A. Jothi and ors. Vs. the State of Tamil Nadu and anr.

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Court : Chennai

Decided On : Mar-12-1992

Reported in : (1992)2MLJ525

Appellant : A. Jothi and ors.

Respondent : The State of Tamil Nadu and anr.

Judgement :
ORDER

K.S. Bakthavatsalam, J.

1. Both the writ petitions are filed challenging the land acquisition proceedings made under the Land Acquisition Act.

2. W.P. No. 16200 of 1990 is filed by the owners of the land and W.P. No. 6298 of 1991 is filed by the agreement holder who entered into an agreement with the petitioners in W.P. No. 16200 of 1990.

3. An extent of 3.94.5 hectare of land at Kondur Village were proposed for acquisition to provide house-sites for Adi Dravidars. A notification under Section 4(1) of the Land Acquisition Act (hereinafter referred to as the 'Act') was published in the Gazette on 13.9.1989 and it was published in Tamil Dailies on 15.9.1989 and 17.9.1989 and the substance of the notification issued under Section 4(1) of the Act was published in the village on 30.9.1989. Notices for enquiry under

Section 5(A) of the Act were sent and served on the petitioner and the said enquiry was conducted on 17.11.1989. After over-ruling the objections raised by the landowners, a declaration under Section 6 of the Act was published in the Gazette on 2.5.1990 and in local dailies on 4.5.1990. At this stage, the owners of the land, the petitioners in W.P. No. 16200 of 1990, have come up to this Court challenging the notification issued under Section 4(1) of the Act. The agreement holder with the petitioners in W.P.No.16200 of 1990 has filed W.P. No. 6298 of 1991 challenging the same notification issued under Section 4(1) of the Act in respect of the small land in question.

4. Though no counter affidavit has been filed in W.P. No. 16200 of 1990, a counter-affidavit has been filed in W.P. No. 6298 of 1991.

5. As the subject matter relates to one and the same acquisition proceedings of the land in question, I am of the view that the counter affidavit filed in W.P. No. 6298 of 1991 can be taken as the counter affidavit in W.P.No.16200 of 1990 also.

6. The main contention raised by Mr. K. Raghunathan, the learned Counsel appearing for the petitioners in W.P. No. 16200 of 1990 is that the substance of notification has not been published as required under Rule 1 of the Tamil Nadu Land Acquisition Rules framed under Section 55(1) of the Act. According to the learned Counsel, as required under Rule 1 of the Land Acquisition 'Tamil Nadu' Rules (hereinafter referred to as the 'Rules'), the notice should be published at convenient places in the locality, and copies thereof fixed up in the office of the Collector, the Tahsildar, and in the nearest police station and it has not been complied with in this case. The learned Counsel relies upon the decision rendered by Nainar Sundaram, J. (as he then was) in Shanmugha Sundara Nadar v. Special Tahsildar I, Tamil Nadu State Housing Board Schemes, Madras : (1987)2MLJ170 , which has been reversed in by a Division Bench of this Court in Tamil Nadu State Housing Board v. Shanmugha Sundara Nadar 1988 W.L.R. 55. The learned Counsel points out that the judgment of the learned Single Judge was reversed on some other ground, Govindasamy, J. has held that the publication is mandatory in Vembuli Naicker v. State of Tamil Nadu : (1992)1MLJ26 .

7. The other contention raised by the learned Counsel appearing for the petitioners in W.P. No. -16200 of 1990 is that certain acquisition proceedings were taken up earlier, in the year 1976, that it had been dropped and as such the acquisition made in this case is tainted with mala fides and has got to be set aside. The learned Counsel contends that this Court should presume that the earlier acquisition proceedings were dropped only because the lands were not suitable and as such when once the lands are left out in the earlier proceedings it cannot be said that they are suitable for the purpose of providing house sites for Adi Dravidars. One other contention raised by the learned Counsel appearing for the petitioner is that the second respondent, the enquiry officer, has given a finding, based on the enquiry under Section 5-A of the Act, that the lands are to be acquired for the purpose for which it is acquired, that it is bad in law and that the first respondent has not applied its mind. The learned Counsel further contends that the acquisition proceedings has to be struck down on the ground of delay of one year between the date of notification under Section 4(1) of the Act and the declaration under Section 6 of the Act.

8. Per contra Mr. Veerabadran, the learned Government Advocate contends that all the provisions of Land Acquisition Act have been complied with. He also produced before me the records to show that copies of notices were affixed in the offices as required under Rule 1 of the Rules framed under Section 55(1) of the Act. The learned Government Advocate further contends that this Court cannot presume, that once the acquisition proceedings are dropped, it does not mean that the power under the Act is exhausted and the lands cannot be acquired due to change in circumstances. The learned Government Advocate further argues that there is no delay in the publication of the declaration under Section 6 of the Act and relies upon a decision of a Division Bench of this Court in Wavoo Magudoom Mohammed v. Government of Tamil Nadu : (1991)2MLJ281 . That apart, he contends that just because the Enquiry Officer under Section 5-A of the Act had given a finding, overruling the objections of the land owners, that does not mean that the Government has not applied its mind. According to the learned Government Advocate, the authority to decide about the land acquisition is Government and mere allegations of mala fide cannot be a ground to set aside the acquisition proceedings. According to the learned Government Advocate, the

allegations regarding mala fide have no basis and this Court should not entertain such allegations as mala fide.

9. Mr. V. Srinivasan, the learned Counsel appearing for the petitioner in W.P. No. 6298 of 1991 contends that the petitioner is an agreement holder, that he is a person interested and that he can challenge the acquisition proceedings. He has raised all other grounds raised in the W.P. No. 16200 of 1990.

10. Mr. Veerabadran the learned Government Advocate states that the petitioner in W.P. No. 6298 of 1991 is only a lessee and that the agreement alleged to have been executed between the petitioners in W.P. No. 16200 of 1990 and the petitioner in W.P. No. 6298 of 1991 is an unregistered one and that it is created only for the purpose of defeating the purpose of the Government to acquire the lands. He further submits that the argument was not in existence at the time of initiation of the acquisition proceedings or at the time of publication of notification under Section 4(1) of the Act, that it came to light at the time of enquiry under Section 5-A of the Act that the agreement entered into between the petitioners in W.P. No. 16200 of 1990 and the petitioner in W.P. No. 6298 of 1991 is an unregistered document and that it is created only to defeat the land acquisition proceedings and as such it cannot be said that the petitioner in W.P. No. 6298 of 1991 is an interested person and the W.P. No. 6298 of 1991 has to be dismissed in limine. It is also stated that the petitioner in W.P. No. 6298 of 1991 is a person who deals with real estate business and that the land owners thinking that they will get only lesser compensation have connived with the petitioner herein and have created an unregistered document and registered a power of attorney on the petitioner on 30.10.1989 long after the publication of the notification under Section 4(1) of the Act. It is claimed in the counter affidavit that as such, no notice was given to the petitioner in W.P. No. 6298 of 1991.

11. I have considered the arguments of Mr. K. Raghunathan, the learned Counsel for the petitioner in W.P. No. 16200 of 1990, Mr. V. Srinivasan, the learned Counsel for the petitioner in W.P. No. 6298 of 1991 and of Mr. Veerabadran, the learned Government Advocate appearing for the State.

12. The learned Counsel for the petitioners in both cases contend that there is a delay of one year between the date of the publication of notification under Section 4(1) of the Act and the declaration made under Section 6 of the Act. I do not think the said contention can be entertained, in view of the decision of a Division Bench of this Court in Wavoo Magudoom Mohammed v. Government of Tamil Nadu : (1991)2MLJ281 (W.P. No. 1772 of 1987 dated 19.9.1990) where it has been held that the last date of the publication has to be taken into account.

13. I do not that think the other contention raised by the learned Counsel for the petitioners in both cases, with regard to mala fide can be accepted. It is well settled that mere bald allegations of mala fide cannot be a ground for setting aside any proceedings. The apex court of the land has held that on the basis of mere bald allegations of mala fides, a petition under Article 226 of the Constitution cannot be entertained. That apart, it is well settled that the decision of the Government is final and what all the authority who holds the enquiry under Section 5-A of the Act, to do is to send a report to the Government and the report is not binding on the Government and the Government can differ from that. So the finality of the proceedings is reached only at the stage of the declaration under Section 6 of the Act, when the Government decides to proceed with the acquisition. As such, I do not see any substances in the contention that just because the enquiry officer overruled the objections and sent the report to the Government, the Government has not applied its mind. The declaration under Section 6 of the Act itself will show that the Government has come to the conclusion to acquire the land. See Somawanti v. State of Punjab : [1963]2SCR774 .

14. The other question raised by the learned Counsel for both the petitioners is with regard to the compliance of Rule 1 of the Rules framed under Section 55(1) of the Act. When the said contention was raised, records were called for and produced before me. The records produced before me will show that the notification under Section 4(1) of the Act has been published in the office of the Joint Sub Registrar, Cuddalore, at Nellikuppam Police Station, in the Office of Deputy Tahsildar (Headquarters), Cuddalore, Chairman, Kondur Panchayat and also in Kondur Village. It is pointed out by the learned Counsel appearing for the

petitioners that no date is shown in the said publications. It is true that the publication is mandatory under Rule 1 of the Rules. But the records produced before me clearly show that, Rule 1 of the Rules has been duly complied with. However, the learned Counsel for the petitioner relies upon the decision of Nainar Sundaram, J. (as he then was) which is reported in Shanmugha Sundara Nadar v. Special Tahsildar I, Tamil Nadu Housing Board Schemes, Madras : (1987)2MLJ170 . The notification under Section 4(1) of the Act has been published in the Gazette on 13.9.1989 and has been published in the notice board in the abovementioned places, i.e., in the offices of the Joint Registrar, Panchayat Office, Tahsildar Office and in the Nellikuppam Police Station on 30.9.1989. As such, I am satisfied, on the facts of the case and on perusal of the records produced before me, that there is the compliance of Rule 1 of the Rules which contemplates that the notice must be placed at convenient places in the locality and copies thereof fixed up in the office of the Collector, Tahsildar and in the nearest police station. The judgment of Nainar Sundaram, J. (as he then was) in Shanmugha Sundara Nadar v. Special Tahsildar I, Tamil Nadu Housing Board Schemes, Madras : (1987)2MLJ170 , was taken on appeal and the Division Bench of this Court in Tamil Nadu State Housing Board v. Shanmugha Sundara Nadar 1988 W.L.R. 55, has observed as follows:.There is on record an endorsement made by the village officer which says that matter in the 'copy' has been published. The learned Judge undoubtedly is right when he says that there is no indication as to what was the copy which was published. While it may not be possible to find fault with those observations that would not necessarily lead to the conclusion that what was published was not the notification under Section 4(1) of the substance of the notification, but something else. If the publication was in connection with the land acquisition proceedings, the only publication possible in the cause would be the substance of the notification under Section 4(1) of the Act. The State Housing Board was entitled to show by evidence aliunde as to what was the material published and if this would have been put in issue at the earlier opportunity it would have been possible for the State Government or the Collector to produce the necessary material in the writ petition. To permit such a challenge which cannot be determined without reference to the facts which have transpired in June, 1975 to be raised in 1984 or 1985 would be really placing a premium on the

latches and want of diligence on the part of the petitioner. In our view, the learned Judge was in error in entertaining the challenge to the proceedings under Section 4 of the Act after a lapse of several years. There may have arisen a doubt in the mind of the learned Judge about the non-compliance with the requirement of Section 4(1) of the Act but at the same time it should have been appreciated that this doubt could have been cleared more effectively if it was raised much earlier. The benefit of this delay cannot certainly go to the petitioner who allowed the proceedings to go on and stood by these proceedings....

The abovementioned observations of the Division Bench of this Court culminated in setting aside the order of the learned single Judge which is reported in Shanmugha Sundara Nadar v. Special Tahsildar I, Tamil Nadu Housing Board Schemes, Madras : (1987)2MLJ170 . It is well-settled that in a petition praying for the issue of a writ of certiorari, if no counter-affidavit is filed then records can be produced to prove that these is compliance of Rules. In this case, a counter affidavit has been filed in W.P. No. 6298 of 1991 stating that the substance of notice under Section 4(1) of the Act has been published in the village on 30.9.1989 and all other formalities have been followed. It is also stated in para 6 of the counter affidavit that all the formalities contemplated under the rules have been followed and notices were served on the land owners. So apart from producing the records before me, the respondents have also filed counter-affidavit with regard to the compliance of Rule 1 of the Rules, which is held to be mandatory. In such circumstances, I am not able to accept the contention of the learned Counsel for the petitioners that Rule 1 of the Rules has not been complied with on the facts of the case. Govindasamy, J. in Vembuli Naicker v. State of Tamil Nadu : (1992)1MLJ26 , has held that giving public notice under Section 4(1) Notification is mandatory and failure to follow the procedure will vitiate the entire proceedings. There cannot be any doubt about the proposition decided by Govindasamy, J. in the above mentioned case. As I have already stated, on the facts of this case, Rule 1 of the Rules framed under Section 55 of the Act has been duly complied with.

15. The other contention raised by the learned Counsel appearing for the petitioners that since the earlier land acquisition proceedings were dropped in the

year 1976,'the initiation of the acquisition proceedings now in invalid in law, is a contention to be mentioned only to be rejected. That is all. I do not think the power of eminent domain ceases once the acquisition proceedings were dropped in the year 1976. Nearly after 15 years, the land acquisition proceedings are taken up and it is not for this Court to say, whether the lands should be acquired or not, sitting under Article 226 of the Constitution of India.

16. The only point left for consideration is whether a notice should be given to the petitioner in W.P. No. 6298 of 1991, who is an agreement holder with regard to the question whether subsequent purchaser of the property can question the acquisition proceedings and whether he has got locus standi, a Full Bench of this Court (to which I am a party) in Seethalakshmi Animal v. The State of Tamil Nadu 1992 W.L.R. 7, has held as follows:.One, who is deprived of his legal rights and or who has sustained injury to any legally protected interest can do so. Circumstances of each case will have to show how far the Court can go to accommodate the purchaser....

If the purchaser is able to show that something is being done contrary to law in the name of the land acquisition, he can maintain a writ petition, otherwise not....

On the facts of this case, it is clear that an unregistered agreement, of sale had been entered into between the petitioner in W.P. No. 6298 of 1991 and the petitioners in W.P. No. 16200 of 1990. In my view, if the principles laid down by the Full Bench of this Court, cited supra, are applied to the facts of the cases on hand, the petitioner in that writ petition has no locus standi and no legal right of the petitioner is infringed. There are no merits in both the writ petitions. Accordingly, the writ petitions will stand dismissed. However, there will be no order as to costs.