellants would be handicapped in making effective representation against the proposed acquisition. The requisitioning authority, namely, M.M.D.A., was impleaded as necessary party in the writ petitions. Respondents filed their return refuting the contentions raised by the appellants and justifying the acquisition as one for a public purpose after complying with all legal formalities. The learned single Judge of this Court consolidated all the writ petitions and passed common order dismissing the writ petitions and hence these writ appeals.

2. We heard learned senior counsel Mr.K.Chandru for the appellants, Mr.K.Natarajan, Learned Additional Government Pleader for respondents 1 and 2 and Mr.R.Gowthaman Narayanan learned Standing Counsel for M.M.D.A.

3. The main thrust of the contention of learned Senior Counsel for the appellants is that the entire acquisition proceedings in respect of the lands of the appellants is vitiated on the ground that the public purpose mentioned in Section 4(1) notification is vague, and as such, it will not be possible for the appellants to put-forth their objections specifically. In our considered opinion, learned Senior Counsel is well-founded in his submission. In the notification issued in exercise of the powers under Section 4(1) of the Acquisition Act, the public purpose mentioned is as follows:

'To wit for land assembly (?) and development project along Inner Ring Road by Madras Metropolitan Development Authority.'

From a cursory look at the notification of the Acquisition Act, it is abundantly clear that it is vague and the competent authority has not specifically stated the public purpose for which the lands are sought to be acquired. The usage of the terms, 'lands are required for the purpose of land assembly and development project' are very general terms, and that, in the eye of law, the lands cannot be acquired for any vague purpose unless the competent authority clearly spellsout the specific purpose for which the lands are being acquired. In the absence of any specific public purpose being explicitly stated in Section 4(1) notification, it cannot be said that the authority has any programme or project or scheme warranting acquisition

of the land for such purpose. It is trite law that any land which is required for a public purpose should be notified with such specific purpose, which is a primary requirement of law. Then and then only, the land owners like the appellants can file their objections stating that whether such lands are actually required for the purpose or not. The mere words in Section 4(1) notification, namely, 'land assembly and development project along Inner Ring Road by M.M.D.A.' gave no indication whatsoever as to the precise purpose for which the land was required. Land assembly, and development project, etc.,--whose connotation is anybody's guess, could take various hues and colours. It could be for residential, industrial or some similar purpose. Moreover, for development of a particular area, the Government may acquire the land itself and develop it or it may control the development of that area by making a scheme or a Master Plan. The scheme of the Acquisition Act shows that public purpose for which the land is needed or is likely to be needed should be stated with sufficient particularity or specificity and in such a manner, that land owner should be able to file objections under Section 5-A of the Acquisition Act. The whole objection of Section 5-A would be defeated if the public purpose is stated vaguely and without any indication of the nature of the purpose for which the land is being or is intended to be acquired. It is apparent from sub-section (2) of Section 4 of the Acquisition Act that the public purpose which has to be stated in sub-section (1) thereof, has to be delineated, because, unless that is done, the various matters which are mentioned in sub-section (2) cannot be carried out; for instance, the Officer concerned or his servants and workmen cannot do any act necessary to ascertain whether it is suitable for the purpose for which it is being acquired. If the public purpose stated in Section 4(1) of the Acquisition Act is land assembly and development project of the area in question without anything more, it is extremely difficult to comprehend how all the matters set out in sub-section (2) can be carried out by the Officer specially authorised in that behalf, and by his servants and workmen.

4. The impugned notification also stultifies the wholesome principle embodied in Section 5-A of the Acquisition Act that a person whose property is being or is intended to be acquired, should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made. We may, in this connection, refer to the

observations of the Apex Court in *Nandeshwar Prasad v. The State of U.P.* that the right to file the objections under Section 5-A is a substantial right when a person's property is being threatened with acquisition and that right cannot be taken away as if by a side-wind. Sub-section (2) of Section 5-A makes it obligatory on the Collector to give an objector an opportunity of being heard. After hearing all objections and making further inquiry he is to make a report to the appropriate Government containing his recommendation on the objections. The decision of the appropriate Government on the objections is then final. The declaration under Section 6 has to be made after the appropriate Government is satisfied, on a consideration of the report, if any, made by the Collector under Section 5-A(2). The legislature has, therefore, made sufficient built-in safeguards in favour of the persons interested to file objection; against the proposed acquisition and for disposal of their objections. As already noticed, in Section 4(1) notification, all that was stated was that the land was required for 'land assembly and development project along Inner Ring Road by M.M.D.A.' There is absolutely no indication whatsoever; whether the development was to be of residential and building sites or of commercial and industrial plots, nor was it possible for anyone interested in the land sought to be acquired to find out what kind of land assembly (?) and development project was under contemplation. In this connection, we may point out that the Acquisition Act did not originally provide for filing or hearing of objections to the proposed acquisition. It was only by the Amending Act 38 of 1923 which came into force on January 1, 1924, that Section 5-A was inserted in the Acquisition Act. Up to that time, the view was that the wishes of the land owners were wholly irrelevant, but after the insertion of Section 5-A, the position has undergone a sea change.

It cannot therefore be said that the owner's wishes are not relevant and that he does not need an opportunity to file objections. To take such a view would render Section 5-A otiose. If it has any purpose and if it has to be given its full effect, the person interested in the land proposed to be acquired, must have an opportunity to submit his objections to the proposed acquisition. The objections will be meaningful only if the notification under Section 4(1), while mentioning the public purpose, gives some definite indication or particulars of the said purpose which would enable the person concerned to object effectively, if so desired. In the

absence of such specific or particular purpose being stated, the objector cannot file any proper or cogent objections under Section 5-A, which he has a right to do under that provision. The view we are taking finds support in the decision of the Apex Court reported in *Munshi Singh v. Union of India*, wherein, a three-judge Bench held that the mere words in the notification under Section 4(1) that the land is needed for 'planned development of the area' are not sufficient to satisfy the requirements of law.

5. In a later decision reported in *Madhya Pradesh Housing Board v. Mohd. Shapi*, again a co-equal Bench of three learned Judges of the Apex Court, speaking through Dr. A. S. Anand J, (as His Lordship then was) has gone to the extent of saying that if Section 4(1) notification is defective, it not only vitiates the notification, but also renders all subsequent proceedings connected therewith bad in the following terms:

'8. It is settled law that the process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. Any notification which is aimed at depriving a man of his property, issued under Section 4 of the Land Acquisition Act has to be strictly construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the Courts. The object of issuing a notification under Section 4 of the Act is two-fold. First, it is a public announcement by the government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the Government for the 'public purpose' mentioned therein and secondly, it authorises the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(4) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity (Italics supplied by us) not only the 'public purpose' for which the acquisition proceedings are being commenced but also the 'locality' where the land is situate with as full a description as possible of the land proposed to be acquired to enable the 'interested' persons

to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections, etc., since it is open to such persons to canvass the non-suitability of the land for the alleged 'public purpose' also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad.'

The Apex Court in the aforesaid decision also held that even when the public purpose has been mentioned as 'residential', it is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law- Vide paragraph 14 of the Judgment noted supra, which is extracted below:-

'14. Apart from the defect in the impugned notification, as noticed above, we find that even the 'public purpose' which has been mentioned in the schedule to the notification as 'residential' is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in 'public interest' or for the benefit of the 'public' or an identifiable section thereof. In the absence of the details about the alleged 'public purpose' for which the land was sought to be acquired, no one could comprehend as to why the land was being acquired and therefore, was prevented from taking any further steps in the matter.'

6. Here, the position has been rendered worse, as it has come out on record that the intention of acquiring lands in Madhavaram Village, Saidapet Taluk for land assembly and development scheme is to benefit from the increased value from property development, as is clear from the copy of the demi-official letter in D.O.No.3217-UD III (i) 92-6, dated 16.2.1993 from the Joint Secretary to Government, Housing and Urban Development Department, Fort St. George, Madras-600 009 to the District Revenue Officer, Chengalpattu M.G.R. District at Kancheepuram. We wonder how can there be an element of public purpose when the avowed object of the acquisition is to spin money by depriving the innocent land owners of their valuable property in colourable exercise of the power of

Eminent Domain.

7. In the light of the aforesaid discussion, we are of opinion that the finding of the learned single Judge on the question of vagueness as contained in paragraph 10 of the order impugned in these appeals, cannot be legally sustained.

8. Of course, in order to get-over the objections based on vagueness of Section 4(1) notification, the respondents would contend (vide counter affidavit filed on behalf of the respondents in W.P.No.21355 of 1993) that in order to enlighten more about the project, it was mentioned in the declaration under Section 6 of the Acquisition Act that the lands are needed for commercial and residential neighbourhood schemes under the project known as 'land assembly and development project'. In other words, the contention is that failure to give detailed particulars of the public purpose in Section 4(1) notification could not vitiate it, more so, when sufficient particulars had been provided in the notification issued under Section 6(1) of the Acquisition Act. This is too untenable a contention to be accepted. In our considered opinion, the Government may not be justified in filling up the lacuna in Section notification by improving it further in Section 6 declaration. It is well settled that when a statutory functionary makes an order or issues a notification based on certain grounds, its validity must be Judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, any order bad in the beginning, may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw' attention to the observations of Bose, J in Gordhandas Bhanji, , which reads as follows:

'Public orders publicly made. In exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he Intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.'

Orders are not like old wine becoming better as they grow older. (See in this connection, the Constitution Bench decision of the Supreme Court in *Mohinder Singh v. Chief Election Commr.*, . The question arose more specifically before the Supreme Court in *Madhya Pradesh Housing Board's Case*, , wherein, the Apex Court, after noting the disparities in Section 4(1) notification and Section 6(1) declaration held as follows:-

'17. That apart, this case also discloses non-application of mind by the authorities concerned and rather casual manner in dealing with the property of the citizens vitiating the acquisition proceedings. Whereas the letter of the Executive Engineer of the Housing Board to the Collector had indicated that the Chairman of the Board had found the land suitable for 'construction of buildings and shops under the self-financing scheme', the notification issued under Section 4(1) makes no mention thereof and instead declares the 'public purpose' to be 'residential'. Again, in the declaration issued under Section 4(1) of the Act the 'public purpose' has been stated to be 'housing scheme of Housing Board' and not 'construction of buildings and shops under the self-financing scheme'. Admittedly, apart from the letter referred to above, there was no other material with the State Government and, therefore, it is not understandable on what material, did the State Government state the 'public purpose' in different terms in the notifications issued under Section 4 and 6(1). No explanation has been furnished by the learned counsel as to why different public purposes were mentioned in the letter of the Board and the two notifications issued under Section 4 and 6 of the Act. (Italics supplied by us). These factors go to expose non-application of mind by the authorities while issuing the impugned notification and it appears that they were not even sure about the 'public purpose' for which the land was sought to be acquired.'

This position stands settled as per the decision of the Supreme Court rendered as early as in 1971 in *Narendrajit v. State of U.P.*, , wherein, it has been held that the defect in a notification under Section 4(1) cannot be cured by giving full particulars in notification under Section 6(1). In the light of the aforesaid discussion, we have no hesitation in holding that notification issued under Section 4(1) is vitiated by vagueness and the defect of vagueness cannot be cured by the subsequent declaration under Section 6(1) of the Acquisition Act.

9. The Government have a case that the appellants/ petitioners are guilty of laches in so far as they failed to invoke the jurisdiction of the Court immediately after the issuance of notification under Section 4(1) of the Acquisition Act. This again is an untenable contention. Similar contention advanced in Narendrajit's Case, : was repelled by the Apex Court in the following terms:

'The fact that the petitioners (owners) did not go to Court immediately after the publication of the first notification is not a matter of any moment. The defects were not cured and cannot be glossed over by reason of the fact that the petitioners went to Court after the issue of the notification under Section 6(1).'

Accordingly, we reject the abovesaid contention of the Government as well.

10. We also take note of the fact from the statement furnished by learned Additional Government Pleader that in spite of the fact that the interim stay issued by this Court was confined only to dispossession, the respondents have not cared to proceed with the acquisition by passing awards in many cases, which shows lethargy on the part of the respondents in the matter. It is not as if the respondents can deal with the property of the citizens in a casual manner. Had they been serious in the public purpose which is sought to be projected as per the notifications impugned in these proceedings, we expect them to be alert and cautious by passing awards at the earliest opportunity. Even while granting stay of dispossession, this Court made it clear that pending hearing of the appeals, other proceedings can go on. Even though nearly a decade has elapsed, it is a pity that the respondents have not risen to the occasion by passing awards in all the cases. Aggrieved persons, having been driven to the Court because of lapses on the part of the authority in issuing a defective notification, cannot be permitted to wait indefinitely and suffer. We also take note of the fact that considering the nature of the lands which are involved in these appeals, the concerned District Revenue Officer had strongly recommended to the Government to drop the acquisition proceedings, as per his notes of inspection dated 23.9.1993.

11. Of course, learned Additional Government Pleader and learned Standing Counsel for M.M.D.A. brought to our notice the following decisions in support of their respective submissions: (i) Aflatoon v. Lt. Governor, Delhi, (ii) Lila Ram v.

Union of India, ; (iii) Ajay Krishan Singhal v. Union of India, and (iv) State of Tamil Nadu v. L. Krishnan, .

12. Aflatoon's case, is clearly distinguishable on the following:--

Paragraph 6 of the decision speaks that the question of vagueness must be decided on the facts and circumstances of each case, the petitioners/land owners in the said case did not urge the ground pertaining to vagueness at the earliest opportunity before the Collector or before the authorities and hence, the Apex Court ruled that no prejudice was caused to them, no contention was raised before the High Court about the vagueness and hence, the Supreme Court ruled that such a contention cannot be permitted to be raised for the first time before the Apex Court, the appellants/landlords were found guilty of laches and third party interest has crept in, as lands were already allotted to co-operative housing societies and they were not made parties before the Court.

13. Leela Ram's case, is distinguishable for the following reasons:-

No objection was raised by the land owners at the earliest opportunity pertaining to vagueness, no argument was raised before the High Court with respect to vagueness, and since vagueness was not pleaded or raised before the High Court, the said contention was not permitted to be raised in the appeal before the Apex Court.

14. Ajay Krishan Singhal's Case, is distinguishable for the following reasons:-

It is a case decided by a Bench of two learned Judges. They did not consider the earlier three-Judge Bench decision in Madhya Pradesh Housing Board's Case, delivered by Dr. A. S. Anand, J., (as His Lordship then was). Even in this case, it is ruled that each case has to be considered and decided on the facts and circumstances of each case. Therefore, the question of vagueness is not a question of law, but a question of fact to be decided on the facts of each case.

15. State of Tamil Nadu's Case, is distinguishable on the ground that the landowners were not allowed to raise the plea of vagueness as they were found guilty of laches and the public purpose in this case is clearly stated with sufficient

particulars in Section 4(1) notification as below:-

'for the implementation of housing schemes to meet the demands made by various sectors of the population under 'Kalaigiar Karunanidhi Nagar Further Extension Scheme', for the creation of a new neighbourhood known as 'Kalaigiar Kanmanidhi Nagar Part II Scheme' and for increasing housing accommodation for the development of South Madras neighbourhood.'

This decision did not refer to Madhya Pradesh Housing Board's Case, . In this case also, it was held that whether the public purpose stated in the particular notification is vague or not, is a question of fact to be decided on the facts and circumstances of each case.

16. At any rate, the facts of the cases on hand are clearly different from the facts of the above mentioned cases cited by the respondents. In the present batch of cases, the question of vagueness was raised by the appellants/land owner before the authorities by way of objections immediately after issuance of Section 4(1) notification. Before this Court, vagueness was pleaded and argued in the writ petitions, and this Court, considered the vagueness in the notification as an issue and answered the same in the common order. In all the abovesaid cases referred to by the respondents, the land owners did not take up the plea of vagueness before the Land Acquisition Officer with a contention that since the public purpose is vague, they are not in a position to file a meaning objection. In the cases on hand, the specific contention was taken by the appellants before the Land Acquisition Officer that since the public purpose in the notification under Section 4(1) is vague, and as the term: 'land assembly and development project' is a very general term, they are not in a position to object specifically against the acquisition. The extent, of land in the cases referred to by the respondents comes to thousands of acres. On the other hand, the property acquired in the cases on hand is only 33.16 acres. The public purpose shown in Section 4(1) and Section 6 are entirely different. Even according to the Government, section 4(1) does not contain the details of the public purpose which necessitated them to explain the public purpose in Section 6 declaration. In all the cases referred to by the respondents, the Apex Court declined to interfere in the land acquisition

proceedings, as the land owners were found guilty of laches, whereas, the appellants in these batch of cases, are not guilty of laches.

17. In Aflatoon's Case, relied on by learned Additional Government Pleader, the Apex Court declined to interfere in the land acquisition proceedings, as the lands acquired have already been given to various co-operative housing societies, and as such, third party interest has already crept it, and those beneficiaries were not made parties in the writ petitions. In the present cases, even the award itself is not passed in majority of cases as already noticed. Therefore, the question of third party interest does not arise for consideration. The respondents mainly contended that when the acquisition is for a large extent of land, specification of the use of each one's property is not necessary. But, in the present case, even in respect of 33.16 acres of land which comprises the whole area, the notification is vague, and conveys no idea as to the specific purpose for which 33.16 acres of property, was to be utilised.

18. In State of Tamil Nadu's Case, which is the only decision by a three-Judge Bench, after Madhya Pradesh Housing Board's Case delivered by Dr.A.S.Anand.J. (as His Lordship then was) sitting in a three-Judge Bench, the public purpose was stated in Section 4(1) with sufficient particulars, which is evident from the very notification which is extracted at paragraph 3 of the judgment at page 499. But, in the present cases, the public purpose is not stated with such sufficient particulars, and hence, the facts of the present cases are different from the facts of State of Tamil Nadu's Case, .

19. In conclusion, we are of opinion that the entire idea behind the acquisition is to speculate in urban lands, as is borne out from the letter of Joint Secretary to Government, Housing and Urban Development Department, Fort St. George, Madras-9 addressed to the concerned District Revenue Officer, dated 16.2.1993, in which it is stated that the intention of acquiring lands along the Inner Ring Road is to benefit from increased value from properly development. Arbitrary exclusion of certain lands is without any rhyme or reason, and the argument of M.M.D.A. is that after having spent large amount on the Inner Ring Road, the benefit should not be left to be enjoyed by the private land owners (appellants), but should accrue

to the Government (vide-inspection notes of District Revenue Officer, Chengalpattu MGR District, Kancheepuram, dated 28.7.1995).

20. In these cases, Section 4(1) notification was Issued on 10.6.1991 and Section 6 declaration was dated 3.7.1992. The writ petitions were filed on 19.7.1992. The stay was limited to dispossession only as already noticed.

The writ petitions were dismissed on 6.7.1999. The writ appeals were filed on 21.7.1999. In the stay orders passed In the writ appeals on 22.7.1999 and 2.8.1999, they were limited to dispossession alone, and it was also made clear that other proceedings can go on. In spite of the above facts as already noticed, the award is not passed in number of cases, which shows that the requisitioning authority (M.M.D.A.) is not sincere in its project and the authorities are speculating in the lands appurtenant to the Inner Ring Road.

21. For the reasons stated above, these writ appeals must succeed, and the same are accordingly allowed. The order of the learned single Judge impugned herein is hereby set aside and the entire acquisition proceedings in respect of the lands of the appellants in these writ appeals, are hereby quashed. No costs.