

N. Subramaniam and ors. Vs. State of Tamil Nadu and anr.

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Court : Chennai

Decided On : Nov-12-1991

Reported in : (1992)2MLJ239

Appellant : N. Subramaniam and ors.

Respondent : State of Tamil Nadu and anr.

Judgement :

ORDER

K.S. Bakthavatsalam, J.

1. The petitioners challenge G.O.Ms. No. 977, Housing and Urban Development Department, dated 17.8.1990, published in the Tamil Nadu Government Gazette, dated 12.9.1990 and quash the publication issued under Section 37(2) of the Town and Country Planning Act 1971, in so far as the petitioners are concerned in respect of their lands comprised in Survey Nos. 107 and 136 in No. 156, in Mamallapuram Village, Chingleput Taluk, Chengai-Anna District. 2. The short facts which lead to the filing of the writ petition are as follows:

The subject matter of the lands are situate in Mamallapuram village and Mamallapuram is a celebrated port-town, drawing a large number of tourists and pilgrims. The growth of population and the influx of tourists were considered by the New Town Development Authority, Mamallapuram, the second respondent herein and since the existing bus-stand is a small one the second respondent suggested

that the lands in S. Nos. 107 and 136 are suitable for constructing a new bus-stand. The New Town Development Authority, acting in accordance with the provisions of the Tamil Nadu Town and Planning Act, 1971 prepared a New Town Development Plan and submitted the same to the Government. Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 provides for the enforcement of the plan so prepared from the date of consent accorded by the Government to the Plan. When the Member Secretary, Mamallapuram New Town Development Authority requested the Government for acquiring the above mentioned lands for construction of Bus Stand, the New Town Development Plan for Mamallapuram New Town was consented by Government under Sub-section (2) of Section 24 of the Town and Country Planning Act in G.O. Ms. No. 968, Housing and Urban Development, dated 29.9.1989, and it was published in the Tamil Nadu Government Gazette on 15.11.1989 as required under Section 26 of the Town and Country Planning Act, 1971. The two survey numbers in question have been reserved for Bus Stand in the above said New Town Development Plan. This was selected by the Task Force, chaired by the Chief Secretary to Government on 21.3.1988. The Committee of Town and Country Planning Board has sanctioned a sum of Rs. 12.11 lakhs for the acquisition of land for the Bus Stand. In view of the provisions under Section 37(1) of the Town and Country Planning Act, a proposal was sent by the Director of Town and Country Planning to the Government for acquiring the above mentioned lands under Section 37(2) of the Town and Country Planning Act. After verifying the facts as to whether the provisions of the Act have been complied with, a draft declaration under Section 37(2) has been approved by the Government by the impugned Government Order. The declaration as published in the Gazette reads as follows: No. II(2)HOU/4461/90-Whereas, a notice was published with Mamallapuram New Town Development Authority Notification No. VI(1) 1964 of 1989, dated the 30th September, 1989, at page 597 of Part VI-Section 1 of the Tamil Nadu Government Gazette, dated the 15 th November, 1989 of preparation of a New Town Development Plan for Mamallapuram New Town under Section 26 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972) and the Government of Tamil Nadu having been satisfied that the lands specified in the schedule below have to be acquired for a public purpose, viz., for formation of a bus-stand, and it having

already been decided that the entire amount of compensation to be awarded for the lands is to be paid out of the public revenues, the following declaration is issued under Sub-section (2) of Section 37 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu 35 of 1972):

DECLARATION

Under Sub-section (2) of Section 3 of the Tamil Nadu Town and Country Planning Act, 1971 (Tamil Nadu Act 35 of 1972), the Governor of Tamil Nadu hereby declares that the lands specified in the schedule below and measuring 3.09 0 hectares, be the same, a little more or less, are needed for a public purpose, to wit, for construction of a bus-stand as required in the New Town Development Plan of Mamallapuram by the New Town Development Authority, Mamallapuram, Chengalpattu Taluk, Chengai Anna District. A plan of the lands is kept at the District Collector's Office, Kancheepuram and may be inspected at any time during office hours....

It is alleged in the affidavit that the exact location of the proposed bus-stand from the main tourist attraction spots like shore temple and other monuments will be about 6 to 7 kms. It is further alleged that the tourist interest will be seriously affected if the new acquisition of lands took place, that there are other more convenient and vacant sites situate on the left side of the shore temple road as well as at the very entrance of the village viz., poramboke land and other lands. It is also alleged in the affidavit that the proposal to locate the new bus stand in the lands to be acquired is incorrect, and that the public interest will be greatly affected if the proposed new bus-stand is put up in the lands to be acquired. It is also stated that when there is a draft report pending consideration, the Government cannot invoke the provisions of the Land Acquisition Act and that the impugned notice purporting to be the one issued under Section 37(2) of the Tamil Nadu 37 of 1972, is illegal. It is further stated in the affidavit filed in support of the writ petition that when a draft proposal is pending and that draft contains a proposal to locate a new bus-stand in a particular survey number before the draft has become final cannot be done and that the notification under Section 37(2) cannot be treated as a final one. It is also stated that if the lands are to be acquired under the Land

Acquisition Act, there are certain procedures to be followed viz., notification under Section 4(1) of the Act and the enquiry under Section 5-A of the Act, that such a course of action is not contemplated under Section 37 of the Town and Country Planning Act, 1971 and that therefore Section 37 of the Act is arbitrary. It is also stated that the impugned notification is bad in law on the ground that there is a colourable exercise of power. It is also stated that principles of natural justice are violated and that the lands are taken over without considering the objections of the petitioners and that it is an infringement of Article 300-A of the Constitution of India.

3. Notice of motion has been ordered by me on 23.4.1991.

4. A counter-affidavit has been filed by the respondents 1 and 2. The counter affidavit says that the New Town Development Authority, acting in accordance with the provisions of the Tamil Nadu Town and Country Planning Act, 1971, under which it was constituted, prepared a New Town Development Plan and submitted the same to the Government. Section 49 of the Tamil Nadu Town and Country Planning Act, 1971 has been referred to in the counter affidavit. It is further claimed in the counter affidavit that a bus stand will have be located as to allow free entry of the buses from all directions, not to pollute areas around monuments, prohibit crisscrossing of buses and other heavy vehicles in the monument zone. It is further stated that Section 36 of the Tamil Nadu Town and Country Planning Act provides that any site required, reserved or designated in the Plan prepared under the said Act shall be deemed to be land needed for public purposes within the meaning of the Land Acquisition Act. 1894 and provides for the acquisition of the said lands as modified in the Tamil Nadu Town and Country Planning Act, 1971, and as such declaration under the act has been issued by the Government in G.O.Ms. No. 977, Housing and Urban Development Department, dated 17.8.1990, which is impugned in this writ petition. It is also claimed in the counter-affidavit that the petitioners themselves wanted to dispossess the lands comprised in S. Nos. 107 and 136 in No. 156, Mamallapuram Village and that the petitioners cannot contend that the lands in question cannot be acquired. It is further claimed in the counter-affidavit that the distance between the site selected and the farthest monument is less than one kilometre and that the said distance can be travelled

by foot by anyone and that the petitioners' contention to the contrary is not correct. It is further claimed that objections were called for and that the views of the public were taken note of before finalising the site for the bus stand. It is further claimed that the interest of the tourists will never be affected of the New Town Development Authority locates the bus stand in those lands mentioned above and that the alternate site suggested by the petitioners are not suitable for the location of the bus stand. It is further stated that the notice of preparation of a New Town Development Plan for Mamallapuram was published on 15.11.1989 and a notification under Section 37 of the New Town Development Plan for Mamallapuram was published on 15.11.1989. It is further stated that Section 37 of the Tamil Nadu Town and Country Planning Act, 1971 provides consent of the Government for preparation of plan and that in the instant case the preparation of the plan was sanctioned by the Government and that all formalities have been complied with by the Government. It is also stated that the objections and suggestions of the public who are affected under Section 27 of the Act were considered and that they have been processed before the Committee on 19.3.1990.

5. Though many points are taken in the affidavit, Mr. N. Ganapathy, the learned Counsel appearing for the petitioners after referring to various provisions of the Act, restricted his arguments only to two points, the first being that no opportunity has been given to the petitioners and that there was no publication made. The learned Counsel points out that the acquisition is being for local authority under Section 3(aa) of the Land Acquisition Act, 1894, the entire cost of the land acquisition cannot come from public revenue. The learned Counsel also points out the declaration made under Section 6 of the Land Acquisition Act and contends that funds' cannot come from public revenue as separate funds are provided under the Tamil Nadu Town and Country Planning Act, in this case. The learned Counsel relies upon the decision of Kanakaraj, J. in *Narayana Rajoo v. The State of Tamil Nadu* (1991)1 L.W. 476, wherein the learned Judge has followed earlier decisions with regard to the validity of declaration made under Section 6 of the Land Acquisition Act for the purpose of acquisition of lands for the Housing Board. The learned Counsel further contends that the declaration made in this case has to be set aside purely on this ground alone.

6. Per contra, Mrs. N. Kalaiselvi, the learned Government Advocate appearing for the respondents contends that the provisions of the land acquisition act have been fully complied with and that the publication in the newspapers has also been made. It is further stated that under Section 26 of the Act, publication has been made in Tamil daily 'Makkal Kural' and in English daily in 'The Hindu', and that wide publicity has also been given to the notification in the notice board of the authority, District Collector, the Township Committee office etc. It is further stated that in response to the advertisement made, the petitioners have submitted applications seeking declaration of their lands as residential instead of public purpose and that they have been duly considered. It is also stated by the learned Counsel for the respondents that a careful reading of Sections 36 and 37 of Town and Country Planning Act, 1971 will prove that the acquisition can be resorted to within three years from the date of notification under Section 26 of the Act and that in this case the land acquisition proceedings have been initiated once publication has been published in the Tamil Nadu Gazette.

7. I have considered the arguments of Mr. N. Ganapathy, the learned Counsel appearing for the petitioners and of Mrs. N. Kalaiselvi, the learned Government Advocate appearing for the respondents. Section 26 of the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter referred to as the 'Act', 1971') provides notice of the preparation of the regional plan, the master plan or the new town development plan, and it reads as follows: (1) As soon as may be, after the appropriate planning authority has received the consent of the Government under Sub-section (2) of Section 24 to the publication of the notice, the appropriate planning authority shall publish the notice in the Tamil Nadu Government Gazette and in leading daily newspapers of the region of the preparation of the regional plan, the master plan or the new town development plan, as the case may be, and the place or places where copies of the same may be inspected, inviting objections and suggestions in writing from any person in respect of the said plan within such period as may be specified in the notice;

Provided that such period shall not be less than two months from the date of the publication of the notice in the Tamil Nadu Government Gazette.

2. After the expiry of the period mentioned in Sub-section (1), the appropriate planning authority shall allow a reasonable opportunity of being heard to any person including representatives of Government departments and authorities, who have made a request for being so heard and make such amendments to the regional plan, the master plan or the new town development plan, as the case may be, as considers proper and shall submit the said plan with or without modifications to the Government....

Section 27 of the Act, 1971 provides the notice of the preparation of the detailed development plan which reads as follows:.(1) As soon as may be, after the local planning authority has received the consent of the Director under Sub-section (2) of Section 25 to the publication of the notice, the local planning authority shall publish the notice in the Tamil Nadu Government Gazette, and in leading daily newspapers of the region of the preparation of the detailed development plan and the place or places where copies of the same may be inspected, inviting objections, and suggestions in writing from any person in respect of the said plan within such period as may be specified in the notice;

Provided that such period shall not be less than two months from the date of the publication of the notice in the Tamil Nadu Government Gazette.

(2) After the expiry of the period mentioned in Sub-section (1), the local planning authority shall allow a reasonable opportunity of being heard to any person including representatives of Government departments and authorities, who have made a request for being so heard and make such amendments to the detailed development plan as it considers proper and shall submit the said plan with or without modifications to the Director....

Section 28 of the Act, 1971 provides for approval of the Government and Section 30 speaks of coming into operation of regional plan, master plan and new town development plan.

8. Chapter IV of the Act 1971 provides the power to acquire land under the Land Acquisition Act and Section 36 of the Act reads as follows:.Any land required, reserved or designated in a regional plan, master plan, detailed development plan

or a new town development plan, as the case may be, shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (Central Act I of 1894) and may be acquired under the said Act as modified in the manner provided in this Act....

Section 37 of the Act 1971 gives power to purchase or acquire lands specified in the development plan which reads as follows:.(1) Where after the publication of the notice in the Tamil Nadu Government Gazette of preparation of a regional plan, master plan, as the case may be, any land is required, reserved or designated in such plan, the appropriate planning authority may, either enter into agreement with any person for the acquisition from him by purchase of any land which may be acquired under Section 36 or make an application to the Government for acquiring such land under the Land Acquisition Act, 1894 (Central Act I of 1894);

Provided that if the value of such land exceeds fifty thousand rupees, the appropriate planning authority shall not enter into such agreement without the previous approval of the Government.

(2) On receipt of an application made under Sub-section (1), if the Government are satisfied that the land specified in the application is needed for the public purpose specified therein, they may make a declaration to that effect in the Tamil Nadu Government Gazette, in the manner provided in Section 6 of the Land Acquisition Act, 1894 (Central Act I of 1894), in respect of the said land. The declaration so published shall notwithstanding anything contained in the said Act, be deemed to be a declaration duly made under the said Section 6 of the said Act;

Provided that no such declaration in respect of any particular land covered by a notice under Section 26 or Section 27 shall be made after the expiry of three years from the date of such notice. (3) On the publication of such declaration, the Collector of the district within whose jurisdiction the land is situate shall proceed to take order for the acquisition of such land under the said Act, and the provisions of that Act shall, so far as may be, apply to the acquisition of the said land with the modification that the market value of the land shall be the market value prevailing on the date of the publication of the notice in the Tamil Nadu Government Gazette

under Section 26 or Section 27, as the case may be....

9. With regard to the contention raised by the learned Counsel appearing for the petitioner that no opportunity has been given to the petitioner, I am not able to agree with the said contention of the learned Counsel for the petitioner. In my view, the provisions of the Act 5 of 1971 have been strictly complied with. A careful reading of Section 37 of the Act, extracted above, will prove that the acquisition can be resorted to within three years from the date of notification of the Section 26 of the Act, 1971 after the notice of the preparation of the Regional Plan, Master Plan or New Town Development Plan and after it received the consent of the Government. On the facts of the case on hand, it is seen that the petitioners have also given their objections against the acquisition and they have been duly considered. As such, I am not able to accept the arguments of the learned Counsel for the petitioner on the ground that no opportunity has been given to the petitioners. The argument of the learned Counsel for the petitioners, on this ground, falls to the ground.

10. With regard to another ground raised by the learned Counsel for the petitioners, it is necessary to refer certain provisions of the Act. Section 39 of the Act gives the right to compensation. Chapter VIII provides for finance and the State Town and Country Planning and Development Fund is created. Section 65 of the Act states that every planning authority shall maintain a separate Fund called 'The Planning and Development Fund Account'. Sub-section (2) of Section 65 of the Act reads as follows:

The Fund account may be initially established by the planning authorities with the grants, advances or loans obtained from the Government or from the State Town and Country Planning and Development Fund....

From a reading of the provisions mentioned above, it is clear that the Government is empowered to acquire lands under the provisions of the Act, Act 37/72, and that the provisions of the Land Acquisition Act need not be followed. Chapter IV of the Act provides for acquisition. However, if an acquisition is made by enforcing Chapter IV of the act, it is the acquisition for the local authorities as defined under Section 3(aa) of the Land Acquisition Act. Section 3(aa) of the Land Acquisition

Act, 1894 reads as follows: The expression 'local authority' includes a town planning authority by (whatever name called) set up under any law for the time being in force....

The relevant portion of Section 6 of the Land Acquisition Act, 1894 with which we are concerned, reads as follows:

6. Declaration that land is required for a public purpose:- (1) Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied, after considering the report, if any, made under Section 5-A, Sub-section (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary, to such Government or of some officer duly authorised to certify its orders (and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under Section 4, Sub-section (1), irrespective of whether one report or different reports has or have been made (whenever required) under Section 5-A, Sub-section (2);

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority....

A reading of the abovementioned sections clearly shows that the acquisition in this case is for local authority, even though Chapter IV of the Town and Country Planning Act, 1971 is invoked for acquiring the lands for the purpose of constructing a bus-stand. But the declaration made under Section 6 of the Land Acquisition Act, which has been extracted in the earlier portion of this order, clearly shows that the entire compensation of the acquisition is paid out of the public revenue. As rightly pointed out by Mr.N.Ganapathy, learned Counsel for the writ petitioners, on this ground alone, the declaration made under Section 6 of the Land Acquisition Act is bad in law. In a batch of writ petitions in *Madan Sundararaj v. The Government of Tamil Nadu*, represented by the Commissioner and Secretary to Housing and Urban Development Department, Madras-9 and Ors. W.P. Nos. 1326 of 1982 etc. Mohan, J., (as he then was) held as follows: It is no consolation to say that public revenue would mean either the revenue of the State

of the revenue of a local authority. Such an argument ignores the well settled position in law that a local authority is a local self-government being the creature of statute having its own seal and perpetual succession. In other words, the State revenues cannot be equated to the revenues of the local authority. That is why the Parliament in its wisdom created a sub-division in the case of an acquisition under Part Hand categorically stated (i) wholly or partly out of public revenue and (ii) or some fund controlled or managed by a local authority. If the argument of the learned Advocate General is accepted, it will render the second limb of the second Proviso to Section 6(1) of the Act, namely, or some fund controlled or managed by a local authority' otiose. In other words, such an unwisdom cannot be attributed to the Parliament.

The learned Judge has further held as follows:..If, in law there is a clear distinction between the revenues of the State as opposed to the revenue of a local authority, it is that which should form part of the declaration in view of the legal requirement under the second proviso to Section 6(1) of the Act. That certainly is not the position here and, therefore, the declaration is not in accordance with the proviso to Section 6(1) of the Act....

This has been followed by Kanakaraj, J. in *Narayana Rajoo v. The State of Tamil Nadu* (1991)1 L.W. 476. In *Madan Sundararaj v. The Government of Tamil Nadu*, represented by the Commissioner and Secretary to Housing and Urban Development Department, Madras-9 and Ors.W.P. Nos. 1326 of 1982 etc. Mohan, J., (as he then was) has followed the decision in *Valjibhaiv. State of Bombay* : [1964]3SCR686 .

In that case it is held that even assuming that the funds of the Corporation consist only of the moneys which have been provided by the State of Bombay it is difficult to appreciate how they could be regarded as part of the public revenue. In my view, money coming out of public revenue whether invested, loaned or granted to the second respondent herein would change their original character and become the funds or assets of the second respondent herein. As such, the terms of proviso are not satisfied in this case, because under the impugned declaration, the entire amount of compensation has to be paid out of public revenue. As I have already

stated, the second respondent has got separate funds under Chapter VIII of the Act, 1971. In view of that, I am not able to accept the contention of the learned Government Advocate appearing for the State that Section 43 of the Act, 1971 provides for making advance to the New Town Development Authority and as such in this case the amount is advanced to the second respondent by the Government and that the declaration is not bad in law, with respect following the judgment of this Court on this issue by Mohan, J., (as he then was) in *Madan Sundararaj v. The Government of Tamil Nadu*, represented by the Commissioner and Secretary to Housing and Urban Development Department, Madras-9 and Ors.W.P. Nos. 1326 of 1982 etc., and agreeing with Kanakaraj, J. in *Narayana Rajoo v. The State of Tamil Nadu* (1991)1 L.W. 476, the impugned declaration in this case is set aside as no other point is argued before me. The writ petition will stand allowed. It may be open to the State to take proceedings afresh rectifying the defects. There will be no order as to costs.