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Court : Chennai

Decided On : Oct-03-1989

Reported in : (1990)1MLJ353

Appellant : Md. QuamruddIn and anr.

Respondent : The State of Tamil Nadu, Represented by Its Secretary, Municipal Administration and Water Supply Dep

Advocate for Pet/Ap. : Mr. A. Seshan

Judgement :

ORDER

Bakthavatsalam, J.

1. This writ petition is directed against the proceedings under the Land Acquisition Act, 1894, herein after referred to as the Act, which has culminated in a notice under Sections 9(3) and 10 of the Act. The petitioners challenge this notice in this writ petition.

2. The 3rd respondent applied for acquisition of the land and building bearing R.S.No. 2776/7 of P.K.M. Village, corresponding to door No. 53, Kandaswamy Koil Street, Kosapet, Madras-12 with an extent of 1785 sq.ft. for Corporation School

purposes. The notification under Section 4(1) was approved by the Government on 21.3.1986 and was published in the Government Gazette on 16.4.1986. The enquiry under Section 5(A) was conducted on 19.11.1986 and nobody turned up for the enquiry. However, the petitioners appeared on 19.11.1986 and represented that they were in a position to appear for the enquiry on 19.11.1986 and wanted time to file their objections on the day itself. They were enquired and the petitioners objected stating that there is another building in the locality and the Corporation can construct another building in the same locality and as such classes may be stopped. After considering the objection it was overruled and the draft declaration was published in the Gazette on 1.6.1987. It was published in the papers on 3.6.1987 and 4.6.1987. The award was passed on 2.6.1989.

3. Notice of motion was ordered by me on 28.6.1989. The only point taken by Mr. A. Seshan, learned Counsel for the petitioners at the first instance is that there is violation of Section 11-A of the Act in these proceedings. The complaint is that the award has been passed after two years from the date of publication of declaration under Section 6.

4. This was countered by the learned Counsel for the state, Mr. P. Arivudai Nambi, Government Advocate stating that under Sub-Section (2) to Section 6 of the Act the Collector shall cause public notice to be given and the last date of such publication and giving of such public notice are to be taken as the date of declaration. If it is so, according to the learned Government Advocate, the publication in papers was made on 3.6.1987 and 4.6.1987 and the award was passed on 2.6.1989 and is within two years as per Section 11(A) of the Act.

5. When the matter stood adjourned and after the learned Counsel for the petitioner was allowed to go through the records, an affidavit came to be filed by the learned Counsel for the petitioner in which the petitioners raise a point stating that there is a long gap between the publication of Section 4(1) notification and the public notice given in the locality. The learned Counsel refers to the decision of the Division Bench of this Court in *Nandakumar v. State of Tamil Nadu* 99 I.L.W. 287 for the proposition that if there is a gap between the publication of Section 4(1) notification and the publication in the Gazette, the acquisition is bad. After

considering the arguments of the learned Counsel for the petitioner and the learned Government advocate and for the other respondents, I am inclined to agree with the stand taken by the learned Counsel for the State.

Section 11(A) of the Act reads as follows:

Period within which an award shall be made: - The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse;

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation -- In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

6. Sub-Section (2) to Section 6 reads as follows:

Every declaration shall be published in the official Gazette the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

A combined reading of Sections 11(A) and 6(2) of the Act clearly shows that only the last of the publication has to be taken into account for the purpose of ascertaining the publication of declaration, which is as found in Section 11(A). If it is so, I am of the view that the stand taken by the learned Counsel for the State is right, and so he states that factually the declaration under Section 6 was published in papers on 3.6.1987 and 4.6.1987 and the award has been passed on 2.6.1989 well within two years as prescribed under Section 11(A) So, this contention of the petitioner based on Section 11(A) fails.

7. With regard to another contention by way of additional affidavit, I am not inclined to accept his contention. There was a delay of 11/2 months i.e. the decision before the Division Bench. The publication of the notice under section...4(1) of the Act in the Gazette and the causing of the substance of the notification should be put on convenient places in the locality and in those circumstances the Division Bench held that the local notice should be made if not simultaneously at the announced time in the Gazette and in the locality, but at least within a minimum possible time after the notification. In my view, on the facts of this case, it cannot be said that the delay of 11/2 months, is an enormous delay in publication of the substance of the notification. On facts I am of the view that the ratio laid down by the Division Bench will not apply to the facts of this case. As such, the second contention also fails. There are no merits in the writ petition and the writ petition is dismissed accordingly.

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