

Sundara Naicker Vs. the State of Tamil Nadu and anr.

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Court : Chennai

Decided On : Mar-27-1996

Reported in : 1996(2)CTC746

Judge : K.A. Swami, C.J. and ;Kanakaraj, J.

Acts : [Land Acquisition Act, 1894](#) - Sections 4(1), 6 and 28A

Appeal No. : W.A. No. 1173 of 1991 and C.M.P. No. 12695 of 1991

Appellant : Sundara Naicker

Respondent : The State of Tamil Nadu and anr.

Advocate for Def. : R. Muthukumaraswamy, Government Pleader

Advocate for Pet/Ap. : M.S. Subramanian, Adv.

Disposition : Appeal dismissed

Judgement :

ORDER

K.A. Swami, C.J.

1. This appeal is preferred against the order dated 15th October, 1990 passed by the learned single Judge in W.P.No. 7133 of 1990. As the writ petition has been dismissed, the petitioner therein has come up in appeal.

2. In the writ petition, the petitioner sought for quashing the acquisition proceedings started with the notification issued under Section 4(1) of the Land Acquisition Act (hereinafter referred to as the Act in G.O.Ms. 733 P.W.D. (Electricity) dated 29.4.1988, published in the Tamil Nadu Government Gazette, part II, Section 2, on 25.5.1988 and also the declaration made under Section 6 of the Act in G.O. Ms. 1095, P.W.D.(Electricity) dated 1.6.1988 and published in the Government Gazette dated 2.6.1988, acquiring an extent of 5.23 cents of agricultural land situated at Ncikuppy Village, for the public purpose, viz., for construction of staff quarters for Madras Atomic power station at Kalpakkam. The petitioner/appellant filed the objections on 19.7.1988, whereas the Notification under Section 4(1) of the Act was published in the locality on 6.6.1988. Even then, the said objections have been inquired into and the report under Section 5A of the Act has been made in favour of proceeding with the acquisition. Accordingly, the declaration has been issued.

3. Before the learned single Judge, it was contended that the objections were not inquired into and the requisitioning department had not offered its remarks, therefore the acquisition was vitiated. It was also further contended that agriculture was more important than construction of staff quarters, therefore the lands could not have been acquired. In addition to this, it was also contended that the declaration made under Section 6 of the Act was not published, as required by Section 6 of the Act. Learned single judge has rejected all these contentions.

4. However, before us, it is contended that the substance of the Notification issued under Section 4(1) of the Act was not published in the locality, that the requirements of Rule 3 (b) were also not complied with, that the declaration made under Section 6 was also not published, as per the provisions contained in Section 6 of the Act and that 4(1) Notification had been published in the news paper earlier to the publication of the same in the Official Gazette.

5. We may point out here that the learned Government Pleader has produced the records before us. From the records, it is noticed that the substance of the Notification issued under Section 4(1) of the Act has been published in the locality. However, the contention is that the publication of the substance of the Notification

is not in the form in which it ought to have been published in the locality, therefore, in the eye of law, such publication has no value and as such, it should be ignored and it must be held that there is non-compliance with the requirements of Section 4(1) of the Act as to publication of the substance of the Notification in the locality issued under Section 4(1) of the Act. On a perusal of the publication of the substance of the Notification, we notice that there is an endorsement made by the village Administrative Officer that it has been published in the village by tom-tom. Again, the sub inspector of police, southern police station, Chingleput, has also certified that the copies of 4(1) Notification with Form 3 A regarding acquisition of land in 177, Neikuppy village, received from the Special Tahsildar, was published in the office. Again, the village administrative Officer has also certified that the same was published in his office. The sub Registrar has also certified about the publication of the substance of the Notification. The Panchayat Union Commissioner has also certified that the Notification issued under Section 4(1) of the Act was published in his office. All these certificates bear the date 6.6.1988. That being so, it is not possible to appreciate the contention of the learned counsel for the appellant that as the form under for publication of the substance of the Notification does not accord with the form prescribed it is bad in law, in the light of the decision of the Supreme Court in Collector (District Magistrate) Allahabad and Anr. v. Raja Ram Jaiswal, : [1985]3SCR995 . In that decision, it has been held that publication of the substance of the Notification in the locality issued under Section 4 of the Act is mandatory: failure to comply with it vitiates the acquisition. In the instant case, we have already pointed out that such a publication has taken place, though it may not be in the form that is required, but the substance of the Notification has been published which sufficiently complies with the requirement of Section 4 of the Act. Therefore, it is not possible to hold that there is lapse on the part of the Acquisition Officer in publishing the substance of the Notification in the locality as required by Section 4(1) of the Act and Rule 1 of the Land Acquisition Rules framed by the State of Tamil Nadu under Section 55(1) of the Act, as they were in force at the relevant point of time, Hence, the contention is rejected.

6. Apart from the fact that the objections filed on 19.7.1988 were beyond time as they were not filed within 30 days from 6.6.1988, those objections are of general nature, they have also been inquired into and remarks from the Acquiring Body

have been received, which has stated that the objections are of General nature. In addition to this, the petitioner/appellant has participated in the 5A inquiry and has given his no objection for acquiring the two survey numbers, but in respect of other survey numbers, he has not given his consent. Whether he has given consent or not, matters very little, as long as the required procedure is followed. The requirement of Rule 3(b) has been complied with, even though it was not required to be complied with, as the objections were filled beyond time. The objections filed beyond time were not required to be sent to the Acquiring Body, as held by a Division Bench of this Court in *The Commissioner and Secretary to Government of Tamil Nadu Housing and Urban Development Department, Madras 9 and Anr. v. C. Ramaswami Chettiar and Ors.*, W.A.No. 957 of 1993, dated 8.2.1996) Therefore, we see no substance in this contention also.

7. The learned counsel for the appellant place reliance on the decision reported in *M. Rajagopal v. State of Tamil Nadu*, 1992 (II) MLJ 404 and *Muthu Karuppan and Ors. v. State of Tamil Nadu*, : (1994)1MLJ303 . In *M. Rajagopal's case*, 1992 (II) MLJ 404 learned single Judge has placed reliance on a decision of the Supreme Court in *Collector (District Magistrate) Allahabad and Anr. v. Raja Ram Jaiswal*, : [1985]3SCR995 . The contention of the learned counsel is based upon the wordings contained in Section 4(1) of the Act. Therefore, we extract the same:-

'4. Publication of preliminary notification and powers of officers thereup (1) whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification.'

According to the learned counsel, as the expression 'official gazettee' occurs earlier to the circulation of the newspaper and publication in the locality. The notification in the official gazette must be published first and then it should be

published in two daily newspapers having circulation in the locality and thereafter, the substance of the same could be published at convenient places in the said locality.

8. We find it very difficult to agree with the aforesaid decisions, consequently, to agree with the contention of the learned counsel for the appellant. It has to be remembered that literal construction of a statute should always be avoided, if it leads to defeat the very object of the provision. Whether the notification is published first in the newspaper or in the gazettee, it is a notification issued under the statute by the State Government proposing to acquire the land. In addition to that, the provisions contained in Section 4(1) would make it clear that the last of the dates of the publications shall be deemed to be the date of publication of such notification, viz., the notification issued under Section 4(1) of the Act. That being so, as long as the publication in the newspaper and in the Gazette have taken place, whether the newspaper publication is earlier and the publication in the gazette is later, matters very little, as long as those publications have been made, without an unduly long gap between the two publications, it is not possible to hold that a publication of the notification in the news paper preceding the publication of the same in the official gazette, would lead to non-compliance with the provisions of Section 4(1) of the Act and thereby it would lead to nullifying the acquisition. It may be pointed out here that the decision of the Supreme Court in Raja Ram Jaiswal, : [1985]3SCR995 on which reliance is placed in M. Rajagopal's case, 1992 (II) MLJ 404, did not concern with Section 4(1) as it... stands today. It was concerned with Section 4(1) as it stood before the amendment and it did not provide for publication of the Notification in two newspapers published in the locality. Not only this, the unamended Section 4 also did not contain a provision to the effect that the last of the dates of such publication and giving of such public notice as the date of the publication of the notification. Therefore, the decision in Raja Ram Jaiswal's case, : [1985]3SCR995 . I cannot have any bearing in construing the provisions of Section 4(1) as amended. Whether the notification in the official gazette proceeds the notification in the news paper or the publication of the notification in the newspaper precede the gazette notification, matters very little as long as it is the last of the dates of such publication and the giving of such public notice being referred to as the date of publication of the notification, which

alone would determine the date of publication of the Notification. That being so, the aforesaid two decisions in *M. Rajagopal v. State of Tamil Nadu*, 1992 (II) MLJ 404 and *Muthukaruppan and Ors. v. State of Tamil Nadu*, 1994 (I) MLJ 303, in our view do not lay down the law correctly. As such the same require to be overruled and the same are overruled.

9. The next contention is that the declaration made under Section 6 of the Act has not been published in the locality as required by sub-section (2) of Section 6 of the Act. Nodoubt, the learned Government Pleader has not been able to place before us the records to show that the substance of the declaration made under Section 6 of the Act has been published in the locality. However, it is the contention of the learned Government Pleader that the same has been done. Even otherwise, we proceed on the basis that it has not been proved by the respondents that the substance of the declaration made under Section 6 is published in convenient places: but, the failure to do so does vitiate the acquisition proceedings, because the Supreme Court in *State of Haryana v. Raghubir Dayal*, : (1995)1SCC133 has held that the requirement as to publication of the substance of the declaration made under Section 6 of the Act is directory, but not mandatory, the relevant portion of the judgment is as follows:-

'..The purpose of the declaration under Section 6 is to render the land notified therein as that needed conclusively for public purpose. So, we are of the opinion that the notification under section-sub (1) should not be invalidated for non-compliance of the notification under Section 6. It is true that the language in Section 6(2) is in pari materia with Section 4(1). The purpose of publication of the declaration is to give effect to the conclusiveness of the extent of the land needed for the public purpose or for a company as made under Section 6(3) of the Act. Since there is an opportunity already given to the owner of the land or persons having interest in the land to raise their objections during the enquiry under Section 5A, or otherwise in case of dispensing with enquiry under Section 5A unless they show any grave prejudice caused to them in non-publication of the substance of the declaration under Section 6(1), the omission not to publish the substance of the declaration under Section 6(1), in the locality would not, render the declaration of Section 6 invalid. We are not intending to say that the officer

should not comply with the requirement of law and it is their duty to do it. But their dereliction to do so per se does not render the declaration under Section 6 illegal or invalid. Therefore, the word 'shall' used in sub-section (2) of Section 6 should be construed to be only directory but not mandatory. Moreover, in this case notice was issued to the respondent under Sections 9 and 10 pursuant to which they appeared before the LAO and put forth their claim and the award has already been made. As stated earlier, since there is no inter se dispute as regards the apportionment, the Land Acquisition Officer had already made the reference under Section 30 and deposited the compensation in the court of District Judge along with the reference'.

That being so, the contention does not carry the case of the petitioner/appellant any further.

10. As all the contentions raised by the learned counsel for the appellant are rejected, the appeal has to be dismissed and it is; accordingly, dismissed. The CM.P. is also dismissed. However, there will be no order as to costs.

11. After the dismissal of the appeal, it is submitted that the petitioner may be permitted to seek reference for enhancement of the compensation in this regard the petitioner has to work out his rights, according to the provisions contained in the Land Acquisition Act. If he has already made an application for seeking reference within the period allowed by law, the Land Acquisition Officer has to make a reference. If he has not made any such application, still, he is not deprived of the requisite compensation, because Section 28A protects the interests of such persons, as it would be open to him to seek the compensation awarded to the neighbouring lands, to be awarded to his lands. Therefore, we do not see that there is any need to issue any such direction.