

S. Thiagarajan Vs. the State of Tamil Nadu Represented by the Secretary to Government, Housing and Urban Development Department and anr.

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Court : Chennai

Decided On : Jan-10-1996

Reported in : (1996)1MLJ483

Appellant : S. Thiagarajan

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

Judgement :

ORDER

1. The petitioner is the owner of a house site measuring 3,240 sq.ft. in R.S. No. 22/1A in Velisemmandalam Village, Cuddalore Taluk, South Arcor District, having purchased the same under document No. 808/90, dated 24.4.1990 on the file Sub Registrar, Cuddalore. He got approval of the lay out by the Director of Town Planning in Na.Vu.E. No. 114/90. He obtained permission for construction of a house and constructed a house in August, 1991. Thereafter, a notification was issued under Section 4(1) of the Land Acquisition Act in G.O.Ms. No. 1251, dated 19.9.1991. When the petitioner received notice, he raised his objections and the enquiry under Section 5-A of the Act was held on 20.3.1992. But for reasons best known to the respondents, another notice was issued to the petitioner in Na.Ka.R. No. 70/98 dated 8.6.1992 calling upon him to file objections within 15 days. He filed his written objections on 16.6.1992. There was no enquiry under Section 5-A

of the Act thereafter. But a report would appear to have been forwarded to the concerned authorities recommending acquisition. It is the case of the petitioner that the Executive Engineer of the requisitioning department, viz. Housing Board, made a recommendation in his proceedings 4190/B/92, dated 27.10.1992 to exclude the petitioner's land from the acquisition proceedings. Yet, the land was not excluded and a declaration was issued under Section 6 of the Land Acquisition Act. The petitioner is challenging the entire proceedings as invalid.

2. The main ground urged by the petitioner is that there was a fully constructed house even on the date of notification under Section 4(1) of the Act and he was residing therein. According to him, the Government has note of the recommendations made by the Executive Engineer and the Superintending Engineer of the requisitioning body and no reasons have been given for rejecting the objections made by the petitioner herein. Hence, it is contended that the acquisition is not bona fide. It is also pointed out by the petitioner that, after the enquiry on 28.3.1992 under Section 5-A of the Act, a fresh notice dated 8.6.1993 was given to the petitioner, calling upon him to submit his objections and he did give his objections. In spite of that, no enquiry was held thereafter and the Land Administration Commissioner had sent a report to the Government on 29.12.1992 recommending the exclusion of the petitioner's land. In spite of the said recommendation, declaration under Section 6 of the Act has been issued. Hence, it is contended that the entire proceedings are vitiated by legal mala fides, if not, factual mala fides.

3. The contention of the petitioner is well founded. It is seen from the order under Section 5-A of the Act made by the Land Acquisition Special Tahsildar in Na.Ka.A. No. 70/88, dated 6.11.1992 that objections were received from the owners of the lands. A reference is made thereafter to a notice dated 8.6.1992 in Na.Ka. No. 76/88 and another communication dated 30.6.1992 in Na.Ka. No. 70/88. The 5th reference is to the communication of the Executive Engineer of Tamil Nadu Housing Board dated 27.10.1992. In the body of the order it is stated that the objections of the owners and the remarks of the requisitioning body have been considered. But no reason has been given as to why the objection should be rejected. In fact, the order refers to the statement of the objection that the

Executive Engineer of the requisitioning body had recommended the exclusion of the land of the petitioner. The only observation made by the Special Tahsildar is that no decision has been taken by the requisitioning body.

4. The petitioner has also produced communication from the Commissioner for Land Administration to the Commissioner-cum-Secretary, Housing and Urban Development Department in letter No. 13/69822/92.3 dated 29.12.1992. That letter refers to the enquiry under Section 5-A of the Act held on 20.3.1992. It proceeds to refer to the recommendation made by the Superintending Engineer of the requisitioning department on 23.2.1992 after inspection of the petitioner's land for exclusion of the said land from the acquisition proceedings. Ultimately, the official has also recommended to exclude the petitioner's land from acquisition proceedings. In spite of that the Government has not applied its mind and proceeded to issue the declaration under Section 6 of the Act.

5. Counter-affidavit has been filed today by the respondents. Even in that counter-affidavit, there is no explanation as to why no enquiry was held after the petitioner submitted his objections in reply to the notice dated 8.6.1992. There is no explanation as to why a second enquiry was held after the first enquiry under Section 5-A of the Act was concluded on 20.3.1992. If the concerned officials had thought that the first enquiry was not sufficient or that there was some defect on account of which such enquiry should be ignored and further enquiry should be held, they ought to have held the enquiry completely after receiving the objections sent by the petitioner in reply to the letter dated 8.6.1992. Without holding such an enquiry, it is not open to the authorities to conclude the matter and send a report to the Government. But it is to be noted that such a report was in favour of the petitioner and the Government ought to have accepted the same. If the Government decided not to accept the said report, it ought to have given direction to the authorities to hold an enquiry and ascertain the petitioner's objections. Inasmuch as the Government has failed to do so, the proceedings are completely vitiated.

6. The petitioner has stated specifically in his affidavit that he had completed construction of the house and performed house warming function as early as

11.9.1991, i.e., before the date of the notification under Section 4(1) of the Act. In reply to the said affidavit the counter-affidavit merely states that there was no house at the time of admission of notification under Section 4(1) of the Act. It only means that at the time of submission of proposals for Section 4(1) notification, the authorities did not find a house, but the plot. It is common knowledge that such inspection for submitting proposals for notification under Section 4(1) of the Act would have been completed long before the issue of the notification. Hence, it is quite possible that at that time, there was no house on the plot. But, before the notification was issued, a house had been constructed by the petitioner and that fact has not been denied in the counter-affidavit. The counter-affidavit is as vague as possible on certain crucial matters referred to by the petitioner in his affidavit. In the circumstances, we are not prepared to accept the case of the Government that the proceedings have been conducted validly in accordance with the Act and the Rules.

7. Consequently, the entire proceedings are vitiated and they are hereby quashed. The writ petition is allowed and the prayer of the petitioner as made in the petition is granted.