Mara Naicker Vs. the Special Tahsildar (Land Acquisition) Harijan Welfare, and anr.

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Court : Chennai

Decided On : Sep-02-1969

Reported in : (1970)1MLJ347

Appellant : Mara Naicker

Respondent : The Special Tahsildar (Land Acquisition) Harijan Welfare, and anr.

Judgement :
ORDER

M.M. Ismail, J.

1. Lands in Survey Numbers 384/1; 384/2 and 384/3, 390/2, 391/1 and 391/2, 397 and 425/1 and 425/2 were acquired by the Government under the provisions of the Land Acquisition Act to enable the Harijans in, Nallathupalayam to have a short-cut from their colony to Tirupur, a place where they were working. The Notification under Section 4 (1) of the Act was published in the Fort St. George Gazette, dated 27th October, 1965, and the Declaration under Section 6 (1) of the Act was published in the Fort St. George Gazette, dated 1st March, 1967. It is to quash these land acquisition proceedings, the petitioner who happens to be one of the joint pattadars of the acquired lands has filed the present writ petition.

2. Mr. N.R. Chandran, the learned Counsel for the petitioner contended in the first place that there was really no public purpose involved in the acquisition because the two places Nallathupalayam and Tirapur were connected by two other routes and therefore there was really no necessity to acquire these lands for the purpose of connecting the two places and providing a short-cut. Whether such a pathway is necessary or not is a matter entirely for the Government to consider and decide and it is not open to this Court, under Article 226 of the Constitution of India to sit in judgment over that determination and to come to the conclusion that such a pathway is not necessary. Therefore, the first point urged by the learned Counsel fails.

3. The second point urged by the learned Counsel is that the provisions of Section 4 (1) of the Act have not been complied with, in that the substance of the notification under that section has not been published at convenient places in the locality. For this purpose, the learned Counsel relies on an averment contained in paragraph 6 of the counter affidavit filed on behalf of the respondents, wherein it is stated that the copy of the Section 4 (1) notification published in the Fort St. George Gazette, dated 27th October, 1965, was served by affixure on the survey stone of the fields under acquisition on 26th January, 1966, and the substance of the notification was published in the village by beat of torn torn on 26th January, 1966. By relying on this passage the learned Counsel contends that the publication in the village by beat of torn torn is not enough and there must be affixure of the notice at certain convenient places in the locality. Whether this contention is sound or not, does not arise for consideration in this writ petition in view of one peculiar fact. Notice under Section 4 (1) of the Act was served on the petitioner himself and in a petition presented by him to the Minister concerned on 4th March, 1966, the petitioner admitted that he had been served with a notice under Section 4(1) of the Act. So long as a notice under Section 4 (1) of the Act has actually been served on the petitioner, it cannot be said that the petitioner was prejudiced or hurt by the non-publication of the substance of the notification at convenient places in the locality as contemplated by Section 4 (1) of the Act. For this reason I hold that there is no- substance in the second contention as well.

4. The third contention of the learned Counsel for the petitioner is that for the Section 5-A. enquiry, no notice was given to him. In the counter affidavit it is averred that such a notice was served on the petitioner and as a matter of fact in the petition, dated 4th March, 1966, already referred to, addressed by the petitioner to the Minister concerned, he had admitted the receipt of notice under Section 5-A as well. Therefore this contention also fails.

5. The last of the contentions advanced by the learned Counsel for the petitioner is that the acquisition was mala fide because it was the Vice President of the Neruperichal Panchayat Board that was responsible for instigating the acquisition in question. It has been repeatedly held by this Court that so long as there are no mala fides on the part of the Government, the fact that there was some mala fides or malice on the part of somebody else does not really establish any mala fides so as to vitiate the acquisition proceedings. In C.M.P. No. 2778 of 1951, a Bench of this Court had held that a declaration under Section 6 of the Land Acquisition Act was not liable to be attacked on the ground that the resolution of a Panchayat on which the acquisition was made was mala fide and engineered by political opponents, if the owner had an opportunity of putting forward his objection before the Government. The reason for this conclusion is that it is really the Government which ultimately applies its mind and decides upon acquiring the property and so long as there is no allegation of mala fides made against the Government, the fact that somebody else had been responsible for initiating the proceedings or inducing the Government to take the acquisition proceedings will not really affect the validity of the acquisition proceedings. This conclusion of the Bench was followed by Venkatarama Ayyar, J., Gopalakriskna v. Secretary, Board of Revenue (1953) 2 M.L.J. 744. No other point was urged before me. In these circumstances, all the points raised by the learned Counsel for the petitioner fail and the writ petition is dismissed. There will be no order as to costs.