

T.L. Radhakrishan and ors. Vs. Govt. of Tamil Nadu and ors.

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Court : Chennai

Decided On : Jun-16-2000

Reported in : AIR2000Mad409

Judge : V.S. Sirpurkar, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1) and 18

Appeal No. : Writ Petn. Nos. 14028 of 1991 and 8294 of 1994

Appellant : T.L. Radhakrishan and ors.

Respondent : Govt. of Tamil Nadu and ors.

Advocate for Def. : T. Kokilavani, Govt. Adv. (for Nos. 1 and 3) and ;K. Chelladurai, Adv. (for No. 2)

Advocate for Pet/Ap. : V. Alagarsamy, Adv. for ;V.P. Venkat, Adv.

Judgement :

ORDER

V.S. Sirpurkar, J.

1. This order shall cover W.P. Nos. 14028 of 1991 and 8294 of 1994.

2. W.P. No. 14028 of 1991 was originally filed by as many as 12 petitioners out of whom first petitioner was allowed to withdraw from the array of petitioners by this

Court by order dated 2-9-1998 in WMP No. 19926 of 1996. At the stage of hearing, learned counsel for the petitioners very fairly pointed out that petitioners 5, 6 and 10 would not be in a position to challenge the acquisition because they have not acquired title of the concerned properties prior to the Notification under Section 4 of the Land Acquisition Act (hereinafter referred to as 'the Act') was published and notified. Therefore, this petition is pressed only on behalf of rest of the eight petitioners.

3. These petitioners claim to be the owners of the land which has been purchased by them from the first petitioner T.L. Radhakrishnan. Learned counsel for the petitioners has furnished the original sale deeds to suggest and show that the petitioners are bona fide owners and holders of proper title in respect of the land in question. The land in question was sought to be acquired by the State of Tamil Nadu and for that purpose a Notification under Section 4 of the Act was published vide G.O. Ms. No. 790 dated 29-7-1993. The publication appears to have been made on 9-8-1993. It is the admitted position that the petitioners who had earlier acquired the title of the place were noticed and they were heard during the enquiry under Section 5A of the Act. During the enquiry under Section 5A of the Act, a common plea which was raised by the petitioners before the Land Acquisition Officer as also before this Court was that these lands were covered by the approved layout -outs. However, the objection regarding the acquisition were refuted and ultimately, the proceedings came to be ordered on 18-7-1991 vide Proceedings No. 10625/91 under Sections 6 of the Act. The Notification was published vide G.O.Ms. No. 1144 dated 16-8-1991 and published in the Government Gazette dated 17-8-1991. In short, the challenge is to the land acquisition proceedings.

4. Learned counsel appearing on behalf of the petitioners has very studiously taken me through the record and has urged that the land acquisition was contrary to G.O. Ms. No. 620 Housing and Urban Development Department dated 29-6-1990. The gravamen of the contention of the learned counsel appears to be that since the lands purchased by the petitioners were in fact, covered under the approved layouts, approved by the Director of Town and Country Planning Department prior to the Notification issued under Section 4(1) of the Act, these

lands should have been excluded from the acquisition proceedings. This is the only ground on which the acquisition is challenged. This apart, the contention feebly raised by the learned counsel is that the acquisition was unjust, unfair and against the rights of the petitioner.

5. Considering the first contention, learned counsel for the petitioners has taken me through the Government Order which is dated 29-6-1990. Paragraph 4 of the Government Order which is relevant for our purpose suggests as follows :

'The Government also direct that the Chairman and Managing Director, Tamil Nadu Board should avoid the acquisition of the following lands generally but not as a rule.

(i) to (iii) not relevant.

(iv) The land covered by layouts duly approved by the Director of Town and Country Planning Department, prior to the 4 (1) Notification.'

Learned counsel very strenuously suggests that the concerned lands being covered by the layouts and duly approved by the Director of Town and Country Planning Department prior to the issuance of the notification under Section 4(1) of the Act, the acquisition of the same should have been avoided. This objection was raised at the stage of the enquiry under Section 5A of the Act also.

6. Learned Additional Government Pleader however, pointed out that this Government Order is merely in the nature of guideline and .is not an absolute bar to the powers of the Government to acquire the lands even if they are covered by the said Government Order. In support of her contention, the Government Pleader relied on a decision of the Division Bench consisting of A.R. Lakshmanan and M. Karpagavinayagam, JJ. In Senior Superintendent of Post Office. Coimbatore v. Coimbatore Diocese Society, : (1998)IMLJ314 wherein the Division Bench has held that such notifications are merely in the nature of guidelines containing administrative instructions and do not affect the statutory power of the Government to acquire lands.

7. Considering the nature of the said Government Order, it is clear that the Government has merely issued the general guidelines and there is no extreme term. Such lands which are covered as the lands in question are directed to be avoided for acquisition generally but not as a rule. The words 'but not as a rule' in the above paragraph 4 are of extreme importance and only suggest that these guidelines are not to act as a bar on the Government's power to acquire the lands. In this behalf. It will be better to see the order passed wherein the objection raised by the petitioners is considered. The order shows that the objection was raised on the ground that these lands were covered by the approved layouts and that these are the only lands owned by the petitioner. The Land Acquisition Officer has clearly taken into consideration the contention of the Tamil Nadu Housing Board that the exclusion in bits of such land may not help any integral development of the area and therefore, has rejected the objections. Now it is not as if the Land Acquisition Officer was not aware of the guidelines as he has clearly referred to the objections as also the views expressed by the Tamil Nadu Housing Board which had kept its representative present before the Land Acquisition Officer during the enquiry under Section 5A of the Act, Therefore, it cannot be said that the Land Acquisition Officer was totally unmindful of these guidelines. What seems to have happened is that in respect of these guidelines, the Land Acquisition Officer seems to have taken a view that the land acquisition was absolutely essential for the integral development. I do not therefore, find any irregularity in the proceedings or any perversity in the order of the Land Acquisition Officer. That apart, the Division Bench decision cited supra which clearly suggests that these guidelines are not absolute in nature.

8. No other objections have been raised by the learned counsel regarding the correctness of the enquiry. Learned counsel however, reiterated that a Full Bench of Andhra Pradesh High Court has held that any acquisition made in contravention of the general administrative policy is void ab initio. I am afraid, in the wake of the Division Bench Judgment which is binding, I cannot subscribe to that view. The Andhra Pradesh High Court has expressed in *Yadaiah v. Government of A.P.* (1983) 1 ALT 233 : AIR 1984 NOG 5 (FB), that the administrative Instructions issued by the State Government bind the land acquisition authorities and any acquisition of the private lands found to be contrary to the applicable

administrative instructions would be null and void. It had already been shown by me that even relying on the Government Order in question it could not be said that such acquisition of the lands covered by the layouts was totally barred. What has been suggested is that it should be avoided, but. such avoidance is not to be treated as the rule. In view of the interpretation of the Government Order given above, it is needless to mention that the Full Bench Judgment does not apply.

9. These are all the points argued by the learned counsel for the petitioners. The writ petition is therefore, dismissed. But in the circumstances, without any costs. Consequently, WP 21128 of 1991 is dismissed.

W.P. No. 8294 of 1994

10. In this writ petition, seven writ petitioners in the earlier writ petition have sought for a direction to the effect that the respondents be directed to refer the award No. 1/93 dated 26-3-1993 passed by the respondent in respect of the plots in S. Nos. 3/ 1B3, 3/ 1B5.

11. What is pointed out in the petition is that they had purchased the above mentioned plots for constructing houses for residential purpose. However, after this purchase, the State Government proposed to acquire the whole land and therefore, they filed a writ petition where this Court had ordered interim stay of dispossession alone. Then they pointed out that an award was passed vide No. 1/93 dated 26-3-1993 and that they made an application to the respondent for referring the award to a civil Court under Section 18 of the Land Acquisition Act (hereinafter referred to as 'the Act') for fixation of higher compensation, However, the respondents have not chosen to refer the matter to the civil Court. Petitioners have pointed out that there is no dispute among the petitioners to receive the amount and the stay order pertains only to dispossession. Petitioners pointed out that finding that the award was not being referred, a legal notice was issued to the respondents on 26-7-1993 to which a reply was given that since the petitioners had not proved their ownership of the land in question and since there was a stay order passed in W.P. No. 14028 of 1991, reference would not be made. Petitioners, being aggrieved by this, have come up to this Court.

12. As could be seen, challenge to the land acquisition proceedings cannot be entertained as that writ petition has already been dismissed. However, the respondents were bound to realise that stay was to the dispossession alone and the subsequent proceedings were not sought to be stayed. It should have become all the more clear from the fact that the award came to be passed. Now the order dealing with the objections raised by the petitioner does not in any way say that the petitioners do not have a title. The petitioners have filed their sale deed before this Court also. Therefore, there was no question of the reference not being made. The stand taken by the Government for not referring the award before the Civil Court is unjustified in view of the clear title of the petitioners regarding which there is no dispute between them inter se. Therefore, the reference under Section 18 of the Act was rightful, once an application for that purpose was made by the petitioners. At least, in the order dealing with the objections it is nowhere stated that the petitioners did not have title even today. Learned Addl. Government Pleader is unable to dispute the sale deeds filed in this Court. If the petitioners have title, then there is no question of they not being allowed to pursue their rightful remedy for enhanced compensation. Petition, therefore, will have to succeed.

13. Accordingly, a direction is given to the respondents to refer the petitioners application under Section 18 of the Act to the proper civil Court, if the application is otherwise within time and legal. Under the circumstances, rule is made absolute in this writ petition alone, but without any order as to costs.