

Ayyamuthu and ors. Vs. the State of Tamil Nadu and ors.

Ayyamuthu and ors. Vs. the State of Tamil Nadu and ors.

SooperKanoon Citation : sooperkanoon.com/824690

Court : Chennai

Decided On : Mar-31-1999

Reported in : (1999)3MLJ4

Appellant : Ayyamuthu and ors.

Respondent : The State of Tamil Nadu and ors.

Judgement :

ORDER

P. Sathasivam, J.

1. Aggrieved by the acquisition proceedings initiated by the respondents, the petitioners have filed the above writ petitions to quash those proceedings on various grounds.

2. Since identical grounds have been raised in all these cases, the same are being disposed of by the following common order.

3. For the convenience, I shall refer the facts in Writ Petition No.6799 of 1997. It is stated that the villagers of Pottaneri including the petitioners are small farmers and the agriculture is sole source of their livelihood. The entire lands of Pottaneri are subject matter of impugned land acquisition for the purpose of establishing coke-oven plant by a public limited company by name Southern Iron and Steel Company Ltd., (SISCOL) co-promoted by Tamil Nadu Industrial Development

Corporation (TIDCO) and Lakshmi Machine Works Ltd., (LMW). An extent of 523 acres of land had been acquired already in or about 1991-92 for the said company out of which an extent of 120 acres alone was utilised by it so far and rest of the lands are used for plantation of Teak Tree which is a long term crop which fact would go to show that there is no immediate need of any more land for the said company in near future. It is further stated that the requisitioning body viz., third respondent in their letter dated 6.12.1996 requested to drop the subject acquisition proceedings. Similar request was made to TIDCO on 4.2.1997 which is followed by another communication dated 15.3.1997, accordingly the award enquiry was also adjourned sine-die. While so, the first respondent issued four Government Orders dated 28.3.1995 in G.O-2 (d) No.66, 67,68 and 69 under Section 4(1) of the Land Acquisition Act (hereinafter referred to as 'the Act) mentioning the entire land of the villagers are needed for setting up of a Coke-oven plant by SISCOL measuring an extent of 156 acres situate in Pottaneri village. The substance of Section 4(1) notification which was published in two dailies are not having circulation in the locality. Further paper publication did not contain true version of form as it was silent as to delegation of power to act as a Collector. In such circumstance, having no other effective remedy they approached this Court by way of the present writ petitions.

4. On behalf of the respondents 1 and 2 Deputy Secretary to Government, Industries Department has filed a counter affidavit disputing various averments made by the petitioners. It is stated that the Managing Director, SISCOL has applied for acquisition of 65.88.0 hectares of land in Pottaneri village, Mettur Taluk for Coke-oven plant. The Government approved the proposal of TIDCO for implementing the Coke Oven Project by SISCOL in G.O.Ms. No. 701, Industries Department, dated 11.12.1992. As per the Government order land acquisition proceedings were initiated. Section 4(1) notification was published in the Government Gazette on 19.4.1995 and in dailies and in the locality. Section 5-A enquiry notice was served on the land owners and 5-A enquiry was conducted on 25.7.1995 and 26.7.1995. The declaration under Section 6 of the Act was published in the gazette on 14.5.1996 and in dailies and in the locality on 15.5.1996 and 16.5.1996 respectively. The award enquiry was posted for hearing on 21.2.1997 and it was adjourned to 3.4.1997 due to administrative reasons.

5. It is further contended that all the three stages of the project viz., Pig Iron Plant has been completed and commenced production, the Sinter plant is expected to commence soon and construction work relating to steel melting and steel rolling mill is going on and it is expected to commence the production by end of 1998. According to the provisions of the Pollution Control Board, the extent of 30 per cent of the total area should be utilised for raising green trees to arrest the air pollution. As such about 180 acres of lands out of 520 acres will have to be utilised for raising green patch. The remaining extent is quite necessary for the plant... Electricity substation, water reservoirs, railway siding, roads, rest houses etc. Regarding two letters sent by the third respondent for dropping the acquisition proceedings, it is stated that, it is only a signal to the Government to accelerate the land acquisition proceedings and not for any other purpose. The notification published contain all the informations which would facilitate the public and the land owners to know about the acquisition. Further, the land acquisition proceedings relating to Pig Iron Project was over when the acquisition for coke oven project reached 5-A enquiry stage. Therefore the Government have authorised the Special Tahsildar, Coke Oven Project to act as Collector under the provisions of the Act. The post is the same and the work done by the Special Tahsildar is only for the same applying body. Regarding authorisation of the Special Tahsildar, it is stated that in the form prescribed by the Government for publication of the notification under Section 4(1) powers have been vested with the persons appointed as Land Acquisition Officer to exercise the powers indicated under Section 4(2) of the Act. Under the same notification, the Special Tahsildar has been appointed as Collector under Section 3(c) of the Act. The substance of the notification is that the Special Tahsildar will exercise the powers indicated under Section 4(2) of the Act. There appears no need to publish the full version of the said notification. It is also not required for the public. What are all needed for the public have been furnished in the Tamil version of the notification. It is further stated that, since the acquisition is for a public purpose and the mandatory provisions have been fully complied with, there is no merit in these writ petitions, accordingly they prayed for dismissal of the same.

6. The third respondent requisitioning body has also filed similar and identical counter affidavit disputing various averments made by the petitioners.

7. In the light of the above pleadings, I have heard Mr. R. Krishnamurthy, learned senior counsel appearing for the petitioners, learned Advocate General for respondents 1 and 2 and Mr. R. Gandhi, learned senior counsel for the third respondent.

8. Mr. R. Krishnamurthy, learned senior counsel appearing for the petitioners, after taking me through the entire acquisition proceedings has raised the following contentions:

(i) Inasmuch as the third respondent has utilised only an extent of 120 acres out of an extent of 523 acres acquired for the very same purpose, the present acquisition of 156 acres is unnecessary and unwarranted. In other words, according to him, there is no need of any lands for the requisitioning body, accordingly the present acquisition is not be warranted;

(ii) Inasmuch as specific authorisation authorising the Special Tahsildar (Land Acquisition) to function as Collector under Section 3(c) of the Act, do not find place in the Tamil newspaper, it is not open to the second respondent to proceed with the acquisition proceedings, accordingly the same are vitiated;

(iii) The substance of Section 4(1) notification was not published in the locality, which is a mandatory, accordingly the acquisition proceedings are liable to be quashed.

On the other hand, learned Advocate General for respondents 1 and 2 as well as Mr. R. Gandhi, learned Senior counsel appearing for third respondent would submit that the entire lands, viz., 520 acres have been properly utilised for erection of the plants as well as for installation of Electricity sub-station, water reservoirs, railway siding, roads, rest houses etc., They also contended that, as per the directions of the Pollution Control Board an extent of 30 per cent of the total area should be utilised for raising green trees to arrest air pollution. Accordingly, the Government is convinced about the requirement of further lands for completion of the entire project. They also contended that, omission of specific reference under Section 3(c) in the publication in Dina Thanthi would not affect the acquisition proceedings. They further contended that, inasmuch as the acquisition of lands is

for a public purpose and after declaration by the Government, it is not open to this Court to go into the matter and take a decision, accordingly they prayed for dismissal of all the writ petitions.

9. I have carefully considered the rival submissions.

10. Regarding the first contention, Mr. R. Krishnamurthy, learned senior counsel appearing for the petitioners has highlighted that, initially an extent of 523 acres had been acquired in the very same village in or about 1991-92 for the said Company and out of which an extent of 120 acres alone were utilised by them so far and rest of the lands are used for plantation of teak trees which is a long term crop which fact would go to show that there is no immediate need for the land in near future. If so, according to him the present action of the respondents in acquiring another 156 acres is unwarranted. In this regard, by pointing out Section 4(1) and Section 6 of the Act, he would contend that, only the actually required land alone is to be acquired and not the entire land. In order to appreciate his contention, it is better to refer Sections 4(1) and 6 of the Act.

Section 4; Publication of Preliminary notification and powers of officers thereupon: (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).

Section 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 authorized to certify its orders and different declarations may be made from time to time in respect of different parcels of an

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 (wherever required) under Section 5-A, Sub-section (2).

He very much emphasised the word used 'likely to be needed' in Section 4(1) and 'any particular land is needed' in Section 6. It is true that the Government is expected to acquire land only to the extent to be needed for public purpose and after enquiry it is open to the Government to confine it to particular land which is needed for a public purpose and proceed thereafter. In this regard, it is useful to refer the particulars furnished by the first respondent in the counter-affidavit filed by the Deputy Secretary to Government, Industries Department. It is specifically stated that, all the three stages of the project, viz., (i) Pig Iron Plant has been completed and commenced the production; (ii) Sinter plant is expected to commence soon; and (iii) construction work relating to steel melting and steel rolling mill is going on and it is expected to commence production by end of 1998. It is also stated that according to the directions of the Pollution Control Board the extent of 30 per cent of the total area should be utilised for raising green trees to arrest air pollution. The Pollution Control Board has also furnished specifications of plant to be planted for this purpose. Learned Advocate General has also brought to my notice certain conditions to be fulfilled by the third respondent company, issued by Government of India, Ministry of Environment and Forest, dated 23.11.1998. Among other conditions, it is stated that,

A green belt of adequate width and density should be developed using native plant species, within and around plant premises in consultation with State Forest Department. A norm of 2000-2500 Plants per ha may be followed. A minimum of 25% of the total land acquired should be developed as green belt. (As per EMP about 40 ha have been earmarked for green belt)'

Accordingly, the Government has undertaken planting of trees as directed around the factory side. In this manner about 180 acres of land out of total extent of 520 acres will have to be utilised for raising green belt. It is further seen from the information furnished by the respondents that, remaining extent is quite necessary for the plant, electricity sub-station, water reservoirs, railway siding, roads, rest

houses etc., Accordingly, the entire extent already acquired is quite necessary for fulfilling the requirements of Pollution Control Board, the direction of Government of India, Ministry of Environment and Forest and also for construction of projects. After taking note of all the above aspects, the Government of Tamil Nadu in their letter No.475, Revenue, dated 19.5.1997 granted permission to hold the entire extent for the project purpose and exempted under the provisions of Land Reforms (Fixation of Ceiling on Land) Act, 1961. No doubt, the learned senior counsel by relying on a Division Bench decision of the Gujarat High Court reported in Shankerbhai Mahijibhai v. State of Gujarat : AIR1981 Guj67 , as well as decision of the Apex Court reported in Jainulabudeen and Ors. v. Government of Tamil Nadu Ors. : [1994]3SCR899 would contend that the present acquisition is unwarranted. In the Gujarat case their Lordships in the Division Bench after referring to Sections 4 and 6 of the Act and after noting that there is no specific scheme by the Gujarat Housing Board to proceed further and also of the fact that no steps have been taken for publication of notification under Section 4(1) ultimately quashed the acquisition proceedings. Inasmuch as the entire 520 acres acquired in the year 1991-92 are being utilised and the respondents have furnished more details regarding their project and utilisation of the entire land, the Gujarat case is not applicable to our case. For the very same reason the decision of the Apex Court referred above is also not helpful to our case. In such circumstance, I do not find any substance in the first contention.

11. Coming to the second contention, it is the specific grievance of the learned senior counsel for the petitioners that, in the paper publication, particularly in Dina Thanthi there is no reference with regard to authorisation under Section 3(c) of the Act. It is true that, in the notification the Government have to authorise any Officer to perform the functions provided under Section 4(2) as well as Section 3(c).

Section 3(c): Speaks about Collector: The expression 'Collector' means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act. Section 4, Sub-clause (2) enables the Land Acquisition Officer or other officer authorised to enter upon land.

Section 4(2): Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workmen-

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adopted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence of jungle.

There is no dispute that in order to complete the acquisition proceedings the Land Acquisition Officer or person authorised must be empowered to do all the provisions of the Act by specific authorisation by the Government. In 4(1) notification issued in Tamil Nadu Government Gazette there is no specific authorisation by them under Sub-section (2) of Section 4 and under Clause (c) of Section 3. The relevant portion published in the gazette is as follows:

Now, therefore, in exercise of the powers conferred by Sub-section (2) of Section 4 of the said Act, the Governor of Tamil Nadu hereby authorises the Special Tahsildar (Land Acquisition) Pig Iron Project, Mettur and his staff and Workmen to exercise the powers conferred by the said sub-section: and, under Clause (c) of Section 3 of the said Act. The Governor of Tamilnadu hereby appoints the Special Tahsildar (Land Acquisition), Pig Iron Project to perform the functions of the Collector under Section 5-A of the said Act.

In the notification published in Dina Thanthi it is true that authorisation under Section 3(c) is not specifically mentioned. The relevant portion is as follow:

By pointing out the above position, viz., absence of specific authorisation authorising the second respondent to exercise and act as Collector under Section 3(c), it is contended that the entire acquisition proceedings is vitiated. In support of the said contention, Mr. R. Krishnamurthy, learned senior counsel appearing for the petitioners have very much relied on an unreported decision of P.D. Dinakaran, J. in W.P. No. 13216 of 1992 dated 22.12.1998 and decision of K.S. Bakthavatsalam, J. reported in A. Vijayarangam and Anr. v. State of Tamil Nadu, 1992 Writ L.R. 518. It is true that a similar question was considered by learned brother P.D. Dinakaran, J. in that decision. 'After considering the publication of 4(1) notification in the gazette as well as in the newspapers the learned Judge has concluded.

But, to hold an enquiry in pursuance of the notification under Section 4(1), the second respondent also ought to have been authorised under Section 3(c) of the Act, to discharge the duties of the Collector, for conducting the enquiry, as contemplated under Section 5-A of the Act.

In the absence of any delegation or authorisation by the Government, authorising the second respondent to discharge the duties of the Collector, any act done or purported to be done by the second respondent on behalf of the Collector is, per se, illegal, and without jurisdiction, and therefore, it shakes down the very basis of the acquisition proceedings, assuming, said to have been built carefully at every stage.

After holding so, quashed the entire acquisition proceedings on that ground. In order to appreciate the said contention, I once again refer that the authorisation under Section 4(2) as well as 3(c) were specifically mentioned in the notification published in the Tamil Nadu Government Gazette. Accordingly, it amply shows that the Government have specifically authorised the second respondent both under Sections 4(2) and 3(c) of the Act. Without specific permission or authorisation it would not be published in the gazette. The only defect even according to the learned senior counsel is that, authorisation under Section 3(c) is missing in the notification published in Tamil daily (Dina Thanthi). It is also clear that, under Section 4 of the Act, whenever it appears to the appropriate

Government any land is needed or likely to be needed for any public purpose that should be acquired in the manner indicated therein. Under Section 4(2) of the Act any Officer either generally or specially authorised by the Government is given the powers to perform the functions mentioned under Section 4(2) of the Act. As stated earlier, there is no dispute that in the Gazette notifications published in our case there is a reference to the conferment of powers of the Collector on the Special Tahsildar (Land Acquisition-second respondent herein) under Section 3(c) of the Act. Though in the paper publication the conferment of the powers under Section 3(c) is not specifically mentioned, once the powers of Collector has been validly conferred on the Special Tahsildar (Land Acquisition) by a specific order by the Government, as seen from the Gazette notification, I am of the view that he would be empowered to perform the functions of the Collector under the provisions of Act. Mere omission in the vernacular daily would not affect the acquisition proceedings. (Emphasis supplied) At this juncture learned Advocate General has brought to my notice G.O.Ms. No. 1317, Revenue, dated 27.9.1986. Since the said Government Order clarifies the position in dispute, the said order is extracted hereunder:

G.O.Ms. No. 1317, Revenue, dated 27th September, 1986.

READ AGAIN:

(1) G.O.Ms. No. 821, Revenue, dated 4th April, 1975.

READ ALSO:

(ii) From the Special Commissioner and Commissioner of Land Administration, Lr. No. K.Dis.S/53929/85, dated 21st October, 1985.

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