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Court : Chennai

Decided On : Sep-18-1973

Reported in : AIR1974Mad383

Judge : K. Veeraswami, C.J. and ;Varadarajan, J.

Acts : Land Acquisition Act - Sections 4(1), 5-A, 5-A(1) and 55(1); Land Acquisition Rules - Rule 3

Appeal No. : Writ App. Nos. 524 to 527 of 1971 and W.P. Nos. 3427 and 3542 of 1970

Appellant : The State of Madras and ors.

Respondent : Periakkal and ors.

Judgement :

1. The land acquisition proceedings in these case have been quashed on two grounds--(1) that Rule 3(b) of the rules framed under Section 55(1) of the Land Acquisition Act had not been followed inasmuch as no notice was given to the objections as required by the rule to the Harijan Welfare Department at whose instance the acquisition was initiated; and (2) that there was departmental bias inasmuch as the same Tahsildar, who did the survey etc., and initiated the proceedings, also held the enquiry under Section 5A of the Act. The acquisition in these cases was for providing house sites for Harijans.

2. We are not impressed by either of the objections to the validity of the land acquisition proceedings. There are hardly any facts to show that the respondents had in any way been substantially prejudiced by the failure to serve notice on the Harijan Welfare Department. The record shows that it was at the instance of the Harijan Welfare Department that the proceedings were initiated for acquisition. But it is contended that if notice had been given to that department, it might as well have accepted an alternative site. That was only a mere chance. Notwithstanding the use of the expression 'shall' we are of opinion that the rule is merely directory and not mandatory. That was the view taken in W. P. No.1099 and 11236 of 1961, which was accepted by a Division Bench of this court in Chockalinga Mudaliar v. State of Madras, represented by the Collector of North Arcot, Vellore, (1972) 2 Mad LJ 196. One of us dealt with the matter thus:-

"The next contention urged is founded on rule 3(b) of the rules framed under Section 55(1) of the Land Acquisition Act. It is contended that no notice under Section 5A was at all given to the Telephone Department requiring the land. Reliance is placed upon Lonappan v. Sub-Collector, Palghat, , and

Ramcharanlal v. State of U. P. AIR 1959 All 752, in support of this contention. but I do not see how even assuming that no notice went to the department, the petitioners were in any way affected. The facts and circumstances of this case clearly show that the department needed the land with the building thereon for the purpose of the telephone exchange. In my opinion, the failure to give notice to the department and thereby conforming to Rule 3(b) is not such irregularity as will necessarily invalidate the acquisition. The test should in every case be whether the failure has caused substantial prejudice to the aggrieved persons. On this view, I consider that there is no substance in this contention either."

Subsequently, this view, as we said, has been accepted in (1972) 2 Mad LJ 196.

3. Under Section 4(1), a notification is to be published to that effect whenever, it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose. Any person interested in any land which has been notified under Section 4(1) as we see from Section 5-A(1) may, within the time specified, object to the acquisition of the land or of any land in the

locality, as the case may be. The objection is to be made to the Collector in writing and the latter shall give the objector an opportunity of being heard either in person or by pleader, and after hearing of such objections and after making such further enquiry, if any, as he thinks necessary, shall make a report to the appropriate Government which shall finally decide. It is in the context of this scheme of things that the scope and effect of Rule 3(b) will have to be determined. Rule 3(b) says--

"If any objections are received from a person interested in the land and within the time prescribed in sub-section (1) of Section 5A the Collector shall fix a date for hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry."

It is no doubt true that as required by the rule, the Collector shall give notice of the objections to the department requiring the land and copies of the objections shall also be forwarded to such department. This is for enabling the department to file on or before the date fixed by the collector a statement by way of answer to the objections and also depute a representative to attend the enquiry. It may be seen, therefore, that the department requiring the land may have an opportunity of traversing the objections, if any, filed by the person interested in the land so that in the light of the reply of the department, a decision may be arrived at for the purpose of making the declaration under Section 6. We do not think that the suggestion made for the respondents that if this procedure had been followed the Harijan Welfare Department might have possibly accepted an alternative site has any bearing upon the interpretation of the actual scope and effect of the rule. Having regard to the purpose of the acquisition, namely, to provide house sites for Harijans, and there being no substantial material to accept any alternative choice, and the rule, in our opinion, being not mandatory, its effect is that in the absence of substantial prejudice, the acquisition proceedings are not invalidated.

4. The other ground seems to be even less substantial. We are unable to understand what kind of bias the Tahsildar could have had which should have an effect upon any decision for the purposes of S. 6. Departmental bias in our view, seems to be a very vague thing. What is stated that the Tahsildar in these cases having initiated the land acquisition proceedings, at the instance of the Government, may be biased in making the enquiry under Section 5A. We can hardly visualise any such bias on the part of the Tahsildar. He is not personally interested or motivated to form any bias. Merely because the department initiated a certain thing, it does not follow that the action is vitiated by what is stated as departmental bias. Something more is required in order to invalidate the acts of the Tahsildar on the ground of bias. Further, bias is related to a decision and the Tahsildar hardly contributes to any decision under Section 5A. He receives objections hears the parties and conveys his own views in relation to what he has heard. The consolidated report which he sends will be no doubt the subject-matter for the Government to consider. The decision ultimately is with the Government and is of the Government. We are therefore, not impressed by this ground of departmental bias. The appeals are allowed. No costs. The writ petitions are dismissed. No costs.

5. Appeals allowed.

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