

N. Chelladurai Vs. the Government of Tamil Nadu Rep by the Secretary to Government Housing and Urban Development Department, Fort St. George, Madras-9 and Another

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Court : Chennai

Decided On : Jun-30-2000

Reported in : 2000(3)CTC215

Judge : P. Sathasivam, J.

Acts : [Land Acquisition Act, 1894](#) -- Sections 4(1) and 5-A; Tamil Nadu Land Acquisition Act -- Rules 1991, Rule 4

Appeal No. : W.P. No. 19129 of 1994

Appellant : N. Chelladurai

Respondent : The Government of Tamil Nadu Rep by the Secretary to Government Housing and Urban Development Depa

Advocate for Def. : Mr. V. Selvanayagam, adv.

Advocate for Pet/Ap. : Mr. A. Sivaji, Adv.

Judgement :

ORDER

1. Aggrieved by the land acquisition proceedings initiated by the respondents for the public purpose, namely, for formation of a Neighbourhood Scheme, the petitioner has filed the above writ petition.

2. After taking me through the various averments in the affidavit filed in support of the above writ petition, learned counsel for the petitioner has raised the following contentions: (1) The respondents have not conducted proper enquiry in terms of Section 5-A of the Land Acquisition Act (Central Act) and Rule 4(b) of the Land Acquisition Rules; (2) The local publication was not made in the Dailies having circulated in the locality where the land situates. On the other hand, learned Government Advocate, after taking me through the impugned proceedings as well as the counter affidavit filed by the first respondent, would contend that the respondents have fully complied with the mandatory provisions of the said Act and Rules and there is no defect or error in the acquisition proceedings, accordingly prayed for dismissal of the writ petition.

3. It is seen from the proceedings that the petitioner is the owner of 10 cents in T.S.No. N-4-24/2 of Nagercoil village. Agasteeswaaram Taluk, Kanyakumari District by virtue of a registered sale deed dated 5.10.90 for valuable consideration. According to him, he is a small land-holder. Patta for this land was transferred in his name after purchase. For the purpose of formation of a Neighbourhood scheme by Tamil Nadu Housing Board, a Notification under Section 4(1) of the Land Acquisition Act (Central Act) (hereinafter referred to as 'the Act') was issued in G.O.Ms.No. 1214, Housing and Urban Development Department, dated 17.9.91. The same was published in the Tamil Nadu Government Gazette dated 11.12.91, in two Tamil Dailies viz., Kumari Murasu and Kinnas dated 19.12.91 and in the locality on 19.12.91. Individual notice in Form 3-A for 5-A enquiry was issued to the petitioner during February, 1992. The petitioner submitted his written objections on 13.2.92. 5-A enquiry was conducted on 10.3.92 and the petitioner also appeared on that date objecting the acquisition, According to the petitioner, even though he had submitted his objections within the time prescribed the second respondent had sent the remarks of the requisitioning body on 11.3.92 which was served on the petitioner on 23.3.92. According to him, no enquiry was conducted by the second respondent and he has passed 5-A

enquiry proceedings on 30.3.92 which was served on him on 6.4.92, There is no dispute that in terms of section 5-A(1)(2) read with Rule 4(b) and (c) of the Rules, if the land owner, submits his objection within the time prescribed namely, within 15 days from the date of receipt of notice for 5-A enquiry, undoubtedly the second respondent had to forward the objection of the land owner to the requisitioning body, here in our case the Tamil Nadu Housing Board and on receipt of the remarks of the requisitioning body, the same has to be communicated to the land owner and thereafter further enquiry has to be conducted, After doing so, it is open to the land acquisition officer to submit a report to the Government for taking further action. This position has been settled in various decisions of this Court as well as the Apex Court. The 5-A proceedings of the Special Tahsildar dated 30.3.92 shows that the petitioner had submitted his objection in time and remarks were also called for from the requisitioning body. However, it is not stated either in the 5-A proceedings of the Special Tahsildar dated 30.3.92 or in the counter affidavit of the first respondent regarding further enquiry after service of copy of the remarks of the requisitioning body to the petitioner. In such circumstances, in the light of the particulars furnished, I hold that the 5-A enquiry and the subsequent proceedings dated 30.3.92 of the 2nd respondent is vitiated since the same was not conducted as laid down in Section 5-A of the Act and Rule 4(b) of the Rules.

4. Regarding the other contention that the publication was made in the dailies which are not having circulation in the locality admittedly 4(1) Notification was published in two tamil dailies, namely, Kumari Murasu and Kinnas dated 19.12.91 and declaration under section 6 in 'Makkal Kural' and 'Vetri Malai' dated 1.12.92. Section 4(1) and Section 6 enables the authorities to publish the contents of the notification in two dailies out of which one shall have a circulation in the locality in which the land situates. It is the definite case of the petitioner that the tamil dailies 'Kumari Murasu' and Kinnas are not having wide circulation in the local area. In the reply affidavit filed by the petitioner, it is specifically stated that those two dailies are not having wide circulation similar to Dhinamalar, Dhinakaran etc. Apart from this, learned counsel for the petitioner has also filed a supporting affidavit from one P. Chinda residing at Main Road, 7/9, North Sorrakudy, Soorankudy post, Dharmapuram village. Agasteeswaram Taluk. Kanyakumari District. According to

him, he is the President of the Kanyakumari District Newspaper Agents Sangam. It is stated in the supporting affidavit that the Tamil daily, namely, Makkal Kural was not circulated during December, 1992. Now only the agent for this daily has been appointed. He also stated that Tamil Daily Vetrimalai was not circulated in the locality and there is no agent for the said daily. He also asserted that even now there is no agent for the daily ' Vetrimalai' in the entire Kanyakumari District. He also asserted that 'Kinnas' Tamil daily was not at all circulated on 19.12.97. According to him, for this also there is no agent till now in the entire Kanyakumari District. He asserted the above factual position in the form of affidavit and in the capacity of as Office bearer of the Kanyakumari District Paper Agents association. As per Section 4(1) of the Act, whenever any land is needed for Government for any public purpose a notification to that effect has to be published in the Government Gazette and in two daily Newspapers circulating in that locality of which at least one shall be in the regional language. Apart from this, the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality. It is clear the preliminary notification under section 4(1) is to be published in the Government gazette, in two daily newspapers circulating in that locality of which one shall be in the regional language and the substance of the notification shall be published at convenient places in the locality. The Courts have taken a view that all the three modes of publication are mandatory. There is no dispute with regard to the publication of 4(1) notification in the gazette as well as in the locality. In so far as the dailies are concerned, it is established by the petitioner that they are not circulated in the locality where the petitioner resides or where the property situated. In the light of the factual information furnished by the petitioner and in the absence of any contra material from the respondent. I accept the contention also raised by the counsel for the petitioner.

5. Under these circumstances, the impugned acquisition proceedings are quashed and the writ petition is allowed. No costs. Both the miscellaneous petitions are closed.