

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.6858 OF 1995

1. R. Anusuya,
rep. by power of attorney agent
P.L.V. Subba Rao

2. D.K. Natarajan
3. D.K. Krishnamoorthy
4. D.K. Balasubramanian
5. K. Santha .. Petitioners

-Vs-

1. Union of India,
rep. by its Secretary to Govt.,
Ministry of Food,
Agriculture, Community Development
& Co-op. Dept. of Agriculture,
New Delhi.

2. The State of Tamilnadu, rep. by
Commissioner & Secretary to Govt.
Transport Dept., Fort St. George,
Madras-9.

3. The Revenue Divisional Officer,
Coimbatore. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorari as stated therein.

For Petitioner : Mr.S. Sundaram for
Mr.T.R. Rajaraman

For Respondent-1 : Mr.V.T. Gopalan
Addl. Solicitor General for
Mr.K. Ravindranath, ACGSC

Respondents 2&3 : Mr.N.R. Chandran
Advocate General for
Mrs.N.G. Kalaiselvi

:J U D G M E N T

The petitioners have filed this writ petition for quashing the land acquisition proceedings.

2. Notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as the "Act") in G.O.Ms.No.1369 Transport Department dated 11.11.1983 was published in the Gazette on 7.12.1983 . The land was sought to be acquired for the Central Government for the purpose of construction of Central Post Office Building. Initially the property was described as appertaining to S.No.735-2 (part), but subsequently an errata was issued and published in the Gazette on 29.2.1984 indicating Survey Number as 935/2. Subsequently, declaration under Section 6 of the Act was made in G.O.Ms.No.1592 dated 3.9.19 86, which was published in the Gazette on 24.9.1986. At that stage, the petitioner filed W.P.No.4925 of 1987 to quash the land acquisition proceedings. One of the contentions raised was to the effect that the remarks of the requisitioning authority were communicated to the land owners on 26.4.1984 and the land owners have sent their further objections on 16.5.1984 and 18.5.1984 , but no enquiry under Section 5 -A was held after 26.4.1984. Following the Division Bench decision of this Court reported in 1994 WLR 326 (N.D. RAMANUJAM v. COLLECTOR OF MADRAS, MADRAS CITY AND OTHERS), the writ petition was allowed by Justice Shivaraj Patil (as His Lordship then was) by judgment dated 8.8 .1994. While quashing the declaration under Section 6, it was observed that the proceedings may continue from the stage after 4(1) notification. It was indicated that opportunity of further reply and hearing should be given. While the matter was pending before the High Court, some discussion was going on between the petitioners and the postal department for accepting lesser extent of property and it is stated that the postal department had agreed to withdraw the land acquisition proceedings subject to certain conditions.

After the matter was decided by the High Court, Notice in Form-A under Rule 3 was issued indicating that the objections received within the due date would be enquired into on 18.1.1995. It is stated in the said notice that the schedule mentioned property is to the extent of 36,593 sq.ft. but the exact extent of land sought to be acquired was not indicated. It is alleged that the notice did not conform the provisions of the Rule 3. It is further stated that all the petitioners have filed their written objections after receiving such notice and the petitioners 2 & 3 were present before the third respondent on 1 8.1.1995 by about 10.45 am for the enquiry and they had waited till 1 .30 pm., but the third respondent was not present and no enquiry was held. In such objections, it has been indicated by the petitioners that the requirement of the postal department was only 400 sq.ft and there was no necessity to acquire the entire land. It is further stated that the objections were rejected and the third respondent had recommended that acquisition may be made. The declaration dated 6.2.199 5 under Section 6 of the Act was published.

3. Acquisition has been challenged on several grounds. It is first contended that Section 6 declaration has not been made within the period contemplated under Section 6 of the Act. It has been further indicated that no enquiry had been held on 18.1.1995 as has been indicated in the notice and without holding any enquiry and giving any opportunity to the petitioner, the subsequent declaration is illegal and without jurisdiction. It is further stated that the objections raised were mechanically rejected. It has been further contended that even during pendency of the earlier writ petition, discussion had been held between the petitioners and the representatives of the postal department and the latter had agreed to acquire lesser extent of land and without considering these aspects, declaration had been issued mechanically. It has been further contended that in 4(1) notification it has been indicated that an extent of 36,000 sq.ft. was sought to be acquired, whereas in the notice dated 14.12.1994 it has been indicated that an extent of 36,593 sq.ft. was sought to be acquired and this particular aspect has been specifically pointed out in the objections. It has been further contended that the requisitioning authority was the Government of India and the Senior Superintendent of Post Office had no role in the matter. It is further indicated that only the Revenue Department is competent to acquire the property in favour of the Central Government and the acquisition notification issued by the Transport Department cannot be sustained.

4. Two sets of counter affidavits were filed, one by the respondent No.1, the Central Government and the other on behalf of the respondents 2 & 3, namely the State Government, represented by the Secretary to Transport Department and the Revenue Divisional Officer. After narrating the events which had occurred prior to filing of this writ petition, it has been indicated that as per the direction of the High Court there has been fresh enquiry and Section 6 declaration has been made within six months from the date of the judgment and thereafter award has been made within four months from the date of declaration under Section 6. It has been stated

□ The 5A Enquiry notices in Form-B was served on the Land owners and interested persons, 15 days well in advance to the 5A enquiry date. Among the Land owners Tvl.D.K. Natarajan and D.K. Krishnamurthy requested to adjourn the 5A Enquiry for further 15 days to offer their objections. As the time was short for the publication of Draft Declaration under section 6 of the said Act their request to adjourn the 5A Enquiry was not considered and the 5A Enquiry was conducted on 18.1.94 as fixed already. The Land owners utilised the opportunity of 5A enquiry and offered their objections. The remarks of the requisitioning body on the objections filed by the land owners and objectors were communicated to the persons concerned in Letter Rc.No.9622/82 dated: 23.1.95 of the Revenue Divisional Officer, Coimbatore through registered post. The objections put forth by them are not a genuine one and therefore in the interest of public it deserved no consideration. Hence their objections were over-ruled in letter Rc.No.9622/82 dated: 30.1.95 of the Revenue Divisional Office, Coimbatore made under section 5A(2) of the said Act. The proceedings were served on the land owners through registered post and postal acknowledgements filed. The fresh Draft Declaration under section 6 of the said Act was approved in G.O.Ms.No.31, Transport Department dated: 6.2.95. The Declaration was published in the Tamil Dailies □Vetrimalai□ and □Makkalkural□ dated: 7.2.95 and the substance published in the locality on

It was further stated:

□ ... 5. Regarding para 4 of the affidavit, it is submitted that generally as per the provisions of the said Act and rules, when objections are received during 5A enquiry the remarks of the requisitioning body will be obtained and communicated to the objectors concerned and there is no necessity for further enquiry. Hence, the contention of the writ petitioners that their counsel was informed by the Land Acquisition Officer that the date of further enquiry will be informed to the petitioners as well as to their advocate is beyond the truth and justification.

6. Regarding para 5 of the affidavit, it is submitted that as per the said Act and Rules the objections filed by the Land owners were sent to the requisitioning body and the remarks offered by the requisitioning body were communicated to the Land owners and objections concerned. There is no rule to conduct further 5A enquiry based on the further objectors filed by the Land owners and objectors on the remarks offered by the requisitioning body, as it will be an endless process if further enquiries are conducted on the same objectors especially when the land owners had not adduced any valid further grounds other than those already conducted. Hence the contention of the writ petitioner that no intimation was sent to them regarding further 5A enquiry in respect of their further objections on the remarks offered by the requisitioning body is not sustainable under the said Act and rules□ .

5. In the counter affidavit of the respondents 2 & 3, similar stand has been taken and the need to acquire the entire land has been justified.

6. The first question which falls for determination is as to whether the declaration under Section 6 of the Act has been made within the time stipulated under Section 6. The relevant provision contained in first proviso to Section 6 of the Act is extracted hereunder :-

□ 6. Declaration that land is required for a public purpose.-

. . . Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1)-
(i) published after the commencement of the Land Acquisition (Amendment and Valuation) Ordinance, 1967 (1 of 1967) but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of three years from the date of the publication of the notification;or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of the publication of the notification.

Explanation 1.- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, subsection (1), is stayed by an order of a Court shall be excluded.

Explanation.2- . . .

7. In the present case, notification under Section 4(1) of

the Act was dated 11.11.1983 and was published in Gazette on 7.12.1983 and locality publication was made on 10.03.1984. The proviso to Section 6 makes it clear that no declaration in respect of any particular land covered by notification under Section 4(1) published before commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after expiry of three years from the date of publication of the notification. In the present case, 4(1) notification was published before commencement of the Land Acquisition (Amendment) Act, 1984, obviously three years period under clause (i) of the proviso is applicable and not clause (ii). Under Explanation -1 in computing the period referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

8. In the present case, it is apparent that previous writ petition had remained pending till 8.8.1994. Section 6 declaration which had been impugned was dated 3.9.1986 and was published in the Gazette and newspapers on 24.9.1986 and published in the locality on 1.10.1986 and ultimately Section 6 declaration was made on 6.2.1995, as apparent from the proforma signed by the third respondent. Even though the previous writ petition was filed in 1987 and stay was granted thereafter, to give maximum leeway to the respondents, the period from 1.10.1986 till 8.8.1994 may be excluded. So calculated, it is apparent that declaration under Section 6 has not been made within the stipulated period of three years. It is of course true that in the judgment of this Court on earlier occasion it has been indicated that fresh enquiry has to be made and declaration has to be made within six months. But, it is obvious that any observation in such judgment has to be understood in the context of the provisions included in the Act and the Court does not have jurisdiction either to reduce the statutory period or to extend the statutory period.

9. Law is now well settled that while seeking a reference under Section 18 of the Act, the question of extension of period as contemplated under Section 5 of the Limitation Act is not applicable. Similar logic is also applicable to declaration under Section 6 of the Act and the question of extension of the period and obviously reduction of the period as contemplated under Section 6 does not arise.

10. The Supreme Court in the decision reported in 2002(3) SCC 533 (PADMA SUNDARA RAO (DEAD) AND OTHERS v. STATE OF TAMIL NADU AND OTHERS) recently dealt with a similar matter, Pasayat, J speaking for the Constitution Bench observed:

□ . . . In terms of the proviso, the declaration cannot be made under Section 6 in respect of any land covered by the Notification under Section 4(1) of the Act after the expiry of three years or one year from the date of its publication, as the case may be. The proviso deals with two types of situations. It provides for different periods of limitation depending upon the question whether (i) the notification under Section 4(1) was published prior to commencement of Land Acquisition (Amendment and Validation) Ordinance, 1967, but before commencement of Land Acquisition (Amendment) Act, 1984, or (ii) such notification was issued after Land Acquisition

(Amendment) Act, 1984. In the former case, the period is three years whereas in the latter case it is one year. Undoubtedly, the Notification under Section 6(1) was made and published in the official gazette within the period of three years prescribed under the proviso thereto, and undisputedly, the same had been quashed by the High Court in an earlier proceeding. It has to be noted that Explanation 1 appended to Section 6(1) provides that in computing the period of three years, the period during which any action or proceeding to be taken in pursuance of the Notification under Section 4(1), is stayed by an order of the Court, shall be excluded. Under Tamil Nadu Act 41 of 1980, w.e.f. 20.1.1967, the expression used is "action or proceeding is held up on account of stay or injunction", which is contextually similar.

11. While overruling the earlier Supreme Court decision in *N. NARASIMHAIAH AND OTHERS v. STATE OF KARNATAKA AND OTHERS* (1996(3)SCC 88) it was further observed :

"... The view expressed in *Narsimhaiah's* case (supra), is not correct and is over-ruled while that expressed in *A.S. Naidu's* case (supra) and *Oxford's* case (supra) is affirmed."

12. Applying the ratio of the aforesaid decision and keeping in view the dates also, even taking a liberal view of the matter, it is obvious that declaration under Section 6 of the Act has not been made within three years period as contemplated under Section 6. On this ground alone, the land acquisition proceedings including notification under Section 4(1) of the Act are liable to be quashed.

13. In view of the aforesaid conclusion, it may not be necessary to deal with the other contentions. However, the contention regarding violation of the principles of natural justice and non-holding of enquiry is also bound to be upheld. In the previous judgment of the court, under which previous declaration under Section 6 of the Act was quashed, it has been specifically observed that after the stage of Section 4(1) notification, land acquisition proceedings are quashed. In other words, the matter has been relegated to the stage of publication of notification under Section 4(1) of the Act.

14. It is one of the contentions of learned counsel appearing for the respondents that since the matter was remanded, objections were not filed within the period of 15 days from the date of issuance of notice under Form-A, it was not necessary to comply with the provisions contained in Rule 3(b). For the aforesaid purpose, reliance has been placed by the learned Additional Solicitor General upon a decision of the Division Bench of this Court reported in ILR (1996) 2 Madras 299 (*THE COMMISSIONER AND SECRETARY TO GOVT. OF TAMIL NADU, HOUSING AND URBAN DEVELOPMENT DEPT. AND ANOTHER*). Even assuming that Rule 3 (b) was not to be followed strictly and there was no obligation to send the objections of the petitioners to the requisitioning authority and there was no further obligation to furnish a copy of the report to the petitioners, it cannot be said that there was no necessity of holding any enquiry. Even if the petitioners did not have right to receive the reply

of the requisitioning authority, they always had a right to justify their objections.

In para 21 of the aforesaid Division Bench decision, it was observed:

□ 21. Therefore, it is clear that in Form B notice, the time to be given therein is for the purpose of hearing the objections and not for the purpose of filing the objections. But at the same time, if any objection is filed as per Form B notice, it does not mean that it becomes excluded from consideration, because the person interested files objections, the principles of natural justice demand that he should be heard. . . .□

The assertion to the effect that on 18.1.1995, two of the petitioners were present and no enquiry as such, had been held on that date, has not been specifically denied. A perusal of the counter affidavit indicates that as if on that date records were made available for the perusal of two petitioners, but there is no specific assertion that in fact the respondent No.3 was present on that day and conducted enquiry. There is also no material on record to show that any further enquiry was held subsequently. As has been observed by the Division Bench decision, relied upon by the respondents themselves, even though there might not have been any right to receive reply of the requisitioning authority, opportunity should have been given to the affected persons to establish their objections and obviously, an enquiry was required to be held. It is thus apparent that principles of natural justice have been violated inasmuch as no enquiry had been held.

15. The other contentions raised by the petitioners relate to merit of their objections. If enquiry would have been held, they could have persuaded the authorities regarding non-necessity of the acquisition or the acquisition in respect of a lesser extent.

16. Learned Additional Solicitor General appearing for the respondent No.1 has submitted that the State Government has power of eminent domain to acquire the land and because of some technical flaw, the proceedings need not be quashed. He has placed reliance upon a decision of the Supreme Court for the aforesaid purpose. The decision has to be understood in the context it was made. The defence that there is right of eminent domain, would not stand in the way of quashing Section 6 declaration. The right to property even though no longer a fundamental right, is a constitutional right and has been recognised under Article 300-A of the Constitution of India. No person can be deprived of his property save under authority of law. If the law prescribes a particular method of acquisition, the State cannot take advantage of the Doctrine of Eminent Domain to acquire any land in violation of such law. There is no doubt that the State has got a right to acquire the land, but that right is to be guided under the principles laid down in the Land Acquisition Act.

17. It was also contended that since the award had already been made, there is no jurisdiction to quash the proceedings. This submission is again misconceived. Merely because the respondents have proceeded to make the award, it would not validate the illegal declaration made under Section 6 of the Act. It is not the case of the respondents that the award amount has already been received by the petitioners. Possibly, in such an eventuality of

receipt of the award amount without demur, the question of acquiescence could have been raised.

18. In the result, the writ petition is allowed and the impugned notification and declaration under the Land Acquisition Act is quashed. No costs.

Index : Yes

Internet : Yes

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To

1. Union of India,
rep. by its Secretary to Govt.,
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