

A. Muthalif Vs. the Special Tahsildar, Harijan Welfare, Devakottai and anr.

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Court : Chennai

Decided On : Jul-12-1984

Reported in : AIR1986Mad87

Judge : V. Ramaswami and ;David Annoussamy, JJ.

Acts : [Land Acquisition Act, 1894](#) - Sections 4 and 6

Appeal No. : W.A. No. 232 of 1981

Appellant : A. Muthalif

Respondent : The Special Tahsildar, Harijan Welfare, Devakottai and anr.

Advocate for Def. : Sadanand, Govt. Adv. ;A.R. Ramanathan, Adv.

Advocate for Pet/Ap. : S. Ramalingam, Adv.

Judgement :

1. This writ appeal is against the order of a single Judge, In W. P. 3754 of 1978 dated 31-3-1981.

2. The circumstances under which the writ petition was filed before this Court are as follows: The writ petitioner is the owner of an extent of 0.65 acres of land bearing S.No. 339/1 in Tirupathur Town, Ramanathapuram district. The said land was notified in the Tamil Nadu Government Gazette for acquisition for the provision of house sites to Harijans of 11th Ward of Tirupathur Town under S. 4(l)

of the Land Acquisition Act (hereinafter referred to as the Act). During the enquiry under S. 5A, the petitioner objected to the acquisition of the land on the ground that the State Bank of India, Tirupathur, Branch and himself had entered into a contract as early as in September 1976 and that consequently the Bank advanced Rs.90000 to the petitioner for the construction of the building as per the plan furnished by the Bank. The Land Acquisition Officer inspected the land proposed to be acquired and found that after the publication of the draft Notification under S. 4(l) of the Act, in the Tamil Nadu Government Gazette, the petitioner laid foundation for the office building of the Bank on the northern portion of the land in S. No. 339/1. The Land Acquisition Officer proposed therefore to acquire 0.65 acre out of 1.10 acres in S. No. 339/1 on the southern side. Accordingly, a draft declaration was published under S. 6 of the Act in the Tamil Nadu Government Gazette dt. 23-8-1978, stating that 0.65 acres out of the land in S. No. 339/1 was needed for the public purpose, viz. provision for house sites to the Harijans of Thirupathur Town. Subsequently, notices under Ss. 9(3) and 10 of the Act were published and served in the manner prescribed under the rules. During the award enquiry, the petitioner reported to the officer concerned that he had filed a writ petition in this court praying to quash the acquisition proceedings, and, therefore, requested him to adjourn the enquiry. In fact petitioner prayed the High Court to issue a writ of Mandamus or any other appropriate writ, restraining the Special Gasholder, Harijan Welfare, Devakottai Land Acquisition Officer from proceeding further in the matter in pursuance of the notices issued under Ss. 9(3) and 10 of the Act.

3. Before the learned Judge, the following two points were urged by the petitioner.

(1) The Land Acquisition Officer was not certain as to where exactly the extent of 65 cents has got to be measured and carved out of the land bearing S. No. 339/1 having a total extent of 1. 10 acres.

(2) There was a discrepancy in the description of the land proposed to be acquired between S. 4(l) notifications and S. 6 declarations. The learned Judge found both the grounds of attack not acceptable, and therefore, dismissed the writ petition by order dt. 31-3-1981. It is against that order; the present appeal has been preferred.

4. In this appeal, the same two points were urged before us.

It is seen that the land is described in S. 6 declaration as -

'Ramanathapuram district, Thirupathur Taluk No. 57 Tirupathur village Ryotwari wet S. No. 339-1B belonging to Muthalif, son of Ayyathurai Ambalam, Thirupathur town, bounded on the north by S. No. 339- 1A, east by S. No. 339-2, south by S. No. 339-3 and west by S. No. 338-0.65 acre.'

This would suggest that the land is rectangular in shape. But the sketch prepared by the Special Surveyor. Mr. Periakarupah on 9-3-1981, which has been placed before us by the learned Government Pleader shows that the land to be acquired is in 'L' shape. In the declaration under S. 6, it is stated that a plan of the lands is kept in the office of the Special Tahsildar (Harijan Welfare) Devakottai for inspection at any time during office hours. The plan now presented is said to be the same as the plan, which was kept in the office of the Special Tahsildar at the time of the declaration. If it is so the verbal description of the land in the declaration under S. 6 is certainly defective.

The land was described in the notification under S. 4(l) as follows: -

'Ramanathapuram District. Thirupathur Taluk, No. 57 Thirupathur village.

Ryotwari wet S. No. 339-1 belonging to Muthalif, son of Ayyathurai Ambalam, bounded on the north by S. No. 339-6 east by S. No. 339-5, south by S. No. 339-3 and west by S. No. 338-0.65 acre'.

5. It is seen from a comparison of the description of the land in the notification under S. 4(l) and the on, given in the declaration under S. 6 that the land is described as S. No. 339/1 in the notification under S. 4(l). whereas in the declaration under S. 6, it is described as S. No. 339/1B. The learned Government Pleader would state that the land bearing S. No. 339/1 has been divided into two parts which have been described as 1A and 113 for the purpose of identification and that the portion of the land to be acquired was 339/1B from the beginning. He produced to that effect another sketch prepared by the said Mr. Periakauppan, the Special Surveyor, on 9-3-1981, with a mention sketch as on the date of S. 4(l)

notification.' In the said plan, the land shown as to be acquired is in 'L' shape as in the sketch referred to above. In the toposketch of the village Tirupathur prepared by the Special, Tahsildar (HW), Devakottai on 36-6-1976, the land to be acquired is shown to be located in the northern portion of the land in S. No. 339/1, whereas in the two sketches prepared by the Special Surveyor on 9-3-1981, it is shown to be on the southern portion. Therefore, the sketch prepared on 9-3-1981 by the Special Surveyor, Mr. Periakaruppan, as giving the description as on the date of S 4(l) notification is obviously wrong. Further, during the course of the enquiry under S. 5A, the appellant herein brought to the notice of the Land Acquisition Officer that the land proposed to be acquired was the one on which he had agreed to erect a building for the State Bank of India, Tirupathur branch. In order to ascertain about the truth over this allegation, the Special Tahsildar, Devakottai, wrote a letter to the State Bank of India, Tirupathur on 29-3-1977 and the Bank confirmed the existence of the agreement by reply dt. 30th Mar, 1977. Again, the Special Tahsildar wrote a letter to 'the Bank on 4-4-1977, asking it whether the Bank has got any objections for the acquisition of the land for the provision of house sites to the houseless Harijans. The Bank replied on 9-4-1977 that the site was actually the one chosen for the building of the Batik premises. Later, the writ petitioner wrote to the Special Tahsildar that in pursuance of an agreement with the Bank he had constructed a pucca building on the land under acquisition, which is now in the occupation of the Bank. The Special Tahsildar the first respondent herein also in his counter-affidavit conceded the fact that the extent required for the construction of the office building on the northern side was left at the disposal of the petitioner and that the remaining extent viz. 0.65 acre on the southern side alone was taken up for acquisition. In the teeth of his clear admission, it would be futile to contend that there was no shifting in the actual portion of the land to be acquired. Faced with this situation, the learned Government Pleader contended that the notification under S. 4(l) was not final and that only the declaration under S. 6 was conclusive and brought to our notice in support of his contention the following two decisions.

6. The first one is by the Supreme Court in Babu Barkya Thakur v. State of Bombay, : [1961]1SCR128 , wherein their Lordships have held that the non-mention of the public purpose in S. 4(l) notification does not matter and in this

connection, they have observed as follows:

'...The purpose of the notification under S. 4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary, digging or boring into the sub-soil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under S. 6 that a firm declaration has to be made by Government that land with proper description and area so as to be identifiable is needed for a public purpose or for a company. What was a mere proposal under S. 4 becomes the subject matter of a definite proceeding for the acquisition under the Act. Hence, it is not correct to say that any defect in the notification under S. 4 is fatal to the validity of the proceedings, particularly, when the acquisition is for a company and the land has to be investigated under S. 15A or S. 40 necessarily after the notification under S. 4 of the Act.'

7. The second decision is a Bench decision of this Court reported in *Gangadhara v. State of Madras*, ILR (1964)Mad 273. In this decision after quoting the observations of the Supreme Court as extracted above, it was held that the vagueness of the S. 4(1) notification will not vitiate the proceedings and the fact that the subsequent declaration under S. 6 fixed the area, inclusive of some more grounds in the same survey number, the property having been described as situate in a particular locality, cannot invalidate the prior proceedings.

8. No doubt, when the land is of homogeneous nature, the fact of taking a portion in one side or the other would not make much difference. But when the land has got specific features, each portion having certain precise advantages to the owner of the land justice would require that the portion of the land to be acquired be described as accurately as possible in the notification under S. 4(1) itself. It is true that the final declaration is only under S. 6. But such a declaration has to be made after considering the report made under S. 5A, which report consists of the enquiry on the objections arising out of the notification under S. 4(1). Therefore, the owner of the land should have been put in a position of being able to put forth his case properly in respect of the portion of the land to be acquired. We are fortified in this view by the recent decision of the Karnataka High Court reported in *Jammada Aivappa v. State*, : AIR1980 Kant22, wherein it was observed that

the declaration under S. 6 of the Act notifying certain lands, which were not included in the preliminary notification issued under S. 4 was not legal and as such cannot at all be sustained.

9. In the present case, the land proposed to be acquired is situate in a fast developing area near the bus stand and a higher elementary school, where the building of the office of State Bank of India, Tirupathur branch has also come up. Therefore, the land in question can no longer be considered as a cultivable land out of which a portion or other can be carved out. In fact, it is seen that from the beginning there was a consensus between the petitioner, the Land Acquisition Officer and the Bank that the land proposed to be acquired was the northern portion upon which the Bank building was to be erected and was subsequently erected. The writ petitioner while filing his objections under S. 5A had in mind only that portion and was not able to put forth his objections in respect of the southern portion now proposed to be acquired. Therefore, it is to be concluded that there is a serious discrepancy between the description of the land in the notification under S. 4 and the declaration under S. 6, that such a discrepancy has caused prejudice to the writ petitioner appellant and has vitiated the acquisition proceedings. It was also found earlier that the description of the land in the declaration under S. 6 was also not proper. Therefore, both the grounds of attack urged before us by the appellant are found to be justified.

10. In the result, the appeal is allowed, the order of the learned single Judge is set aside. The land acquisition proceedings in respect of the land of the appellant are hereby quashed. There will be no order as to costs.

With reference to Art. 134A of the Constitution the learned Government Pleader prayed that leave may be granted. We are not satisfied that the proposed appeal to the Supreme Court raises any substantial law of general importance which needs to be decided by the Supreme Court. In the circumstances, we refuse to grant leave.

11. Appeal allowed.

