V. Devaraj, Vs. the State of Tamil Nadu Rep. by Secretary to Govt. Housing and Urban Development Dept.,

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Court : Chennai

Decided On : Mar-26-2003

Reported in : 2003(4)CTC134

Judge : K. Govindarajan, J.

Acts : Land Acquisition Act - Sections 4(1), 5A, 6, 9 and 10

Appeal No. : W.P. Nos. 9747 to 9749 and 18004 to 18031 of 1996, 6414 of 1997 and 1595 to 1602 of 2000

Appellant : V. Devaraj, ;v. Sundararajan, ;v. Damodarasamy, ;dr. V. Ramachandran and V. Lakshminarayanasami

Respondent : The State of Tamil Nadu Rep. by Secretary to Govt. Housing and Urban Development Dept., ;The Chair

Advocate for Def. : P. Gomathinayagam, Spl. G.P. for R1 and ;D. Veerasekaran, Adv. for R2 in W.P. 9749/96

Advocate for Pet/Ap. : Kandavadivel Doraiswamy, Adv. in W.Ps. 18004 to 18031/96 and 6414/97, ;S.S. Sundar, Adv. in W.Ps. 1677/97 and 1595 to 1602/00 and ;N. Ishtiaq Ahamed, Adv. in W.Ps. 9747 to 9749/96

Judgement :
ORDER

K. Govindarajan, J.

1. In all these cases the petitioners are challenging the impugned acquisition proceedings in respect of their lands sought to be acquired for the purpose of Housing Scheme at the instance of the Tamil Nadu Housing Board.

2. In these writ petitions, a Notification under Section 4(1) of the Land Acquisition Act, hereinafter called 'the Act', was issued in Government Orders dated 25.2.1994, 6.8.1994, 2.4.1994 and 28.2.1994. Since no notice was served on the petitioners, they did not have any opportunity to object the acquisition proceedings. The Government also made declaration under Section 6 of the Act and awards were also passed subsequent to the filing of the writ petitions. For the purpose of constructing houses by the Tamil Nadu Housing Board, the Government proposed to acquire the petitioners' lands.

3. Insofar as the lands of the petitioners bearing Survey Nos. 382, 384/1, 383, 384/2 and 385/1A of Kalapatti village, which are subject matter in W.P. Nos. 18004 to 18031 of 1996, 9747 to 9749 of 1996 are concerned, the Government issued notification under Sec. 4(1) of the Act in G.O.Ms. No. 191, Housing and Urban Development Department, dated 25.2.1994 published in the Tamil Nadu Government Gazette, dated 30.3.1994. The said notification with regard to the lands in S. Nos. 382, 383 and 384 are concerned, they were made in the name of a dead person, namely, Sami Naidu, the original owner. Insofar as the lands bearing S. No. 382 is concerned, the property was purchased by the petitioners in the year 1993 from one Selvaraj, son of Sami Naidu in whose name the notification under Sec. 4(1) of the Act was issued. Subsequently after forming lay-out therein, the Director of Town and Country Planning sanctioned the lay-out on 7.10.1994. A sum of Rs.4,17,000/- was also paid to Kalapatti Town Panchayat. It is the case of the petitioners that most of them have constructed houses on the basis of the sanctioned Plans. The petitioners in W.P. Nos. 18004 to 18031 of 1996 came to know about the acquisition proceedings only on service of the

notification issued under Sections 9 and 10 of the Act. They had no opportunity to appear for the enquiry held under Sec. 5-A of the Act. With respect to Survey Nos. 383 and 384/1, the property was purchased by the petitioners in 1965. Though with respect to Survey Number 383 (W.P. No. 9748/1996) declaration was made under Sec. 6 of the Act in the name of the petitioner, the petitioner was not given an opportunity to participate in the enquiry held under Sec. 5A of the Act.

4. With respect to the land bearing S. No. 416 which is the subject matter in W.P. No. 6414/1997, notification under Sec. 4(1) of the Act in G.O.Ms. No. 217, Housing and Urban Development Department, dated 28.2.1994 was issued.

5. Similarly, with respect to the lands bearing S. Nos. 370, 371 and 372 of Kalapatti village which is the subject matter in W.P. No. 1595 to 1602 of 2000, the Government proposed to acquire the same by issuing Gazette notification under Sec. 4(1) of the Act, in G.O.Ms. No. 343 Housing and Urban Development Department dated 6.8.1996. Even with respect to the lands situate in S. Nos. 370, 371 and 372 of Kalapatti village, the lay-out was approved as early as 26.10.1990 and 20.2.1992 by the Director of Town and Country Planning and most of the Plots were sold even prior to the notification issued under Sec. 4(1) of the Act. In the enquiry held under Sec. 5-A of the Act, the original owner filed a written objection stating that he sold the properties and he has given the particulars regarding the purchasers, namely, the petitioners. In spite of the same, no opportunity was given to the petitioners to raise their objection with respect to the acquisition proceedings.

6. In all these writ petitions though in the notification issued under Sec. 4(1) of the Act it is stated that the lands are sought to be acquired for the purpose of constructing houses by the Tamil Nadu Housing Board, in the declaration made under Sec. 6 of the Act, the said purpose was given up, but it is stated that the lands are sought to be acquired for formation of Kalapatti neighbourhood scheme by the Tamil Nadu Housing Board which means the Housing Board is going to sell the developed sites without constructing the houses by themselves. On these facts, learned counsel appearing for the petitioners raised the following grounds attacking the impugned acquisition proceedings with respect to the notifications

issued in the name of the dead persons:-

(i) Notification under Sec. 4(1) of the Act was issued in the name of dead person and so the impugned acquisition proceedings are void ab initio.

(ii) The petitioners in W.P. No. 18004 to 18031 of 1996 have constructed the buildings after getting No Objection Certificate from the Special Tahsildar, Housing Scheme, Coimbatore and necessary lay-out plan etc., were obtained from the Director of Town and Country Planning Department and also from the Town Panchayat and so at this stage the impugned acquisition proceedings cannot be sustained.

(iii) No opportunity was given to the petitioners. In W.P. Nos. 1595 to 1602 of 2000, it is stated that though the original owner informed the authorities about the sale of the lands in favour of the petitioners with all particulars, the authorities have not given opportunity to the petitioners.

(iv) The purpose for which the impugned acquisition proceedings are made is to construct houses by the Tamil Nadu Housing Board and the land had already been utilised for the same purpose. So the impugned acquisition proceedings cannot be construed as the same were for public purpose.

(v) In the Notification issued under Sec. 4(1) of the Act, it is stated that the lands are sought to be acquired 'for the purpose of constructing houses by the Tamil Nadu Housing Board'. But, in the declaration made under Sec. 6 of the Act, it is stated that the same is 'for the purpose of Kalapatti neighbourhood scheme of Tamil Nadu Housing Board, Coimbatore'. Since the purpose of the impugned acquisition is changed in the declaration made under Sec. 6 of the Act, from the purpose mentioned in the Notification issued under Sec. 4(1) of the Act, the same cannot be sustained.

(vi) Referring to G.O.Ms. No. 620, Housing and Urban Development, dated 29.6.1990, it is submitted that the lands, covered under the lay-out duly approved by the Director of Town and Country Planning Department, prior to the issue of notification under Sec. 4(1) of the Act, should not be acquired. According to the

petitioners, the said guidelines were not considered by the respondents.

7. Heard Mr. Kandavadivel Doraiswamy, Mr. S.S. Sundar and Mr. N. Ishtiaq Ahamed, learned counsel appearing for the respective petitioners and Mr. Gomathinayagam, learned Special Govt. Pleader and Mr. D. Veerasekaran, learned counsel appearing for the 2nd respondent in W.P. No. 9749/1996.

8. It is not in dispute that the notifications were issued in the name of dead person. The original owner of the land, Sami Naidu, died and the authorities should have discharged the statutory functions by making due enquiry with the heirs of the said deceased owner. So the impugned acquisition proceedings taken by issuing notification in the name of the dead person vitiate the entire acquisition proceedings. Thiru Raju, J., as he then was, in the decision in Muthuswamy v. The State of Tamil Nadu has taken similar view holding as follows:-

'The authorities, in my view have miserably failed to verify properly about the heirs of the deceased pattadar and the fact that such heirs have not themselves come on record cannot be a valid plea in a case of the nature involving the death of the only owner of the land or justify the issue of a notification or a declaration in the name of a dead person. The procedure adopted by the respondents cannot be approved by a Court of law. On account of the irregularities and lapses committed on the part of the respondents in properly verifying about the ownership or the legal heirship in respect of S.F. No. 138/12B, the petitioners have been seriously prejudiced. This vitiates the impugned land acquisition proceedings in so far as it relates to S.F. No. 138/12B. The grievance made on the absence of notice as well as the manner of issue of notification and the declaration under Sec. 6 of the Act in so far as it relates to the land of the petitioners in W.P. No. 14595 of 1990 deserves to be sustained.'

In the present case, the respondents notified G.O. Ms 191 Housing & Urban Development Department dated 25.2.1994 with respect to the lands bearing Survey No. 382 and 383 was issued in the name of the dead persons and the proceedings with respect to the said lands cannot be sustained.

9. In the present case, with respect to the lands bearing S. Nos. 370,371,372 and 382 etc., the lay-out plan was approved by the Director of Town and Country Planning and necessary amounts were paid to the Town Panchayat. On that basis, Plots were also sold to the petitioners. Though submission was made on the basis of G.O.Ms. No. 620, Housing and Urban Development, dated 29.6.1990 stating that as lay-out was approved already even before the notification issued under Sec. 4(1) of the Act, the impugned acquisition proceedings cannot be interfered with, merely because the authorities have not taken into consideration the said Government Order, in view of the decision of the Apex Court in the decision in State of Tamil Nadu vs. Meenakshmi Ammal, :

10. Insofar as the lands bearing S. Nos. 370, 372 and 383 are concerned, the authorities were informed even before making declaration under Sec. 6 of the Act about the purchase of the same by the petitioners concerned. In spite of the same, no opportunity was given to the petitioners/purchasers of the said land to raise their objections. Though the authorities are not obliged to make a roving enquiry about the persons whose names do not find place in the revenue records, it is well settled by the Full Bench of this Court in the decision in P.C. Thanikavelu v. Spl. Dy. Collector, L.A., Madras, : that if the authorities were informed about the present owners of the property, they are bound to issue notice and hear such persons before making declaration under Sec. 6 of the Act. In this case, admittedly, such an exercise was not done though particulars were given. Learned Special Government Pleader appearing for the Government submitted that though the names were given, addresses were not furnished and so the petitioners were not given opportunity to raise their objections. I am not able to understand the said arguments. If the particulars are insufficient, they could have asked the correct address from the person who gave such insufficient particulars. The Act contemplates such an enquiry only with a view to afford an opportunity to the land owners who are going to be deprived of their lands. Raising an objection in such circumstances is a valid right which cannot be lightly ignored stating that they are not having full particulars. Hence the failure to afford due opportunity to the petitioners vitiates the impugned acquisition proceedings. This view of mine is supported by the judgment of the Division Bench of this Court in Lakshmanan v. Government of Tamil Nadu 2000 (I) CTC 382 in which it is held as follows:-

'6. In the present case, even assuming that the enquiry officer was justified in ignoring the partition deed on the ground that it was not registered and the name of Lakshman did not appear in the Revenue records and also ignoring the statements of Raman and Annamalai to the effect that Lakshmanan was the real owner of the property, the most crucial feature is that in the notification under Section 4(1) of the Act itself, the name of Lakshmanan is disclosed as one of the interested persons. If even in the absence of his name in the Revenue records, and if in the preliminary enquiry prior to the issue of notification under Section 4(1) of the Act itself, his interest in the property had been disclosed and he is also recognised as a person interested, the subsequent attempt and exercise on the part of the authority to adjudicate upon the rights of the parties and to hold that the appellant was; not an interested person, is uncalled for and unsustainable. More so, when both persons whose name appear in the revenue records had come before the authority disclaiming any interest in the property and had disclosed the name Lakshmanan as the real owner. The expression 'person interested' is couched in a very wide manner which would include even a tenant or a holder of easementary right etc. The reason is that principles of natural justice require that an opportunity should be given to all persons who are genuinely interested in the property. Of course, we make it clear that the acquiring authority need not mention the persons beyond the names disclosed in the revenue records, but if the enquiry clearly discloses that some other individuals was the real owner of the property and person interested, it would be erroneous to ignore the said claim. In the present case, in stating that the parties where trying to delay the proceedings, it is actually the enquiring authority who is guilty of having unnecessarily delayed and protracted the proceedings by adopting an unreasonable attitude of ignoring their own notification under Section 4(1) of the Act and in having assumed the role of Civil Court adjudicating upon the rights of the parties. All that was required to be done was to have dealt with the appellant's objection also and to have treated him as one of the persons interested. One further strange feature is that even in the declaration under Section 6 of the Act, the appellant's name has been disclosed as the owner of the property. If so, there was absolutely no justification for having held that he was not the owner of the property and to have failed to deal with his objections.'

11. Even the learned Judge of this court in Chinthamani v. Special Tahsildar for Land Acquisition 2000 (II) CTC 21 has taken the same view holding as follows:-

'The learned counsel relying upon the observation made by the Full Bench has argued that there is a duty cast upon the Collector to issue a notice to the sister of the petitioners when it was brought to the notice of the Officer that she is the person interested and has further argued that non-issuance of notice is in violation of the principles of natural justice. Sufficient time has been granted to the Government-Advocate to produce the records to verify whether notice has been issued to Mrs. Chinthamani. But no records have been produced on behalf of the respondents. Learned Government Advocate has argued that as the name of Mrs. Chinthamani was not found in the revenue records, it is not necessary on the part of the Land Acquisition Officer to issue a notice. In another reported judgment in Tamilarasan, P. v. State of Tamil Nadu rep. by Commissioner & Secretary, Adi Dravidar Welfare Department 1999 (1) C.T.C. 586 a learned Single Judge of this Court, following the observation made by the Full Bench of this Court held that notice is necessary, if it is brought to the notice of the enquiring officer that the concerned person is interested and non-issuance of notice to the person interested is in violation of the principles of natural justice, when it is brought to the notice of the concerned Land Acquisition Officer during the proceedings under Section 5-A. In this case it is apparent that no notice has been issued to Mrs. Chinthamani, even though it has been brought to the notice of the Land Acquisition Officer in the course of 5-A enquiry that she is the person interested in the property.'

12. The petitioners purchased a small piece of land to construct their houses for their shelter. As a matter of fact, most of them have constructed their houses after purchasing a small extent of land. They have also purchased only on the basis of the plan approved by the concerned authorities. As a matter of fact, the third respondent gave no objection certificate on 29.10.1992 stating that there was no proposal to acquire such lands. The public purpose for which the lands in question are acquired is to provide Plots of lands to construct houses for the public by the Tamil Nadu Housing Board. There is no justification for the respondents to deprive the land and buildings of the petitioners who have constructed the building utilising

their hard earned or borrowed money.

13. Considering the validity of acquisition for the purpose for which the land was put into use, the Apex Court in Ghaziabad Sheromani Sakhari Avas Samiti Ltd. v. State of U.P. and others : held that as the land measuring 20 acres were purchased by the Co-operative Society for construction of houses to the members, the Development Authority constituted by the State Government for the same purpose should not have been permitted to acquire the same to the prejudice of the petitioners therein.

14. Following the decision of the Apex Court in State of Karnataka and others v. Narasimhamurthyand others, : holding that the right to shelter is a fundamental right under Art. 19(1) of the Constitution of India and to make the said right meaningful, the State has to provide facilities and opportunity to the land owners to build houses, the learned Judge of this Court in the decision in Thiruvengadam, R. v. Secretary to Govt., Housing Department, Govt. of T.N.,Ms.9 1997 (II) CTC 323 has held as follows:-

'15. In the light of the said pronouncement of the Supreme Court, in my considered view, it is neither purposeful nor it is meaningful nor it is just nor reasonable to deprive the portion of the 15 cents of land, where the petitioner had put up construction and been living there for decades together. The State while exercising powers of eminent domain under the Land Acquisition Act to provide accommodation or shelter should also see that the valuable houses, the petitioner or his ancestors had put up and where he has living from his birth should not be pulled down or render the petitioner homeless and throw out his family to street.

16. The fundamental right of the petitioner shall not be ignored or brushed aside while acquiring the land for purpose of putting up houses by the Tamil Nadu Housing Board for the benefit of the affluent or resourceful urbanities, while depriving the poor villager, who is not in a position to complete. The respondents should not unreasonably and deprive his fundamental right of shelter or destroy the right of shelter already owned by the petitioner. The State also should see that the very fundamental right of shelter, which shelter the petitioner is already possessed, should not be deprived. The constitutional duty of State to provide

shelter could also be achieved by the petitioner being allowed to retain the house and allow him to live there.

17. It is rather surprising for the requisitioning authority or for that matter for respondents to ignore the petitioner's fundamental right of shelter, as a matter of routine by just stating that the writ petitioner could apply to Housing Board afresh under ex-owner category. By such a course there is only a chance of getting alternative accommodation at a higher cost on a later date, which will be beyond his means. It is unreasonable to uproot the villagers against the well settled and affluent urban population, whose demand is sought to be met by the schemes of the Housing Board.

18. There is no justifiable reason at all to proceed further with acquisition and deny the fundamental right of the petitioner to shelter and acquire his only residential house or plot resulting in dislocation of the petitioner and his family. By the compensation the petitioner who is being rendered houseless and uprooted, will not be in a position to secure allotment or even put up a house as day by day the cost of constitution is in the increase. At the same time, the acquisition may deny the house already owned and further deny him the sentiments he has for his house, where he is living since childhood.

19. There is every justification for the fifteen cents being excluded from acquisition as the petitioner is actually residing with his family in the house put up thereon and living there with his kith and kin. There is no justification for the petitioner and his family being uprooted, thrown out and displaced and on the other hand, the Housing Board could very well, with slight change or least deviation proceed with its scheme.

20. In the circumstance, accepting the contention of the learned counsel for the petitioner that acquisition in respect of 15 cents of land over which the petitioner had put up constitution alone is quashed and in other respects, the respondents are at liberty to proceed further and complete the acquisition.'

In spite of the above said judgment, the respondents have not applied their mind with respect to the said aspect and proceeded with the impugned acquisition

proceedings and passed the award even after filing the writ petitions to say that they have completed the acquisition proceedings. Though the Government Pleader submitted that award was passed before filing writ petition, it is factually wrong. So the impugned acquisition proceedings cannot be sustained even on this ground.

15. Though the learned counsel appearing for the petitioner in W.P. No. 1595 to 1602 of 2000 submitted that the purpose for which the acquisition proposal was notified in the notification under Sec. 4(1) of the Act was given up and new purpose is mentioned in the declaration, the said submission cannot be sustained. In the notification issued under Sec. 4(1) of the Act, it is stated that the lands are required for the purpose of constructing the houses by the Housing Board. In the declaration made under Sec. 6 of the Act, it is stated that the land is required for the formation of neighbourhood scheme. But the ultimate public purpose is to construct the houses. So, it cannot be said that the public purpose for which the acquisition is proposed is changed.

16. The land acquisition proceedings relating to the land bearing S. Nos. 384/1 are challenged in W.P. No. 9747/1996. The only argument made by the learned counsel appearing for the petitioners is that they were not given opportunity before making declaration under Sec. 6 of the Act. According to the learned counsel, the objection was sent even on 5.4.1993, though the notification was published in the Gazette on 30.3.1994, by certificate of posting, and in spite of that, no opportunity was given to raise objection in the enquiry held in accordance with Sec. 5-A of the Act. Learned Special Government Pleader did not deny the said fact of sending objection either orally or pointing out the same in the counter. No counter is placed before this court with respect to the allegations made in the said writ petition. Only the Housing Board has filed counter denying the said fact. But, the Housing Board may not have knowledge about the said objection, as the objection was sent to the State Government and the land acquisition officer. In the absence of any counter with respect to the above said factual averment by the concerned officer, it has to be taken that the said fact was not denied. If it is so, the authorities should have given opportunity to the petitioners in the enquiry held under Sec. 5A of the Act. So, for non-compliance of the said statutory obligation, the impugned acquisition

proceedings, except the issuance of notification under Sec. 4(1) of the Act cannot be sustained.

17. Before parting with this case, I would like to mentioned about the way in which the counter affidavits are being prepared in the writ petitions. The Government Pleaders have been entrusted with the work to prepare the counter affidavit, after getting instruction from the concerned officer. Such instruction alone should not be relied on, without verifying the facts with reference to the relevant records available. This observation is made only because in most of the cases, Court is compelled to dispose of the writ petitions basing on the counter affidavits filed on behalf of the Government or other authorities and nowadays counter affidavits are being prepared only on the basis of the remarks, without even verifying the correctness of the same, by perusing the records. In this case, the counter is filed in W.P. No. 1595 to 1602 of 2000. On a perusal of the counter, it is clear that, it is only a reproduction of the para-war remarks and the same has been prepared without any application of mind. Even in the counter, it is mentioned that paragraph Nos. 5 to 16 are reproduction of the para-war remarks, which clearly establishes that the said counter is prepared by the Government Pleader without even verifying the records and without even appreciating the importance of files, counter affidavits especially in Land Acquisition cases. Even the Government Pleader who appeared before this court has not verified the same, but, he proceeded with the argument only on the basis of the said counter. This attitude cannot be appreciated. The Government Pleaders are expected to prepare counter carefully with a view to safeguard the interest of the Government and also to give correct factual position to the court so as to enable the court to come to correct conclusion as the counter affidavit is a pleading for the purpose of deciding the case. It cannot be stated that as the same are being signed by the concerned authorities, the Government Pleaders can not be held responsible for the mistakes. Unfortunately, nowadays, most of the authorities are also signing the counter mechanically with the belief that the Government Pleader should have prepared the counter with correct particulars on the basis of records. I am making these observations only due to the fact that I came across number of cases in which counter affidavits are being filed with the facts which are not supported by documents and records.

18. For the reasons stated above, W.P. Nos. 18004 to 18031 of 1996, 9748 and 9749 of 1996 are allowed by quashing the notification under Sec. 4(1) of the Act, dated 25.2.1994 and also the declaration made under Sec. 6 of the Act dated 17.5.1995. W.P. No. 6414 of 1997 is also allowed by setting aside the notification issued under Sec. 4(1) of the Act dated 28.2.1994 and the declaration made under Sec. 6 of the Act dated 22.5.1995. W.P. Nos. 1595 to 1602 of 1997, relating to the land bearing S. Nos. 371 and 372, Kalapatti Village, are allowed by setting aside the notification dated 6.8.1996 made under Sec. 4(1) of the Act and also the declaration dated 8.10.1997. Insofar as W.P. No. 9747 of 1996 is concerned, the same is allowed and the impugned acquisition proceedings taken against the land bearing S. No. 384/1 are set aside retaining the notification made under Sec. 4(1) of the Act intact and giving liberty to the authorities to proceed with further in accordance with law, after giving opportunity to the petitioners. No costs. Connected W.M.Ps., are closed.