

Kannammal and anr. Vs. State of Tamil Nadu Represented by Secretary to Government, Housing and Urban Development and ors.

Kannammal and anr. Vs. State of Tamil Nadu Represented by Secretary to Government, Housing and Urban Development and ors.

SooperKanoon Citation : sooperkanoon.com/814926

Court : Chennai

Decided On : Jul-16-1990

Reported in : (1991)90MLJ1

Appellant : Kannammal and anr.

Respondent : State of Tamil Nadu Represented by Secretary to Government, Housing and Urban Development and ors.

Judgement :

ORDER

Kanakaraj, J.

1. By a notification issued under Section 4(1) of the Land Acquisition Act, 1894, hereinafter referred to as 'the Act', an extent of about 539.98 acres in Nolambur Village, Saidapet Taluk, Chengalpattu District were sought to be acquired for the development of Ambattur Neighbourhood Scheme. The notification was issued in G.O.Rt. No. 307, Housing Department, dated 11.12.1975 and published in the Gazette dated 31.12.1975. The deceased grandmother of the petitioner in W.P. No. 9783 of 1982 and the petitioner in W.P. No. 9784 of 1982 owned certain extents of land notified for acquisition. The declaration under Section 6 of the Act was approved in G.O.Ms. No. 1784, Housing and Urban Development

Department, dated 30.12.1978 and published in the Gazette dated 30.12.1978. It is at this stage, the above writ petitions have been filed seeking to quash the notification under Section 4(1) of the Act and the declaration under Section 6 of the Act. The learned Counsel appearing for the petitioner raises the following points: (1) The substance of the notification under Section 4(1) of the Act was published in the village only on 22.2.1976 and this being separated from the Gazette Notification dated 31.12.1975, by a long gap of time, the entire acquisition proceedings are vitiated. (2) The procedure prescribed for the conduct of the Enquiry under Section 5-A of the Act as per Rule 3(b) and (c) of the rules framed under Section 55 of the Act, has not been strictly followed. (3) The Government has not taken note of several Government Orders exempting certain types of lands from Acquisition Proceedings.

2. The respondents have filed a detailed counter affidavit. So far as the first contention is concerned, it is stated in para.11 of the counter affidavit that the substance of the notification was published in the Village on 22.1.1976 and not on 22.2.1976 as contended by the petitioner. Taking the correct date viz., 22.1.1976, it is contended that there is no long gap of time between the Gazette Notification and the publication in the village. I am inclined to agree with the contention put forward by the learned Government Advocate on this aspect. It is now well settled that the Gazette Notification and the publication in the village can be separated by a gap of time and whether the gap of time will vitiate the acquisition proceedings will depend upon the facts of each case. In this case, the gap of time is not too long and the enquiry under Section 5-A having been conducted only on 8.4.1976, there was also no prejudice to the land owners. Accordingly, I am dismissing the first contention.

3. So far as the second contention is concerned, the argument is that the objections submitted by the petitioners at the enquiry under Section 5-A on 8.4.1976 had been forwarded to the Tamil Nadu Housing Board which is the requisitioning authority. It is not disputed that the remarks of the requisitioning authority were communicated to the petitioner only on 16.10.1978. In para 22 of the counter-affidavit, these dates are admitted. In my view, this admitted position regarding the remarks of the Tamil Nadu Housing Board being communicated to

the petitioners on 16.10.1978, nearly after two years after the enquiry under Section 5-A vitiates the entire enquiry under Section 5-A of the Act. The relevant portion of Rule 3(b) and (c) is extracted below to show that the contention of the petitioner is well founded.

3.(b). If any objections are received from a person interested in the land and within the time prescribed in Sub-sections (1) of Section 5-A, Collector shall fix a date of hearing the objections and give notice thereof to the objector as well as to the department or company requiring the land, where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

(c) On the date fixed for enquiry or any other date to which the enquiry may be adjourned by the Collector, the Collector shall hear the objector or his pleader and the representative, if any, of the department or company and record any evidence that may be produced in support of the objections.

Strictly speaking, the remarks of the requisitioning authority shall be available to the petitioner at the time of the enquiry under Section 5-A. In fact in many cases, the Land Acquisition Officers hold a second enquiry after the remarks are obtained by issuing notices to the land owners as well as to the requisitioning body. Such a procedure will alone conform to the requirements of Rule 3(b) and (c) quoted above. In this view of the matter, I have necessarily to hold that the enquiry under Section 5-A of the Act is vitiated in this case.

4. So far as the last contention is concerned, it is explained in para.10 of the counter-affidavit which is as follows:

The petitioner has referred to the orders issued by Government in G.O.Ms. No. 837, Housing Department, dated 15.6.76 and G.O.Ms. No. 413, Housing, dated 3.3.79 prescribing certain norms regarding exclusion of lands from acquisition proceedings relating to certain schemes for the Tamil Nadu Housing Board. The petitioner has also stated that these orders which pertain to certain schemes have

been extended to other schemes also concerning the Housing Board in G.O.Ms. No. 57, Housing, dated 12.1.80 and that according to these norms, her lands should have been excluded from the acquisition proceedings. These Government Orders relate to exclusion of lands which are covered by layouts approved by the Director of Town Planning built up areas village site and areas covered by factories. Out of the lands held by the petitioner and notified for acquisition proceedings, the lands comprised in Survey Nos. 311/1 and 311/2 in which the brick-kiln and the chimney are situated and the lands in Survey Nos. 307, 312 and 313 which are used for brick Industry were already excluded from acquisition proceedings before the publication of draft declaration. The lands now covered by acquisition proceedings do not come under any of the categories mentioned in the above Government Orders and they are cultivable lands.

The said statements in the counter-affidavit sufficiently answer the last contention.

5. Having regard to my finding on the second contention, I hold that the enquiry under Section 5-A of the Act in so far as the petitioners are concerted is vitiated. The result will be that the proceedings subsequent to Section 5-A enquiry and all proceedings subsequent thereof will stand quashed so far as the petitioners are concerned. It will be open to the respondents to give fresh notice to the petitioners for an enquiry under Section 5-A of the Act by following the procedure prescribed in Rule 3(b) and (c) quoted above. I make it clear that the notification under Section 4(1) will stand. The writ petition is allowed. The Rule nisi is made absolute to the extent indicated above. There will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com