

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/09/2002

CORAM

THE HONOURABLE MR.JUSTICE V.S.SIRPURKAR
AND
THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA

Writ Petition No.1381 of 1995
and
W.M.P.No.18334 of 1999 and W.M.P.No.18496 of 1999

1.R.Devarajan
2.Tmt.Vasanthamani
3.T.K.Ramachandran ... Petitioners

-Vs-

1.The Revenue Divisional Officer
Coimbatore-18.

2.The District Collector
Coimbatore District
Coimbatore.

3.The Secretary to Government
of Tamil Nadu (Land Administration)
Fort St.George, Madras-9. ... Respondents

Petition under Article 226 of the Constitution of India praying for
the issue of a writ of declaration as stated therein.

For Petitioners : Mr.K.Ramachandran

For Respondents : Mr.S.T.S.Murthi
Special Government Pleader

:O R D E R

(Order of the Court was made by V.S.SIRPURKAR, J.)

In this writ petition, initially the notification under section 4 of
the Land Acquisition Act bearing G.O.Ms.No.656, Housing Department, dated
27.4.1978 came to be challenged under various grounds. We need not refer to
those grounds, since the learned counsel does not want to argue on the basis
of those grounds. Ultimately, the learned counsel was permitted to raise
additional grounds and it is only on that additional ground that the

notification under Section 4 as also the notification under Section 6 is being challenged. Needless to mention that, to begin with the notification under section 6 was not a part of the record of this writ petition. It seems that since the learned counsel was permitted to raise the additional grounds challenging the Section 6 notification by making an amendment, the said notification alone is in challenge now. The only ground on which the section 6 notification is in challenge is that it is contrary to section 6 and more particularly to the second proviso thereof. Learned counsel points out that the public purpose stated in Section 4 notification is for housing accommodation under West Kovaipudur Neighbourhood scheme. He further points out that in Section 6 notification, the preamble of the notification is in the following terms :-

"The Government of Tamil Nadu, having been satisfied that the lands specified in the schedule below have to be acquired for a public purpose and it having already been decided that the entire amount of compensation to be awarded for the lands is to be paid out of public revenueS, the following declaration is issued under Section 6 of the Land Acquisition Act, 1894 (Central Act 1 of 1894)."

2. From this, the learned counsel develops his arguments that this land was being acquired by the Tamil Nadu Housing Board as it was the Tamil Nadu Housing Board which would have built the housing schemes contemplated under the public purpose. If that was so, according to the learned counsel, the compensation amount ought to have come from the Tamil Nadu Housing Board, which is declared to be a local authority under Section 158 of the Tamil Nadu Housing Board Act. He points out that since the declaration suggests that the entire compensation amount is to come from public revenue, the notification itself is defective, as according to him the compensation amount should not only have been coming from the Tamil Nadu Housing Board, but it should have also been stated accordingly in the Section 6 notification, and since it is not so stated, the notification is defective and therefore this defect is fatal to the acquisition. Learned counsel very heavily relies on the Division Bench judgment of this Court rendered by their Lordships S.MOHAN AND S.RAMALINGAM, JJ. in W.A.No.831/1985 (K. SUNDERRAJ AND TWO OTHERS -VS- THE STATE OF TAMIL NADU AND TWO OTHERS).

3. As against this, the learned counsel for the Government opposes the claim and points out that firstly it is not essential that the money should have come from Tamil Nadu Housing Board because there is no reference to the Tamil Nadu Housing Board at all either in the Section 4 notification or in the Section 6 notification. Learned Government Pleader also points out that there would be no question of finding fault with the Section 6 notification, as according to him, the judgment relied upon by the learned counsel for the petitioner suggests that in that case it was clear that the land was being acquired for the Tamil Nadu Housing Board and in the present case there is nothing to indicate that way.

4. Considering the rival submissions, it must be stated that in the aforementioned judgment, there is a specific finding in para 3 by the Division Bench. It says as follows:-

"In the instant case before us, the lands are sought to be acquired for the purpose of providing housing facilities at the instance of the Tamil Nadu Housing Board. The Tamil Nadu Housing Board has been defined as 'Local Authority' under Section 158 of the Tamil Nadu Housing Board Act. Therefore when a declaration is published under Section 6 of the Land Acquisition Act, stating that the lands are required for the purpose of providing housing facilities at the instance of Housing Board, the declaration should recite that the entire amount of compensation would come out of the funds of the Local authority, namely Tamil Nadu Housing Board. But in the instant case, the declaration stated that the compensation would come out of public funds. Such a declaration is not in conformity with the second proviso to Section 6 (1) of the Land Acquisition Act."

5. When even a cursory glance is thrown on the Section 6 notification here, there is not even a passing reference to the Tamil Nadu Housing Board. It is not stated either in the Section 4 notification or in the Section 6 notification that this acquisition is for Tamil Nadu Housing Board. Learned counsel tried to get out of this difficult situation by suggesting that in the aforementioned judgment, the same Section 4 and Section 6 notifications came for consideration. At least from the bare reading of the judgment, we are unable to find out any such fact. The judgment does not suggest that it was concerned with the very Section 4 notification dated 4.10.1978 and the very Section 6 notification bearing G.O.Ms.No.347, Housing and Urban Development, dated 22.5.1981. There is absolutely nothing in that behalf either on the record in this writ petition or even in the aforementioned judgment.

6. Then, the learned counsel pointed out that the appellants in the said writ appeal were one Sunderraj and two others and there is a reference to their name in the Section 6 notification. That may be so. But, that by itself does not mean that the Division Bench was considering the same notification. It may be that there could be some other properties of those persons, which were also acquired. But, we are again not concerned with that for the simple reason that in para 3 of the aforementioned judgment, there is a clear reference that Section 6 notification in that case stated that the land was required for the purpose of providing housing facilities at the instance of the housing board. Reading the notification, which has been produced before us by the learned Government Pleader, we do not find any such thing in the notification. On this ground alone, the contention raised by the learned counsel has to be rejected.

6. This is apart from the fact that in the aforementioned judgment, a specific point was taken and perhaps it was an admitted position that the scheme was to be floated by the TamilNadu Housing Board. We find that the Tamil Nadu Housing Board was made a party to the appeal. We find that the Tamil Nadu Housing Board is not a party to this writ petition. Had the Tamil Nadu Housing Board been joined as a party, they would have been able to make a statement as to whether the land acquisition exercise was at their instance and for their schemes. By not impleading the Tamil Nadu Housing Board as a party to this petition, we would be left with no other choice but to accept the statement made by the Government that there was nothing on the record to suggest that this acquisition was for the Tamil Nadu Housing Board. That

being the only challenge, the writ petition must fail and it is accordingly dismissed. However, in the circumstances we do not choose to inflict costs. Consequently, connected WMPs are closed.

(V.S.S.J.)
(F.M.I.K.J.)
26.09.2002

Index : Yes
Website : Yes

kst.

To :

1.The Revenue Divisional Officer
Coimbatore-18.

2.The District Collector
Coimbatore District
Coimbatore.

3.The Secretary to Government
of Tamil Nadu (Land Administration)
Fort St.George, Madras-9.

□