

L. Krishnan and ors. Vs. State of Tamil Nadu Represented by the Secretary to Government Housing and Urban Development Department and ors.

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Court : Chennai

Decided On : Apr-24-1991

Reported in : (1991)2MLJ150

Appellant : L. Krishnan and ors.

Respondent : State of Tamil Nadu Represented by the Secretary to Government Housing and Urban Development Departm

Judgement :

Abdul Hadi, J.

1. These writ petitions challenge the respective land acquisition proceedings. As certain common questions are involved in them, they are taken up together and disposed of. One common question which was argued in most of these writ petitions is whether the respective Section 4(1) notifications in them could be quashed, on the ground that they suffered from the vice of vague-ness or indefiniteness. We shall first deal with that question.

2. Both W.P. No. 2758 of 1983 and W.P. No. 9654 of 1986 are by the same petitioner Mrs. Marian Joseph. The first of the said two, is for a mandamus to forbearing the respondents from proceeding further in pursuance of the notice of the second respondent therein under Section 9(3) and 10 of the Land Acquisition

Act, (For convenience sake, hereinafter be referred to as Act) in his No. Ka/3264/72/A dated 18.9.1983 against the petitioner. The same petitioner has subsequently filed W.P. No. 9654 of 1986 for a writ of certiorari for quashing the same Land Acquisition proceedings.

3. W.P. Nos. 2758 of 1983, 9654 of 1986, 9764 of 1986 and 9561 of 1983 - all relate to the same Section 4(1) notification G.O.R. No. 124Housing, dated 8.5.1975, the material portion of which runs as follows:

No. II(2)/HOU/1861/75 - Whereas it appears to the Government of Tamil Nadu that the lands specified below are needed for a public purpose, to wit, for the implementation of Housing Schemes, to meet the demands made by various sectors of the population under 'Kalaingar Karunanidhi Nagar Further Extension Scheme', notice to that effect is hereby given to all whom it may concern in accordance with the provisions of Sub-section (1) of Section 4 of the Land Acquisition Act 1894, (Central Act I of 1894); 'The lands invoked in these writ petitions are in Nerkundram Village, Saidapet Taluk, Chengalpattu District in W.P. Nos. 2758 of 1983 and 9654 of 1986, the extent of the land involved is 4 grounds and 18 Sq.ft., in Sec. No. 70/2. In W.P. No. 9764 of 1986 the extent involved is 7 grounds and 1223 s.f. in Sec. No. 20, 70/2, 74/1 and 74/2. In W.P. No. 9561 of 1983, the extent involved is 0.04 acres in Sec. No. 93.

4. The material portion of the Section 4(1) notification in W.P. No. 6169 of 1983, G.O.R. 221, Housing, dated 29.8.1975 runs as follows :

No. II(2)/HOU/3459/75 - Whereas it appears to the Government of Tamil Nadu that the lands specified below are needed for a public purpose, to wit, for the creation of a new neighbourhood, known as Kalaingar Karunanidhi Nagar Part II Schemes, notice to that effect is hereby given to all whom it may concern in accordance with the provisions of Sub-Section (1) of the Section 4 of the Land Acquisition Act, 1894 (Central Act I of 1894)...

The lands involved in this writ petition are in Koyambedu Village, Saidapet Taluk, Chengalpattu District and the extent thereof are 20.60 acres in S. No. 164/1, 165, 166-2, 167-1B, 167-2, 167/5, 167/6 and 168.

5. The material portion of the Section 4(1) notification G.O.R. No. 367, Housing, dated 19.2.1975 in W.P. No. 10474 of 1982 runs as follows :

No. II(2)/HOU/983/75 - Whereas it appears to the Government of Tamil Nadu that the land specified below are needed for a public purpose to wit, for increasing housing accommodation for the development of South Madras neighbourhood, notice to that effect is hereby given to all whom it may concern in accordance with the provisions of Sub-section (1) of Section 4 of the Land Acquisition Act 1894, (Central Act I of 1894)....

The land involved in this writ petition is in No. 141, Kottivakkam Village, Saidapet Taluk, Chengalpattu District and the extent thereon is 10 acres and 33 cents in Sec. No. 232/1E, In this W.P. in W.M.P. No. 814 of 1991 the subsequent purchaser of 4.46 acres out of the abovesaid 10.33 acres has also been impleaded.

6. The submission of the respective learned Counsel for the petitioners in each of those writ petitions is that, applying the decision of the Bench of this Court in *The State of Tamil Nadu v. A Mohammed Yousuf and Ors.* : (1990)2MLJ149 , the respective Section 4(1) notifications should be quashed on the ground of vagueness thereon. In the said decision, the relevant portion of the notification therein runs as follows:

Whereas it appears to the Government of Tamil Nadu that the lands specified below... needed for a public purpose, to wit, for development of the area by construction of houses by the Tamil Nadu Housing Board, notice that effect is hereby given to all whom it may concern in accordance with the provision of Sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act I of 1894).

In the context of the abovesaid notification therein the Bench of this Court observed as follows in the abovesaid decision:

That apart, the expression 'public purpose viz., for development of the the area by construction of houses by the Tamil Nadu Housing Board is most indefinite and vague. It is now well settled that in a notification under Section 4(1) of the Land

Acquisition Act, it is the obligation on the part of the acquiring authority to state the 'public purpose' with sufficient particulars and clarity. The mere mention in the notification that the land was being acquired for development of the area by construction of houses by the Tamil Nadu Housing Board, is wholly insufficient and conveys no ideas as to the specific purpose for which the site was to be utilised. Even in the counter affidavit filed to the writ petition, the public purpose was not spelt out with any clarity or particularity. No other material was also placed on record to show the exact purpose for which the land was to be acquired. A bare statement that houses were proposed to be constructed on the site by the Housing Board, without indicating either the class of persons for whom they were to be constructed or the necessity for the same, is not sufficient compliance with the requirement of law. Reliance placed by the learned Government Pleader on the object for which the Housing Board has been constructed to justify the existence of 'public purpose' cannot advance the case because we find that there is no whisper in the counter as regards the requirements of Sections 40 and 41 of the Tamil Nadu State Housing Board Act, 1961.' The Bench came to this conclusion relying on the case reported in *Munshi Singh v. Union of India* : [1973]1SCR973 , and the Bench while relying on the said Supreme Court decision further observed as follows: In *Munshi Singh v. Union of India* : [1973]1SCR973 , their Lordships of the Supreme Court interfered with the notification issued under Section 4(1) of the Land Acquisition Act on the ground that it was vague and indefinite and on account of those defects the persons interested in the land proposed to be acquired did not have a proper opportunity to file objections. It was held that such a defective notification, which formed the basis of subsequent proceedings, could not be sustained. In view of the legal position as settled by the Supreme Court, it is thus open to a party to question a notification issued under Section 4(1) of the Act. Of course, the Court would interfere only in case it finds that the said notification suffers from the vice of vagueness, indefiniteness and the like grounds, which prevent the parties from making effective objections in the enquiry under Section 5-A of the Act. We accordingly hold that the abstract proposition of law laid down in *N. Krishnappa Mudaliar and Anr. v. The Government of Tamil Nadu and Anr.* : (1977)1MLJ406 , is no longer good law and a writ petition calling in question a notification under Section 4(1) is maintainable where the notification suffers from

the vice of vagueness, indefiniteness or similar grounds. The maintainability of the writ petition would depend upon the nature of the challenge to the validity of the notification issued under Section 4(1) of the Act.

7. Now we find that the abovesaid Bench decision and the Supreme Court Decision would squarely apply to the present writ petitions also. In the above referred to notifications relating to these writ petitions also we find the similar vagueness and indefiniteness. In the first of the above referred to three notifications involved in these writ petitions the public purpose is stated as 'for the implementation of the Housing schemes to meet the demands made by various sectors of the population under 'Kalaingar Karunanidhi Nagar Further Extension Scheme'. Likewise in the second it is,

for the creation of a new neighbourhood, known as Kalaingar Karunanidhi Nagar, Part II Schemes,

Likewise in the third, it is,

for increasing housing accommodation for the development of South Madras Neighbourhood.

In all these cases also, there is no indication of either the class of persons for whom the houses were to be constructed or of the necessity for the same. In all the above three, in addition there is also no reference to the Housing Board. So we find that the said Bench decision squarely applies to the present writ petitions also on the abovesaid question. We also find that the said Bench decision was also followed in the case reported in Narayana Raju and three Ors. v. The State of Tamil Nadu represented by the secretary to Government, Housing and Urban Development Department, Madras-9, 1990 T.L.N.J. 358. There are also the public purpose was stated to be,

for the formation Madurai North Neighbourhood Project in Madurai North Taluk, Madurai District

There, the learned Judge has observed,

It is not even stated that the lands are needed for providing house-sites to the members of the public or for the formation of a residential colony. The Madurai North Neighbourhood Project may mean anything. It is now well settled that the Land Acquisition Act being expropriatory should not only conform to the procedure prescribed under the Act but also be specific and afford reasonable opportunity to the land owners to submit their objections. From the above notification and declaration, it will not be possible for the land owners to submit their objections because they do not know for what purpose, the land is sought to be acquired. In 1984 T.L.N.J. 21, Mohan J. (as he then was) invalidated a notification because the word 'Harijan' was omitted while describing the purpose of acquisition. The Learned Judge has given adequate reasons why such small omissions in acquisition proceedings should be considered as fatal to the acquisition itself.

8. No doubt, we find in the affidavit filed in support of the W.P. No. 2758 of 1983 that this contention based on the vagueness of Section 4(1) notification has not been raised. But the same writ petitioner who has filed the other Writ Petition No. 9654 of 1986 against the same land acquisition proceedings, has stated in her affidavit filed in support of the said writ petition as follows:

The notification under Section 4(1) expressing the need for acquisition for a vague public purpose, which may or may not arise on the pegged down market value without any concrete scheme in existence as on the date of the 4(1) notification would amount to a colourable exercise of power and abuse of power by the State....

That apart in W.P. No. 9654 of 1986 she has also filed additional affidavit taking this point specifically. In W.P. No. 9764 of 1986 and W.P. No. 9561 of 1983 also the affidavit filed, takes up the abovesaid point specifically.

9. The before, in W.P. Nos. 2758 of 1983, 9654 of 1986, 9764 of 1986 and 9561 of 1983, the above referred to respective notifications under Section 4(1) of the Act are liable to be quashed as illegal on the abovesaid sole ground alone.

10. But, we find that in W.P. No. 6169 of 1983, the above point based on vagueness and indefiniteness of Section 4(1) notification was not specifically taken up either in the original affidavit filed in support of the writ petition or in the

supplemental affidavits filed by the writ petitioner therein. However a different question is raised therein as follows : Sanction for layout of the land in question therein was obtained as early as 16.11.1970, from the Director of Town Planning and Villivakkam Panchayat. By virtue of G.O. MS. No. 837, dated 15.6.1976, the first respondent therein excluded from acquisition the said land in Koyambedu Village and certain other lands on the ground that the said sanction was obtained. Subsequently the first respondent therein by its another G.O. MS. No. 125, Housing Department, dated 20.1.1978 waived the earlier G.O. MS. No. 837, in so far as it related to Koyambedu Village (where the land in question in this W.P. is situate) 'So that the madras Metropolitan Development Authority could acquire the lands in that area for the peripheral outstation bus terminal and for organising a wholesale market in textiles.' Subsequently by G.O. MS. No. 413, Housing and Urban Development Department, dated 3.3.1979, the first respondent further modified G.O. MS. No. 837, and granted the abovesaid exclusion only on condition that the abovesaid layout should have been approved by the Town Planning authorities before the publication of the notification under Section 4(1) and that the said lay-out should be on the fringe of the scheme area without affecting the scheme. While so, when this W.P. No. 6169 of 1983 came up for final disposal earlier on 12.11.1984 before Sathar Syed, J. it was contended by the petitioners that they had obtained the above said approval of the Director of the Town Planning with respect to the land in question prior to the coming into force of G.O. MS. No. 413 and that the said G.O. was not applicable to the said land. The learned Judge however the n found that a batch of writ petitioner (W.P. No. 10351 of 1982 etc.) had been heard by a Division Bench of this Court, inter alia, on the question of the validity of the said G.O. MS. No. 837 etc. and orders had been reserved. So the learned Judge directed posting of W.P. No. 6169 of 1983 after the disposal of the above said batch. Hence the said W.P. No. 6169 of 1983 has been now posted before us after the disposal of the said batch by judgment dated 8.1.1988. The said Bench Judgment has held that these G.Os.' are statutory in character and that the rights of the parties should be governed by the law that stood on the date of Section 4(1) notification, and that the before the rights have to be marked out only in accordance with G.O. MS. No. 837 and not G.O. 413. The Bench also relied on (1955) 2 M.L.J. 49 (at p. 61), for coming to this conclusion.

So holding, the Bench allowed W.P. No. 10351 and 10373 of 1981 which came under the said batch of writ petitions. The argument in the present W.P. No. 6169 of 1983 is that on the same reasoning the said W.P. also should be allowed. We also feel that the said argument has to be accepted.

11. Thus, on the above said conclusions reached, all the writ petition herein have to be allowed. However, since certain other points were also argued before us, we shall deal with them also.

12. One another common point that was urged in some of these writ petitions is about the unreasonable delay in making an award after issuance of the notification under Section 4(1). In this connection, the cases reported in *P. Appalamurthy v. State* : AIR 1981 AP278 and *Sree Vengeeswarar Alagarperumal Devasthanam v. State of Tamil Nadu* : (1984)2MLJ427 , are relied on. In : AIR 1981 AP278 , the explanation for the delay was that the Government was expecting that because of the Land Ceiling Act, or the Ceiling Act on urban vacant sites, it might may get some lands at a very low compensation under those enactments and that, the before, it need not proceed to acquire those lands at the market value under the Land Acquisition Act. In that context, the Andhra Pradesh High Court observed as follows:

If the Government wanted to wait for the result of the proceedings under the ceiling laws, it was welcome to do so, provided it withdrew the notification issued under the Land Acquisition Act. But, it cannot have both ways.

It cannot say that it will keep the notification issued under Section 4(1) of the Land Acquisition Act alive and, at the same time, wait for the result of the proceedings under the Ceiling laws, so as to ultimately opt for the more advantageous alternative. This would be an unreasonable and arbitrary exercise of power. A notification cannot be issued for the purpose of pegging down the price, or for freezing the price, as the case may be, and the n wait for a convenient and opportune time to pass an award. Such a line of thinking and the course of conduct is alien to the scheme and intendment of the Land Acquisition Act. As the Supreme Court has observed in *Ambalal v. Ahmedabad Municipality* : [1968]3SCR207 :

We are not hereby to be understood as suggesting that after issue of the notification under Sections 4 and 6 the appropriate Government would be justified in allowing the matters to drift and to take in hand the proceedings for assessment of compensation whenever they think it proper to do. It is intended by the scheme of the Act that the notification under Section 6 of the Land Acquisition Act must be followed by a proceeding for determination of compensation without any unreasonable delay....' Reference in this connection may also be made to the decision of a Learned Single Judge of the Madras High Court in Krishna Iyer v. State of Madras : (1967)2MLJ422 . The learned Judge observed:

As the compensation has to be determined with reference to the date of the notification under Section 4(1) the person whose land is to be acquired may stand to lose if there is a great delay between the notification under Section 4(1) and the notification under Section 6(1) in case prices have risen in the meantime. Though the statute does not prescribe any time limit for issuing the Section 6(1) declaration after the Section 4(1) notification or for passing an award at a subsequent stage, that circumstance does not deprive the aggrieved party of a remedy where undue prolongation of the proceedings has operated in an oppressive manner on the owner of the land, especially in circumstances where land values have increased by leaps and bounds in the intervening time....

The same principle was reiterated in (1984) 2 M.L.J. 427 also. In the present case, in W.P. No. 10474 of 1982 also in para 10 of the counter affidavit we find a similar explanation as follows:

Further, clearance under Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, from the Assistant Commissioner, Urban Land Tax and under Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act 1961 from the Authorised Officer, Kancheepuram was also required for finalising the acquisition proceedings. As the clearance could not be obtained from the Assistant Commissioner, Urban Land Tax and Authorised Officer, Land Reforms in time, the Government were moved for exemption. So the contention of the petitioner that the Section 4(1) notification was published with a view to peg the prices of the land is not at all correct.

Similarly, explanation is found in the Counter affidavit in W.P. No. 2758 of 1983 also. The before, the learned Counsel for the petitioner in W.P. No. 10474 of 1982 and W.J.P. No. 2758 of 1983, relying on the above referred to observations in : AIR 1981 AP278 , that waiting for the result of the proceedings under Ceiling laws so as to ultimately opt for the more advantageous alternative, would be an unreasonable and arbitrary exercise of power. In : AIR 1981 AP278 , after due declaration under Section 6, there was a lull for a period of three years, in which the notice under Sections 9(3) and (10) of the Act were issued and then again, the Land Acquisition Officer from the proceedings almost for 5 years when he passed the award. Likewise, in : (1984)2MLJ427 , there was a delay of 20 years. In the present cases also, the Section 4(1) notifications in the year 1975 and the Section 6 - declarations were published in the year 1978. Awards were passed in all the above said writ petitions, excepting in the case W.P. No. 10474 of 1982, in 1983, that is, about 5 years after the publication of Section 6 declaration. In W.P. No. 10474 of 1982 also till the writ petition was filed in the year 1982, the award was not passed. No doubt, in view of the interim stay on further proceedings, granted therein in 1982, the award could not be passed subsequently. Thus, in all these cases, we find that there is delay in passing the award and the reason given by the respondents themselves is that they were waiting for the benefits under the provisions of the Ceiling Laws. Even Section 11-A of the Land Acquisition Act which was introduced by Act 68 of 1984 and came into force on 24.9.1984, stipulates that the land acquisition proceedings shall lapse if the award is not made within a period of two years from the date of publication of Section 6 declaration. No doubt this Section 11-A will not be applicable in the abovesaid cases where awards were passed in 1983 itself, But, the period between Section 6 declaration and the date of passing of award was as much as 6 years. Under the Board standing Orders 90(12) also the Land Acquisition Officer should pass the award as promptly as possible. The said Order 90(12) is one of the administrative instructions of the Board of Revenue (1983) 1 A.W.R 354, has also held, relying on : (1979)1ILLJ217SC , that such instructions constituted a quasi law and enforceable. Proviso to Section 11-A no doubt says that award shall be made within a period of 2 years from the date of commencement of the aforesaid Amending Act 68 of 1984 i.e., 24.9.1984. But the said proviso will apply only to a

case where award has not been passed before that date. Even in W.P. No. 10474 of 1982, the period between the publication of Section 6 declaration and the interim stay order granted in the said W.P. was about 5 years. The judgment dated 17.7.1990 by a Bench of this Court in W.A. No. 214 of 1986, which dealt with a case of award passed after the aforesaid coming into force of Amended Act 68/84 and of the consequent applicability of the said proviso to Section 11-A, has no application to the present cases. Similar decision reported in *Kaliappan v. State of Kerala* : AIR 1989 SC239 , relied on in the above said W.A. No. 214 of 1986, also has no application to the present cases. Under these circumstances, the abovesaid decision of the Andhra Pradesh Court and that of this Court in : (1967)2MLJ422 , and that of the Supreme Court in : [1968]3SCR207 , alone do apply to the facts of the present case.

13. One another common point urged in some of these writ petitions is that in all these cases, Rule 3(b) and (c) of the rules made by the Government of Tamil Nadu pursuant to Section 55(1) of the Land acquisition Act, has not been followed. The said Rule 3(b) and (c) runs as follows:

If any objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of Section 5-A the 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 of 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.

14. The submission of the Learned Counsel for the petitioner in the writ petition No. 10474 of 1982 is that though as per para 4 of the counter affidavit of the respondents, the remarks of the Tamil Nadu Housing Board were communicated

to the writ petitioner on 8.2.1978 it is not stated in the said counter affidavit that the enquiry contemplated under Rule 3(b) and (c) was held. But we find on the other hand, that there is no allegation in the affidavit of the petitioner himself in this writ petition that the above said enquiry was not held. So when the said petitioner himself has not chosen to allege that the said enquiry was not held, it cannot be concluded that there was no such enquiry simply on the footing that in the counter of the respondent there was no mention about such enquiry.

15. In W.P. No. 9561 of 1983 also similar contention was put forth by the Learned Counsel for the petitioner herein. But, there, we find in the affidavit in support of the writ petition that a specific allegation has been made that such an enquiry was not held (vide para 7(b) of the affidavit of the petitioner) We also find that there is no counter affidavit filed in W.P. No. 9561 of 1983. In these circumstances in W.P. No. 9561 of 1983 this contention based on the above said Rule 3 has to be accepted. In W.P. No. 9764 of 1982 also similar contention has been raised based on Rule 3. In this writ petition also there is no counter. The before, in this writ petition also the above said contention has to be accepted.

16. One other contention raised by the Learned Counsel for the respondents is these writ petitions have been belatedly filed. But in this contention there is no substance. In the decision reported in Hari Singh v. State of U.P. : [1984]3SCR417 , no doubt it was held that a writ petition challenging the validity of Section 4 notification filed after 2 1/2 years of the notification was liable to be dismissed. But, there it was a case of emergency acquisition. There was notification under Section 17(4) of the Act also. While Section 16 of the Act provides to take possession of land by the Collector after the award, Section 17 deals with taking possession of the land by the Collector before award in case of urgency. So, the said decision is not applicable to the present case. In fact, in the decision reported in Kadiravel Mudaliar v. State of Tamil Nadu 1987 Writ L.R. 182, also, it was found that there were laches on the part of the authorities themselves and that the authorities also did not comply with the above said Rule 3(b) and (c) which are mandatory. In these circumstances, it was held therein, that the contention based on delay or laches should not be put against the petitioner to him the appropriate relief. In the present case also, there were laches on the part of the authorities and there was

also similar violation of law by the authorities and the before, the contention of the learned Counsel for the respondents cannot be accepted.

17. In the above circumstances, all the writ petitions are allowed. Rule Nisi is made absolute. However, in the circumstances, there will be no order as to costs.

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