

Chendamarai and ors. Vs. Special Tahsildar, Land Acquisition (Miscellaneous Scheme) and anr.

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Court : Chennai

Decided On : Oct-19-1976

Reported in : (1977)2MLJ505

Appellant : Chendamarai and ors.

Respondent : Special Tahsildar, Land Acquisition (Miscellaneous Scheme) and anr.

Judgement :

ORDER

A.D. Koshal, J.

1. By this judgment I shall dispose of three petitions under Article 226 of the Constitution of India, viz., Writ Petition Nos. 688, 689 and 1571 of 1972 arising out of land acquisition proceedings which were initiated through a single notification, dated the 24th of May, 1967 under Section 4 of the Land Acquisition Act (herein after referred to as the Act). The land covered by that notification had an extent of 5.98 acres and was situate in Thiruvothiyur Village, Saidapet Taluk as detailed below.

S. No. Extent.

194/1-A. 3.43 acres

1-B. 0.04 acres

195/1. 0.02 acres

2. 1.27 acres

197 0.75 acres

198/1-A. 0.47 acres

5.98 acres

This land was split up into two parts. An extent of 0.51 acres comprised as follows:

Survey No. 194/1 Part. 0.04 acres

Survey No. 198/1-A. 0.47 acres

0.51 acres

was sought to be acquired under the ordinary provisions of the Act, while in the case of the rest of the land the objections and the inquiry under Section 5-A of the Act were dispensed with in pursuance of the provisions of Section 17 thereof.

2. At the time of the issue of the above-mentioned notification, Order 51 acre of land sought to be acquired under the ordinary provisions of the Act was owned by S.P. Ramaiah Nadar and Soundarapandia Nadar, to whom a notice was issued by the Special Tahsildar (Land Acquisition) (hereinafter referred to as the Tahsildar) under Section 5-A of the Act requiring them to submit their objection, if any, to the acquisition thereof. To that notice, S.P. Ramaiah Nadar sent a reply, dated the 14th of July, 1967 giving therein, the history of acquisition of other lands belonging to him and then stating:

After acquiring Order 78 cents as per Gazette notification there is an extent of Order 49 cents (36 cents in S. No. 194/2 and 13 cents in S. No. 198/1B left over

and which has been in our possession and enjoyment till date.

We have no objection to hand over possession of the Order 49 cents for the rehabilitation of fisherman in Thiruchinnakuppam as required by the Government. We would however, request you to award us a very reasonable compensation taking into account the present market rates prevailing in the seashore areas which are fastly developing into industrial areas.

A sum of Rs. 500 (Rupees five hundred only) per cent, will, in our- opinion, be a fair compensation and meet the ends of justice also. No mention was made in this reply to the two survey numbers (1941 and 198/1-A), which were sought to be acquired under the ordinary provisions of the Act and about which his objections were invited. A declaration under Section 6 of the Act in respect of the land having an extent of 0.51 acres and sought to be acquired under the ordinary provisions of the Act was published in the official (sic) the 16th of February, 1968, while a similar declaration about the rest of the land having an extent of 5.47 acres was published in the official gazette earlier, i.e., on the 26th of July, 1967. Thereafter, S.P. Ramaiah Nadar above mentioned sold his lands covered by the notification under Section 4 of the Act to one Suseela and she in turn conveyed them to Rajarathinam Ammal, from whom they were purchased by various persons including the petitioners in the three petitions before me, in the years 1969 and 1970.

3. In proceedings under Section 9 of the Act which commenced in December, 1971, notices were issued by the Tahsildar to Ramaiah Nadar above mentioned and not to any of the persons, including the petitioners, who had by then become the owners of the lands originally owned by him. Those proceedings culminated in an award, dated the 27th December, 1971, according to which the petitioners were found to be entitled to various sums which they were asked to collect from the Tahsildar through a notice under Section 12 of the Act. The award and the acquisition proceedings resulting therein are challenged by each of the petitioners with the prayer that they be quashed by a writ of certiorari on the ground that they were made and taken without notice to them and also without proper notice under Section 5-A to them and Ramaiah Nadar.

4. The first ground is well taken. Under Sub-section (3) of Section 9 of the Act, it was incumbent on the Collector to serve notice of the acquisition proceedings on all persons who were known or believed to be interested in the land proposed to be acquired. The petitioners before me were certainly such persons as they had purchased the said land before the proceedings reached the stage of action under Section 9, through deeds which were registered and the registration of which gave notice to the world at large about the transactions covered thereby; so that every one, including the Tahsildar must be deemed to have known about the petitioners having become the owners of the lands purchased by them. In these circumstances the issue of the notice under Section 9 only to Ramaiah Nadar who had ceased to have any interest in the land sought to be acquired, without any notice to the petitioners, would vitiate the proceedings and the award resulting therefrom on the ground that they deal with the civil rights of the petitioners without affording any opportunity to them of being heard. From the stage, therefore, which the proceedings had reached immediately before notices under Section 9 were issued, they as well as the impugned award must be and are hereby struck down. It will, of course, be open to the Tahsildar to re-start the proceedings from that stage after giving notice thereof to the petitioners and otherwise in accordance with law.

5. The second ground does not appear to be justified. The petitioners acquired the lands in dispute subsequent to the publication of the two declarations under Section 6 of the Act. Before they purchased the land they were not entitled to any notice whatsoever. Their predecessor-in-interests, viz., Ramaiah Nadar was no doubt entitled to a notice under Section 5-A of the Act requiring him to file objections in respect of that portion of the acquired land, in relation to which a notice of that type was not dispensed with, and such a notice was actually served on him although he failed, for reasons best known to himself, to file any objections in that behalf. In so far as the other land acquired under the emergency provision is concerned, even Ramaiah Nadar was not entitled to any notice. As it is, however, in his reply dated the 14th of July, 1967 and mentioned above, he did not object to the acquisition of any part of his land as is evident from his assertion therein that he was left with only 49 cents of land in Survey Nos. 194/2 and 198/1-B and that he had no objection to the same being acquired by the Government at

the proper price. No exception can in the circumstances be taken to either of the declarations made under Section 6 of the Act.

6. In the result, the petitions succeed and are accepted and the award together with the acquisition proceedings is struck down as stated above. The petitioners shall have the costs of the proceedings from the respondents. Counsels fee Rs. 150 per petition.

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