

M. Ganesan and anr. Vs. the State of Tamil Nadu Represented by the Commissioner and Secretary to Government, Housing and Urban Development Department, and ors.

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Court : Chennai

Decided On : Dec-04-1997

Reported in : (1998)3MLJ328

Appellant : M. Ganesan and anr.

Respondent : The State of Tamil Nadu Represented by the Commissioner and Secretary to Government, Housing and Urb

Judgement :

ORDER

V. Rengasamy, J.

1. This writ of certiorari has been filed under Article 226 of the Constitution of India to quash the order of the first respondent in G.O.Ms.No. 599, Housing and Urban Development, dated 27.4.1987 relating to the acquisition of the petitioners' lands.

2. The facts averred in the affidavit are as follows: The petitioners who are husband and wife have purchased 8 3/8 cents and 5 1/8 cents respectively in S.No. 63/5D2 in Thopour Village of Madurai South Taluk on 28.10.1985 and the first respondent has issued the notification under Section 4(1) of the Land

Acquisition Act (hereinafter referred to as 'the Act') by G.O.Ms.No. 1159, Housing and Urban Development, dated 4.11.1985 requiring these land and some other lands for the Madurai South Neighbourhood Scheme and Land Development by the Tamil Nadu Housing Board. There is an Ashram in this property of the petitioners known as 'Ramlingaswami Madam' in which, they are celebrating Thai Poosam Day, Ani Poosam Day and Karthigai Dheepam Day festivals and also celebrating the worship of Sri Ramalinga Swamigal on all 30 days in the month of Margazhi as they are devotees of Sri Ramalinga Swamigal and the vacant land has been let out to one R.S. Kannan who is having a shed for the purpose of manufacturing grease under the name and style of 'Sri Pandiyan Lubricant. Though they are owners of the property, their names were not published for the acquisition of the lands, that the declaration has been made under Section 6 of the Act in G.O.No. 599, Housing and Urban Development, dated 27.4.1987, which is the impugned order without informing their objections to the requisitioning body viz., the Housing Board, that the scheme itself is ill-conceived and unwarranted as there was no necessity for forming a Satellite Town near Madurai when there was no demand for the house in Madurai. Some of the lands notified were dropped from the acquisition proceedings to certain other individuals, but their lands Have not been dropped from the acquisition and therefore this will amount to discrimination. There was no simultaneous publication or publication within a reasonable time. Therefore for all reasons the proceedings have to be quashed.

3. The learned Counsel for the petitioner Mr. Srinivasaraghavan contended that the petitioners have purchased the lands mentioned above even before the notification under Section 4(1) of the Act; however, the Acquisition Officer did not publish the name of the petitioners or notice also was not sent to them as to the requirement of the land and further for the enquiry under Section 5-A of the Act also, notice was not sent to them and therefore this procedure followed by the respondent, proceeding with acquisition, without notice to the owners is illegal and the proceedings for acquisition has to be quashed. The Notification was made on 4.11.1985 whereas the petitioners have purchased the property only on 28.10.1985 from one Ramalakshmi Ammal. Therefore, when the sale was just six days before the notification, it appears that when the arrangements were made for issuing the notification and papers were sent for publication which must be at least

a week prior to the notification, the petitioners could not have even purchased the property or even if they had purchased the property, the mutations could not have been carried out on the days/when the notification was effected. The Acquisition Officer has to proceed only on the basis of the Revenue Records and as Ramalakshmi Ammal was the vendor of the petitioners, her name finds a place in the notification. It is not the case of the petitioners that even on the day when the notification was made, the Revenue Records contained their names showing their ownership to this property and the Authorities had deliberately omitted their names. As the petitioners name could not have been entered in the Revenue Records, the Land Acquisition Officer could have been guided only from the entries in the revenue records and therefore nothing turns out from the description of the vendors name only, at the time of the notification. Therefore, for the enquiry under Section 5-A of the Act also, notice was sent only to Ramalakshmi Ammal the vendor, who according to the learned Government Advocate, did not turn up for the enquiry under Section 5-A of the Act, therefore, there was no occasion for the Government till the enquiry under Section 5-A of the Act was initiated on 16.9.1986 to know about the ownership of these petitioner. It is an admitted fact that the first petitioner appeared before the Enquiry Officer only on 14.11.1986 informing the sales in their favour. Therefore, the respondent cannot be blamed for not sending notice to the petitioners for the enquiry under Section 5-A of the Act.

4. The second contention of the learned Counsel for the petitioners is that no details of the scheme have been published and the public was not made known the object of this scheme or the purpose of the acquisition and therefore the proceedings for the acquisition deserves to be quashed. On a perusal of the Gazette Notification, under the caption 'Housing and Urban Development' the details of the notification under Section 4(1) of the Act are published. It reads as follows: 'It appears to the Government of Tamil Nadu that the lands specified below situate in Thoppur Village of Madurai South taluk are needed for the public purposes, to wit, Madurai South Neighbourhood Land Development Scheme of the Tamil Nadu Housing Board.' According to the learned Counsel Mr. Srinivasaraghavan, this detail is not sufficient to know about the scheme by the public and this description in the notification under Section 4(1) of the Act which is cryptic, does not furnish the details of the object of the scheme. When the caption

is 'Housing and Urban Development' and the notification also reads' that for the public purpose, the Tamil nadu Government had required the lands of the Madurai South Neighbourhood Land Development Scheme by Tamil Nadu Housing Board, it goes without saying that Tamil Nadu Housing Board has taken us the scheme of the development of the lands, so as to put up constructions for the occupation of the public. It cannot be stated from the description in the notification that one was unable to understand the purpose of the scheme and the way in which it was intended for the public purposes. When the Tamil Nadu Housing Board has undertaken this scheme, it must be for the construction of the buildings intended for the public. The notification also reads that it was for the public purpose. This Court also had occasion to consider this aspect in *Kaliyaperumal v. The Commissioner and Secretary to Government of Tamil Nadu* 1991 W L.R. 972, wherein it is observed that when a specific purpose is specified in the notification under Section 4(1) of the Act, the contention of the writ petitioner that the public purpose specified in the notification is vague is not sustainable. The specific purpose viz., development of the land by the Tamil Nadu Housing Board for the public purpose is mentioned in the Government Order. The Apex Court in *State of Tamil Nadu v. L. Krishnan* : (1996)1SCC250 would observe that the public purpose mentioned in the notification concerned therein, viz., 'for the execution of the Interim General plan for the Greater Delhi' is specific in the circumstances and does not suffer from any vagueness. It further adds that whether the purpose stated in a particular notification is vague or not is a question of fact to be decided in each case and cannot be treated as a question of law.

When the purpose is mentioned in the notification, as mentioned in the above decision, that the requirement simply stated as the Interim General Plan for the Greater Delhi', itself was found to be not vague the more details in the present notification cannot be vague and the petitioner is not entitled to contend that the notification does not give the details. Therefore, this contention falls to the ground.

5. The third contention of the petitioner is that the scheme is ill-conceived and unnecessary as there was no real demand for buildings in Madurai especially when Ramnad District was bifurcated with three headquarters and in consequence of it, as the Administrative Offices relating to Ramnad District were shifted to the

respective headquarters, case was no necessity for this scheme. Absolutely, there is no statistics to hold that till the Administrative Offices relating to Ramnad District were housed in Madurai, there was demand for the buildings and on account of the shifting of the administrative offices, the demand had ceased or the buildings fell vacant in large numbers and there was no necessity for and construction in Madurai. Such fact has not been proved by the petitioners. The Administrative offices relating to Ramnad District might have been housed in a few buildings till the headquarters was retained at Madurai. But the increase in the population is indisputable fact and when the entire economy itself is paralysed on account of the increases in population, the argument, that there may not be demand for the house in Madurai in spite of the increase in the population, is not a sound one. The demand must have been only on account of the increase in the population. It is not the case of the petitioners that for the personal gains of anybody having this scheme' launched, or with mala fide intention, this scheme through the Housing Board was implemented. There could not have been any such intention especially when the Housing Board had taken up this scheme and public alone will be the beneficiaries by the allotment of the buildings. Therefore, without any allegation of mala fide in the scheme itself, there is no scope to contend that the scheme is ill-conceived and there was no necessity for such a scheme. The scheme could not be implemented without spending several crores, not only for the acquisition of the lands but also for the construction of the buildings. There could not have been any other reason for spending so much crores unless it is intended for the welfare of the society. There is no chance for any individual gain, in such schemes. Therefore, the scheme was only for the benefit of the public as there was demand for the buildings due to the increase in the population.

6. The next contention raised by the petitioners is non-compliance of Rule 3(b) of the Land Acquisition Rules. The learned Counsel Mr. Srinivasaraghavan contended that even though notice was not issued to the petitioners by the Land Acquisition Officer for the enquiry under Section 5-A of the Act, the first petitioner appeared before the Land Acquisition Officer on 14.11.1986, he also raised his objections for the acquisition of the land but his objections were not forwarded to the requisitioning body as required under Rule 3(b) and the reasoning of the requisitioning body was also not received to overlook the objections raised by the

petitioners and as the mandatory rule has not been complied with, the impugned order under Section 6 of the Act is likable to be quashed,. The learned Counsel relied upon the decision of this Court in Tube Suppliers Limited v. Government of Tamil Nadu : 1997(2)CTC213 and Balkis Ammal v. State of Tamil Nadu : 1997(1)CTC247 . In the first decision, it is held that when Section 5-A enquiry was held without obtaining report containing reason from requisitioning body as to the landlords objection, the enquiry is invalid and illegal. In the latter decision, the view taken by this Court is that when any enquiry was conducted without serving the remarks of the requisitioning body upon the owners, the declaration based on such defective enquiry is violative of Rule 3(b) of the Rules and is liable to be quashed, Before coming to the compliance of Rule 3(b), it is important to refer to certain facts in this background. As mentioned above, the notice for enquiry under Section 5-A of the Act was not sent to this petitioners for the reason that their name did not find a place in the Revenue Records, but the notice was sent to their vendor Ramalakshmi Ammal. But she did not turn up for enquiry. The date was fixed as 16.9.1986 for the enquiry and some of the land owners appeared on that day and as they submitted certain objections, it was forwarded to the requisitioning, body for getting their remarks, and therefore the enquiry was adjourned to 15.11.1986. Only on that day, the first petitioner herein appeared before the Enquiry Officer and seems to have stated his Objections. But there is nothing on record to show that he had submitted any objection in writing for being forwarded to the requisitioning body. It is contended by the learned Government Advocate that as the date viz., 16.9.1986 was fixed for the enquiry and the petitioners did not appear on that day, there is no question of sending any objections to the requisitioning body, as there was no objection coming forth from the petitioners, and there was no possibility of sending any objection either before 16.9.1986 or before the next adjourned date on 14.11.1986. However, it is argued for the petitioners that when the first petitioner appeared on 14.11.1986, at least on that day his objection could have been forwarded to the requisitioning body calling for the remarks to overlook the objections and as this was not done, the enquiry is violative of Rule 3(b) of the Rules, The two decisions relied upon by the learned Counsel (cited supra) no doubt held that when the Rule 3(b) of the Rules is not complied with by not sending the objections to the requisitioning body serving the

remarks of the requisitioning body before the enquiry was conducted, it will not amount to the compliance of the Rule. But in these cases objections were filed before the Enquiry Officer before the commencement of the enquiry. Therefore, this Court has held that their objections must have been sent to the requisitioning body and similarly the remarks of the requisitioning body had to be served on the land owners before the enquiry had commenced. But, in this case, though the enquiry had commenced on 16.9.1986, the petitioners did not submit any objections and only when the enquiry was adjourned for the purpose of the remarks from the requisitioning body. the first petitioner appeared on 14.11.1986 and there is nothing to show that he filed any written objections for the acquisition of the lands. The records viz., page 238 of the file shows that the Executive Engineer of Tamil Nadu Housing Board was present on 14.11.1986 before the Enquiry Officer. As the landowner did not give any objection in writing, but had made oral representation, in the presence of the representative of the requisitioning body and the enquiry officer also had passed the order that there was no valid objections, it cannot be stated that Rule 3(b) was not complied in this case. As a matter of fact, the Rule 1 fixes the period also for submitting the objections and only such objections received within the prescribed time, it should be forwarded to the requisitioning body. Rule 1 reads that Collector should issue notice about the requirements of the land also calling upon the interested persons in the land to lodge their objections before him within 30 days after the issue of the notification Rule 3(b) reads that if any objections are received from a person interested in the land, and within the time prescribed in Sub-Section (1) of Section 5-A of the Act, the Collector shall fix a date for hearing of all the objections and give notice thereof to the objections as well as the requisitioning body. In this case, though the notification was made on 4.11.1985, within 30 days objections were not filed by the petitioners. Therefore, they cannot contend that Rule 3(b) has not been complied with by the respondents when they did not file the objections within the prescribed time. This aspect also has been considered in *Kaliyaperumal v. The Commissioner and Secretary to Government of Tamil Nadu* 1991 WL.R. 972, holding that when the revision petitioner had not filed the objections within 30 days from the date of notification under Section 4(1) of the Act and any objections filed by the writ petitioners after 30 days cannot be considered as being filed within the

time as prescribed under the provisions of the Act and in the absence of any objection filed by the writ petitioner within the stipulated time, it is not open to the writ petitioner to contend that the procedure contemplated under Rule 3(b) of the Rules framed under Section 55(1) of the Act has been violated. Therefore, this will dispose of the above objection raised by the petitioners.

7. The fifth objection raised by the learned Counsel is that there is no simultaneous publication or publication within a reasonable time about the acquisition and relying upon the decision of this Court in *The Government of Tamil Nadu represented by its Secretary, Home Department v. M. Natarajan* : (1997)IIMLJ604 , would contend that there is a gap of nearly three months in the publication and therefore the declaration under Section 6 of the Act has to be quashed. The Gazette Notification dated 4.11.1985 was published on 18.12.1985. It is admitted that the publication in the Tamil daily was effected on 22.3.1985 and in the English Daily on 2.4.1986. It is also not in dispute that the publication in the locality was made on 13.4.1986. Therefore, the learned Counsel would contend that the publications were not effected simultaneously and there is a gap of more than three months between the publications effected in the Gazette and the publications in the newspapers and the publication of the locality is after four months of the Gazette notification and under these circumstances, there is no continuity in the action for which the proceedings has to be quashed. It is true that in the above decision of this Court, the delay of more than two months in the publications has been found to be questionable. The learned Government Advocate would explain that vast area of the lands have been acquired under this scheme and the notification would show that about 1,375 acres of land have been acquired and due to this extensive area, there was pressure of work on account of which, there was a gap of some time in effecting the publications. According to the learned Government Advocate, even if there is any delay, if it is explained, it is for the court to consider whether there was continuity in the action or there was total inaction on the part of the Authorities concerned, and in this case, as the extent acquired is more than 1,375 acres, the steps to publish in the newspapers could not have been done overnight simultaneously with the publication in the Gazette and therefore there was some delay which cannot affect the proceedings as there is nothing to show that there was no continuity in the action. He also referred to a

decision of the Apex Court in Sanjeevakumar M. & H.E. Co-operative Housing Society v. Mohd. A. Wahab : [1996]2SCR308 , wherein the Apex Court would observe as follows:

This Court had held that Section 4(1) does not prescribe that public notice of the substance of the notification should be given in the locality simultaneously with the publication of the notification in the Official Gazette or immediately thereafter. They are two steps required to be taken under Section 4(1) before taking further steps under Sub-Section (2). The time factor is not a vital element and there is no warrant to read the words 'simultaneously' or 'immediately thereafter' in Section 4(1). They are not required to be done simultaneously or immediately thereafter. Contemporaneity may involve a gap of time and by the very nature of the things the publication in the official Gazette and the public notice in the locality must necessarily be separated by a gap of time. This does not mean, that the publication and the public notice may be separated by a long interval of time. What is necessary is that the continuity of action should not appear to be broken by a deep gap. If there is publication in the Gazette and if there is public notice in the locality, the requirements of Section 4(1) must be held to be satisfied unless the two are unlinked from each other by a gap of time so long as it may lead one to the prima facie conclusion of lack of bona fides in the proceedings for acquisition.

Therefore in view of the Apex Court only for the purpose of continuity in the action, the publication should not be broken by a deep gap. The Apex Court has not fixed a time limit in this decision mentioning what is the distance of time to accept that there is a deep gap breaking the continuity. On the other hand, it is the view of the Apex Court that Section 4(1) does not prescribe the notices to be published simultaneously or immediately thereafter. If the gap of time is so long, when leading to a prima facie conclusion of lack of bona fides in the proceedings, then only the discontinuity in the action has to be inferred. In this case, as mentioned above, the Gazette Notification was effected on 18.12.1985 and the publication in the Tamil Daily was published on 23.2.1986 within a period of three months. When so much extent of land was acquired, the entire details of the lands have to be furnished to the press for publication. Therefore, naturally it requires some time for

publication in the papers and this gap of three months' time cannot be said to be a long period to suspect the bona fides in the action on the part of the authorities concerned. Therefore, following the view taken by the Apex Court in the above decision, I hold that the delay in making the publication in the newspapers and in the locality will not affect the acquisition proceedings.

8. One another contention raised by the petitioner is that some of the lands notified by the respondents were excluded under a subsequent notification in G.O.Ms.No. 1047, Housing and Urban Development, dated 22.7.1988, that when some of the lands have been excluded from acquisition, their lands are still in acquisition there is discrimination among landowners, which is violative of Article 14 of the Constitution. The respondents have filed counter admitting the G.O.No. 1947, dated 22.7.1980 withdrawing the notification in respect of certain lands which fall within the category of the residential houses built up in the residential areas. According to the learned Government Advocate only the houses used for the residential purposes are excluded under the above said G.O., but the petitioners' building though it is described as an 'ashram', the remaining portion of the Ashram has been let out for industrial purposes, in which one Kannan is having an industry for the manufacture of grease under the name and style of 'Pandian Lubricant', and as the premises is used for industrial purpose, the above G.O. is not applicable to exclude the petitioners' land. The petitioners have admitted in the last line to para 2 of the affidavit that except the Ashram portion of the building the rest of the vacant space is used for the industrial purpose as the tenant kannan has put up shed therein for the manufacture of the grease under the name and style of pandian Lubricant. So, it is an admitted fact that the petitioners premises is not exclusively used for the residential purposes but also for the industrial purposes. When such is the case, the G.O.Ms.No. 1047, Housing and Urban Development Department, dated 22.7.1988 which excludes only the residential buildings cannot be made applicable to the property of the petitioners. Therefore, there is no question of discrimination in excluding the properties and Article 14 of the Constitution of India is not attracted to aid the petitioners.

9. In State of Tamil Nadu v. Mahalakshmi Ammal : (1996)7SCC269 , the Supreme Court has held that when there is exemption from acquisition excluding certain

lands by the Government on the ground of pendency of litigation or, the land being far interior guidelines for exclusion of lands issued by the Government cannot be applied to the other lands being gate way to the scheme and thereby, the possibility of the entire scheme getting frustrate, cannot be directed for exclusion of the appellant's lands. On applying certain facts in that case, viz., some of the lands were involved in the litigation, whereas some other lands were situated in a far off interior place, they were excluded from the acquisition. When those facts are not applicable to the other lands, but on the principle non-discrimination, if entire lands were excluded from the acquisition, then the scheme itself will be frustrated and there is no possibility for any development scheme. Similarly, when the exemption has been granted only to the residential buildings, the same standard cannot be applied to the petitioners' lands which are admittedly used for an industrial purpose. So at any rate, there is no room to hold that there is violation of Article 14 of the Constitution of India in the acquisition of these lands. So taking into consideration of these objections raised by the learned Counsel for the petitioners, none of them stand scrutiny, for quashing the proceedings of the acquisition. Under those circumstances, the writ petition has to be dismissed.

10. In the result, the writ petition is dismissed. There will be no order as to costs.