

Periyathayee Vs. the Special Tahsildar (La) and ors.

Periyathayee Vs. the Special Tahsildar (La) and ors.

SooperKanoon Citation : sooperkanoon.com/829708

Court : Chennai

Decided On : Oct-16-1997

Reported in : (1998)2MLJ265

Appellant : Periyathayee

Respondent : The Special Tahsildar (La) and ors.

Advocate for Pet/Ap. : Mr. N.R. Chandran

Judgement :

J. Kanakaraj, J.

1. All these writ appeals and the sole Writ Petition No. 12767 of 1986 challenge the validity of certain acquisition proceedings initiated at the instance of the Salem Housing Unit of the Tamil Nadu Housing Board. Though the acquisition is in respect of one and the same scheme, different notifications were issued under Section 4(1) of the Land Acquisition Act. We do not propose to refer to the notifications because the learned single Judge has adverted to each of the notifications. Similarly we do not propose to refer to the facts of each writ petition, because the learned single Judge has referred to the facts of the cases. We will, however, refer to certain facts as and when necessary where some specific points have been raised apart from the general submissions made against the validity of the acquisition proceedings.

2. We will however, refer to the facts of one case for the sake of understanding the scope of the arguments. In W.P.No. 4781 of 1985, the lands bearing Nos. 114/3A and 114/4, Ayamperumal Patti Village are involved. According to the petitioner, jasmine plants are grown in the lands. Notification under Section 4(1) of the Act in respect of the above lands, was issued in G.O.Ms.No. 755, Housing and Urban Development Department, dated 4.9.1981, published in the Gazette dated 23.9.1981. The petitioner in W.P.No. 4781 of 1985 filed objections through his advocate. An enquiry under Section 5(A) of the Act was initiated on 28.11.1981. The petitioner's advocate appeared for the enquiry and pressed the objections of the petitioner. A declaration under Section 6 of the Act was issued in G.O.Ms.No. 726, Housing and Urban Development Department, dated 21.4.1983, published in the Gazette on 4.5.1983. The writ petitioner challenges notification under Section 4(1) of the Act and the declaration under Section 6 of the Act, on various grounds.

3. A counter-affidavit is filed in this writ petition stating that enquiry under Section 5-A of the Act was conducted on 28.11.1981 in accordance with the Rules and the Regulations. The objections received from the landowner were sent to the Executive Engineer, Salem Housing Unit and his reply was forwarded to the land owner. It is thereafter, a further enquiry was held in the presence of both the land owner and the officer of the Housing Unit. An award enquiry was conducted on 7.8.1986 and an award was passed on 22.9.1986, in respect of the lands not covered by the stay orders. So far as the contention of the petitioner that his name did not find a place in the notification under Section 4(1) of the Act is concerned, it is categorically stated that the petitioner's name does find a place in the notification under Section 4(1) of the Act. The other allegations of delay in completing the land acquisition proceedings are denied and it is stated that the acquisition proceedings are perfectly valid.

4. We have already stated that almost all the writ petitions which were filed, raised common questions of law except in a few cases where individual points are also separately raised. We will first deal with the common questions of law raised by the learned senior counsel for the appellants and the writ petitioner, before taking up the individual cases.

5. The common questions of law raised before the learned single Judge and now before us, are as follows:

(1) The notification under Section 4(1) of the Act and the declaration under Section 6 of the Act are vague and therefore, the land owners are prejudiced in making their objections. Consequently, it is submitted that such a notification and declaration have to be quashed as illegal and unsustainable.

(2) The second attack on the acquisition proceeding is that Part VII of the Land Acquisition Act should have been followed inasmuch as the Tamil Nadu Housing Board is a 'company' within the definition of the Land Acquisition Act. This point has been projected in different ways and we will advert to the same, at the time of considering the arguments.

(3) Many of the lands which were included in the notification under Section 4(1) of the Act as well as in the declaration under Section 6 of the Act had been subsequently exempted from the acquisition proceedings whereas on the very same grounds, the lands of the appellants and the writ petitioner have been included in the acquisition proceedings. The argument is that there is invidious discrimination between the parties, who were similarly situated.

(4) The substance of the notification under Section 4(1) of the Act has not been published in the village and in many cases, there has been long delay in the publication of the substance.

(5) In any case, awards have not been passed and the bar of Section 11 -A of the Act has set in and therefore, the acquisition proceedings have to be dropped as having lapsed.

6. There was also a contention raised that Rule 3(b) of the Rules framed under Section 55 of the Act had not been strictly followed in the sense that after calling for the remarks from the acquisition body there was no enquiry in the presence of both the officer and the land owner. This aspect of the case has been clearly dealt with in the counter-affidavits filed by the State and they have stated that the remarks were, in fact, called for and an enquiry was subsequently conducted to

conform to the requirements of Rule 3(b) of the Rules. Learned counsel for the appellants had also perused the records and he could not find fault with the procedure adopted.

7. We will now take up the questions of law seriation. On the first point relating to vagueness, and the necessity for a scheme before embarking upon a Land Acquisition proceeding for the benefit of the Tamil Nadu Housing Board, this Court had taken a view that in the absence of clear specification in the notification and declaration, the acquisition proceedings should be deemed to be invalid. Subsequently, the Tamil Nadu Housing Act was amended indicating that prior to the acquisition of a land, it is not necessary to have a scheme approved by the Housing Board and the Government. That apart, the Supreme Court has now taken the view quite contrary to the view taken by this Court. The said judgment of the Supreme Court is reported in *State of Tamil Nadu v. L. Krishnan* : (1996)1SCC250 . The Apex Court answered the question of vagueness in the following terms: (at p.267).The above decisions, and particularly the decision in *Aflation v. Lt. Governor of Delhi* : (1994)1SCC44 , do establish that whether the public purpose stated in the particular notification is vague or not is a question of fact to be decided in the facts and circumstances of each case and further that where a large extent of land is acquired, it would not be proper to insist upon the Government particularising the use to which each and every bit of the Land so notified would be put to. The three notifications concerned herein, we are told, pertain to about 400 acres in all. The parties have not furnished copies of the notifications in their entirety. Only Shri Ashoke Sen has supplied the full text of the notification dated 19.2.1975. It shows that a total extent of ninety-seven acres one cent was proposed to be acquired, affecting the holdings of about twenty-five persons, some of them holding such small extents of 0.26 or 0.25 acre.

The Supreme Court then referred to various judgments on the aspect and observed that where large extents are sought to be acquired, it would not be possible to specify how each owner's land would be utilised and for what purpose.

8. If we now turn to the notifications in question we find that in G.O.Ms.No. 755, Housing and Urban Development Department, dated 4.9.1981, it is stated that the

lands specified in the schedule therein, in Ayyamperumalpatty village, Salem taluk are needed for a public purpose, to wit, for construction of houses under the Salem Neighbourhood scheme, Salem. The argument of Mr. N.R. Chandran, learned senior counsel, is that there is no reference to the acquisition being for the benefit of the Tamil Nadu Housing Board. We are unable to accept this argument because the words, Neighbourhood schemes have always been associated with housing schemes initiated by the Tamil Nadu Housing Board, in various parts of the State of Tamil Nadu. Where the scheme is in a particular districts, the name of the district is prefixed before the Neighbourhood Scheme. It is idle on the part of the owners to contend that they are not aware of the fact that the acquisition was for the benefit of the Tamil Nadu Housing Board. That apart, all the land owners have taken part in the enquiry under Section 5-A of the Act, where the officers of the Tamil Nadu Housing Board were present, to put forth their objections. In the corresponding declaration under Section 6 of the Act, namely in G.O.Ms.No. 726, Housing and Urban Development Department, dated 21.4.1983, it is stated that the lands are being acquired for a public purpose, and that it had already been decided that the entire amount of compensation to be awarded for the lands, was to be paid by the Executive Engineer and Administrative Officer, Salem Housing Unit out of the Fund controlled or managed by the Tamil Nadu Housing Board. The said declaration also says that a plan of the lands is kept in the office of the Special Tahsildar and may be inspected at any time during office hours. In our view, the above declaration taken along with the notification under Section 4(1) of the Act is sufficiently clear to indicate the purpose of the acquisition and also enables the land owners to inspect the plans by visiting the office of the Executive Engineer, Salem Housing Board, Therefore, the first contention is rejected.

9. The second contention, in our opinion, is the only contention, which requires careful consideration, having regard to the points raised by Mr. N.R. Chandran learned senior counsel for the appellants. To appreciate the arguments we will refer to the meaning of the word 'company' as it was defined prior to the amendment..the expression 'company' means a company registered under the Indian Companies Act, 1882 or under the (British) Companies Acts, 1882 to 1890, or incorporated by an Act of Parliament of the United Kingdom or by an Indian Law, or by Royal Charter or Letters Patent and includes a society registered under

the Societies Registration Act, 1860, and a registered society within the meaning of the Co-operative Societies Act, 1912.

Section 6 of the Land Acquisition Act, prior to 1984 Amendment was as follows: 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: provided 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...

The basis of the argument of the appellants is the decision rendered in *Valjibhai v. State of Bombay* : [1964]3SCR686 . In that case, an acquisition for constructing a bus depot, at the instance of the State Transport Corporation was challenged on the ground that Part VII had not been followed. The State Transport Corporation in having been incorporated by an 'Indian Law' is a company. In that particular case, no part of the compensation was provided by the State Government and consequently the Apex Court held that the acquisition ought to have been made only by following the procedure prescribed in Part VII of the Land Acquisition Act. In doing so, the Apex Court also rejected the contention on behalf of the State Government that the State Transport Corporation could not be equated to a 'local authority' within the meaning of the Land Acquisition Act. For this purpose the Apex Court referred to the definition of the word 'local authority' in Section 3(31) of the General Clauses Act, which is as follows:

'Local authority' shall mean a municipal committee, district board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the controller management of a municipal or local fund.

The Apex Court proceeded to say that no material had been placed before them from which it could be shown that the fund of the Corporation could be regarded as a local fund. The Apex Court also referred to the fact that the Bombay Road Transport Corporation Act, 1950, had defined the Corporation as a local authority

for all purposes. But the Apex Court held that this will not help the State Government, because the General Clauses Act alone will govern and the Bombay Act had not received the assent of the President. Further, with the repeal of the Central Act, 1950, the foundation for the continuance and existence of the Bombay Act also disappears.

10. From the above position, if the Government is to escape the rigour of Part VII of the Land Acquisition Act, they will have to establish that local authority as defined in the General Clauses Act will include the Tamil Nadu Housing Board and secondly that the Tamil Nadu Housing Board is not a 'company' within the meaning of the word 'company' as defined in the Land Acquisition Act.

11. We have gone through the provisions of the Tamil Nadu Housing Board and we are clearly of the opinion that it is far different from the State Transport Corporation of Bombay. The Tamil Nadu Housing Board was enacted for the purpose of providing housing and improvement schemes and for all such related matters of providing amenities to such housing schemes. It is needless to point out that it is more in the nature of a 'local authority'. The definition of the word, 'local authority' in the General Clauses Act refers to municipal committee, district board, port commissioner or other authority, legally entitled to or entrusted by the Government with control and management of municipal or local fund. The words 'other authority' has to be read *eiusdem generis* with the words used earlier and therefore, in our opinion the Tamil Nadu Housing Board will fit in with the definition of local authority. That apart, a perusal of the Tamil Nadu Housing Board Act shows that under Section 92, the Government guarantees the payment of the principal and interest of any loan raised by the Housing Board. Under Section 118, the Housing Board is required to submit, at the end of every year, an abstract of the account of its receipts and expenditure, The accounts of the Board should be forwarded to the Government under Section 125 of the Act and the Government has power to scrutinise the same and place the same before the State Legislatures. Under Section 154 of the Act, the Board has to submit to the Government, a detailed report of the administration during the preceding year in such form as the Government may prescribe. Sections 156 and 157 provide for supercession of the Board and the dissolution of the Board by the Government,

Therefore, we have no hesitation in coming to the conclusion that the fund maintained by the Housing Board is nothing but a fund maintained by a local authority.

12. Further, Section 158 of the Tamil Nadu Housing Board Act says the Board shall be deemed to be a local authority for the purpose of the Land Acquisition Act, 1894. That apart, the Act had received the assent of the President on 6.4.1961 and the same had been published in the Gazette on 12.4.1961. For all the reasons, we have no hesitation in coming to the conclusion that the judgment of the Supreme Court above quoted, will not apply to the facts of the present case and the acquisition of the lands under Part 2 of the Land Acquisition Act is perfectly valid and sustainable.

13. The second aspect of the case, argued by Mr. N.R. Chandran, learned senior counsel for the appellants is, that once the Tamil Nadu Housing Board is a 'company' within the meaning of the word 'company' as defined in the Land Acquisition Act, the acquisition can be made only under Part II of the Land Acquisition Act. For this purpose, reference was made to a Division Bench judgment of this Court, in P. Iyar Nadar v. State : AIR1965 Mad50 . In that case, the Division Bench has held that the company in question was within the meaning of Section 40(a) of the Land Acquisition Act, and therefore the State Government ought to have followed Part VII procedure. The Division Bench was of the opinion that the principles specialia generalibus derogant will apply and the Government cannot scale the application of Part VII. We are of the opinion, that this judgment will not apply, because the Supreme Court in Somawanti v. State of Punjab : [1963]2SCR774 has posed several questions and one of them is as follows:.(3) That the property is in fact being acquired for a company and, therefore, the provisions of part VII of the Act should have been complied with. Non-compliance with these provisions vitiates the acquisition...

The Apex Court answered the question in the negative. According to the Supreme Court, even in such cases where the Government came forward with a token possession, that acquisition could be upheld if it was for public purpose. The following observations are apposite. It is, therefore, clear that quite apart from the

provisions of Sub-section (3) of Section 6 cannot be successfully challenged on the ground that the object of the acquisition is not to carry out a public purpose. i.e., cannot, therefore, accept the petitioner's contention that the action of the Government in making the notification under Sub-Section 1) of Section 6 was a colourable exercise of the power conferred by the Act...

There is one another judgment of the Supreme Court rendered recently in *Kashi Vidyapith v. Motilal* : AIR 1996 SC2705 . That was a case where the lands were acquired for the U.P.State University. The University was originally a society registered under Societies Registration Act and later on became statutorily a deemed University. After going through the provisions of the University Act, the Apex Court came to the conclusion that the State had sufficient control over the 'funds to be expanded by the Universities and therefore should be deemed to be a local authority within the meaning of Section 3(31) of the General Clauses Act. The Apex Court also distinguished the judgment of the Supreme Court in *Valjibhai Muljibhai Soneji v. State of Bombay* : [1964]3SCR686 . Therefore, the Apex Court, held that it was not necessary for the State Government to follow the procedure prescribed in Part VII of the Land Acquisition Act.

14. Our conclusion as above, is without, reference to the judgment of V. Ramaswami, J. (as he then was) in *Chenniappan v. Government of Tamil Nadu* : (1980)2MLJ224 . In that judgment the learned Judge has specifically held that acquisition of lands for the purpose of construction of houses by the State Housing Board, the Board would be deemed as a 'local authority' and the procedure prescribed under part II alone need be followed. This judgment was approved by a Division Bench of this Court in *The Special Tahsildar L.A. Neighbourhood Scheme, Salem and Ors. v. Lakshmi and Ors.* I.L.R. (1997) 1 Mad. 785. In fact, the Division Bench judgment above referred to relates to the very acquisition where some of the petitioners had succeeded before K.M. Natarajan, J., and the State went on appeal and the appellate court reversed the judgment of K.M. Natarajan, J. Without reference to the above judgment we have independently held on first principles and rejecting the argument of Mr. N.R. Chandran, learned senior counsel for the appellants, that the acquisition is valid even though part VII was not followed.

15. The third question relating to the delay in publishing the substance of the notification under Section 4(1) of the Act in the village does not also carry weight because in almost all the cases, the counter affidavit proceeds to say that such a publication was made within reasonable time. In any event, none of the land owners were prejudiced by any delay, because all of them had appeared in the proceedings under Section 5-A of the Act. The view expressed by us finds approval in a Division Bench judgment of this Court in *State of Tamil Nadu v. Rajendran and Ors.* (1993) 2 L.W. 352.

16. The contention based on discrimination is vigorously pressed by the learned senior counsel for the appellants. The argument is that the learned single Judge rejected the contention only on the ground that after the notification under Section 4(1) of the Act and the declaration under Section 6 of the Act, the Government had not exempted any land from acquisition proceedings. It is now brought to our notice that even after such notification and declaration under the provisions of the Land Acquisition Act, several lands have been exempted on the ground that they had contained jasmine plants or other similar reasons. Therefore, it is contended that there is no reason at all as to why the lands of the appellants' should not also be exempted from acquisition proceedings. The question whether any particular land can be exempted from the scheme of acquisition is entirely for the State Government to consider. It may be in a particular case that the lands are in fringe area and may not have the main purpose of the land acquisition. It may be some lands are low lying and it will be more beneficial to leave them out of the land acquisition than acquire them and pay compensation. It may be, that in some cases that the lands had been so well developed that it would not be proper to demolish such development and use the same as residential colony. We are only trying to point out that the question of exemption will have to be examined by the Government on a case to case basis and it will always be open to the Government to exempt certain lands if they are satisfied. After all, as stated by the Apex Court in *Somawanti v. State of Punjab* : [1963]2SCR774 , it is entirely for the Government to choose the land or accept the objections and exclude the lands. Therefore, it follows that even in the case of exemption, it is entirely for the Government and it will not be proper for the court in exercise of its jurisdiction under Article 226 of the Constitution of India to say that a particular land should be

acquired or a particular land should be left out of the acquisition. This is the view taken by the Apex Court in *State of Tamil Nadu v. Mahalakshmi Ammal* A.I.R. 1996 S.C. 866. Observes the Supreme Court: It is seen that in first two G.Os. referred to earlier, the Government laid down guidelines for exclusion of lands which are the subject matter of lay out approved by the Housing Board, the Government having realised that fault in issuing the above guidelines, thereafter issued order in G.O.Ms.No. 583, dated March 11, 1983 of the Housing and Urban Development withdrawing all the guidelines issued in the G.Os. referred to above with immediate effect. Thus, it could be seen that the Government itself having realised the misapplication of guidelines laid by it and disastrous effect on the execution of the Housing schemes prepared by Housing Board or entrusted to it by Government or local authorities, it withdrew the G.Os. with immediate effect. It is seen that respondents' land are abutting the road Omalar to Salem and practically it would be the gate way to the scheme. Under those circumstances, if the lands are excluded from the scheme, the entire scheme gets frustrated. Under these circumstances, we do not find any justification to direct the Government for exclusion of the lands on the above grounds...

17. Thus, all the major points argued by the learned senior counsel for the appellants fail and the writ petition and the writ appeals deserve dismissal. However, affidavits have been filed on behalf of the appellants stating that their lands are in fringe areas and entitled for exemption. In most of the cases, it is further averred that awards have not been passed on the ground of pendency of the writ petitions. According to the appellants and the writ petitioner there was no impediment at all in passing the award and therefore more than two years having elapsed from the date of the amending Act 68 of 1984 namely from 24.9.1984 all the acquisition proceedings lapsed so far as the appellants and the writ petitioner are concerned. We make it clear that we do not decide this question. This is because the explanation to Section 11-A says that the period during which any action or proceeding to be taken in pursuance of the declaration under Section 6 of the Act is stayed by an order of the Court, that period shall stand excluded. We do not propose to embark upon on exercise of calculating the period of limitation and whether the proceedings were stayed or the Government was precluded from passing the award. Here again there are judgments of the Supreme Court

construing the Explanation liberally and saying that even if there is only a stay of dispossession, the same can be taken as preventing the office from passing the award. It is for this reason, we do not propose to go into this question and leave it open to the Government to pass orders in accordance with law. If the appellants and the petitioner are aggrieved by any such order and if according to them, the award was being passed beyond the period of limitation, it is always open to them to agitate the matter. Similarly, so far as the question of exemption of their respective lands are concerned, it is always open to them to approach the Government giving specific particulars about other lands which have been exempted and seeking a similar exemption for their lands. It is always open to the Government to pass orders on such applications in accordance with law and in accordance with the judgment rendered by us.

18. With the above observations, the writ appeals and the writ petition are dismissed, However, there will be no order as to costs.

19. However, in so far as W.A.No. 576 of 1994 which is filed against W.P.No. 202 of 1985 it is represented to us that the lands have been exempted from acquisition, and therefore, no specific orders are necessary in the said representation The letter of the Deputy secretary in Lr.N.25591.S02 (2) 94/4) dated 23.3.1995 is placed before us. That letter is placed on record and the writ appeal No. 576 of 1994 is disposed of accordingly.

20. The learned single Judge in W.P.No. 4271 of 1985 (W.A.Nos. 584 of 1994 herein), has given a specific direction to consider the case of a Doctor, who has put up a nursing home and staff quarters and seeking exemption on that ground. The observations of the learned single Judge are affirmed by us and the Government will consider his case accordingly.

21. In W.A.No. 581 of 1994 which is against W.P.No. 9293 of 1986 it is stated that the entire land has been a built up and godowns have also been constructed. Such constructions have taken place, after the specific approval of the Salem Panchayat Union. It is for the Government consider whether such constructions are more beneficial to the public or the construction of residential houses are more beneficial to public. The question of exemption will be considered with reference to

the above statement that constructions had been with the approval of the Salem Panchayat Union.

This writ petition and writ appeals having been set down this day for being mentioned pursuant to the order of this Court dated 24.9.1997 in the presence of the aforesaid advocates, the court made the following orders:

The matter is nosterd, today for being mentioned. Learned counsel for the petitioner points out that there is a typographical error in referring to W.A.No. 591 of 1994 by wrongly mentioning it as W.A.No. 581 of 1994. The said mistake will stand corrected. Similarly, W.P.No. 4274 of 1985 is wrongly mentioned as W.P.No. 9293 of 1986. The said mistake will also stand corrected.

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