

In the High Court of Judicature at Madras

Dated: 29/08/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 868 of 2003

and W.P.Nos. 2411 & 3883 of 2003

and

WPMP.Nos.1077,3028,3029,4894,4895/03&WVMP.No.497 Of 2003

V. Sundaravelu .. Petitioner In Wps.868&2411/2003

Jaihind .. Petr. In WP.3883 of 2003

-Vs-

1. The State of Tamil Nadu rep.  
by the Additional Secretary  
Transport Department  
Fort St. George, Chennai 9.

2. The District Collector  
Nagapattinam.

3. The Special Tahsildar (L.A.)  
Velankanni  
Nagapattinam  
Broad-gauge, Nagapattinam.

4. Southern Railways rep. by the  
General Manager, Chennai. .. Respondents in all Wps

For petitioners : Mrs. Hema Sampath

For respondents : Mr. S. Gomathinayagam  
1 to 3 Spl. Govt., Pleader (LA)

For 4th respondent: Mr. V.G. Sureshkumar

:COMMON ORDER

By consent of both parties, the main writ petitions themselves  
are taken up for final disposal.

2. Since the points raised in all these writ petitions are  
one and the same, they are being disposed of by the following common order.

3. It is seen that the request of the Church Authorities of Shrine Basilica Velanganni and the long felt need of the tourist coming from all over India as well as from abroad is that the pilgrim center Velanganni should have railway connection. The foundation stone was laid in June, 1999 for formation of a new broad gauge railway line. To save time and litigation, the District Collector, conducted a meeting on 06.03.2000, to hear public views for the formation of new railway line. Public representatives from all walks of life and the Railway Authorities attended the meeting. The Deputy Chief Engineer, Gauge Conversion, Trichy has sent a land plan and schedule for acquisition of land for the proposed broad-gauge line between Nagapattinam and Velanganni. On the basis of the land plan and schedule received, details of lands involved in the land acquisition were obtained from the Revenue Divisional Officer, Nagapattinam on 07.02.2001 and the District Collector conducted a meeting with Southern Railway Executive Engineer, Tiruvarur, Revenue Divisional Officer, Nagapattinam and the Rev. Father. Church of Velanganni, Basilica. The Railway authorities worked out the tentative land cost at Rs.37.62 crores. The land of the petitioners were sought to be acquired for the above railway line, they filed these writ petitions before this Court.

4. The learned counsel for the petitioners has raised the following contentions.

(i) There is no need to invoke the urgency provisions in the Land Acquisition Act 1 of 1894, for acquiring the land of the petitioners;

(ii) No proper publicity was effected as provided under the Act;

(iii) Inasmuch as the respondents have invoked Section 17 (2) of the Act, it does not authorise them to dispense with enquiry under Section 5-A.

5. The learned Special Government Pleader appearing for respondents 1 to 3 would contend that in view of urgency in forming broad-gauge line between Nagapattinam and Velanganni, they are justified in invoking the urgency clause. He further contended that proper publicity as provided under the Act and Rules were effected. According to him, Section 17(4) alone was invoked and not sub-clause (2) of Section 17, as claimed by the petitioners.

6. The learned counsel for the 4th respondent - Southern Railway, adopted the argument of learned Special Government Pleader.

7. I have carefully considered the rival submissions.

8. The counter affidavit of the District Collector, Nagapattinam and the records produced show that in G.O.Ms.No.45 Transport (I.1) Department dated 30.03.2002, the Government of Tamil Nadu issued orders of administrative sanction to initiate land acquisition proceedings under urgency clause under Section 17 (2) of the Land Acquisition Act 1 of 1984 (in short "the Act") for acquiring an extent of 27.86.0 hectares in total, which includes an extent of 9.20.0 hectares in Therkkupoigainallur Village. A

notification under Section 4(1) of the Act was approved by the Government in G.O.Ms.No.218 Transport (I.1) Department dated 24.10.2002 and it was published in the Tamil Nadu Government gazette extraordinary issue part II Sec.2 dated 28.10.2002 at pages 3 to 6. The same was published in the newspaper "Dhina Boomi" and "Dr. Namathu MGR" on 13.11.2002 and the same was also published in the locality on 15.11.2002. Draft declaration under Section 6 of the Act was approved by the Government in G.O.Ms.No.253 Transport (I.1) Department dated 29.11.2002 and published in the Tamil Nadu Government gazette extraordinary issue Part II Section 2 dated 03.12.2002 at pages 3 to 7. The draft declaration was published in the newspaper "Dr. Namathu MGR" on 12.12.2002 and in "Dhina Boomi" on 13.12.2002. The locality publication was also made on 13.12.2002. At this stage, the petitioners have filed the above writ petitions and obtained an order "not to be dispossessed" until further orders from this Court.

9. Now, I shall consider contention No.1 and 3 raised by the learned counsel for the petitioners.

10. In the 4(1) notification itself it is specifically stated that the lands specified in the schedule are needed for a public purpose, to wit for the construction of new broad-gauge railway line between Nagapattinam and Velanganni. In the same notification, it is also stated that it has become necessary to acquire the immediate possession of the lands specified in the schedule, the Governor of Tamil Nadu directed that the land be acquired under the provision of Sub-section (2) of Section 17 of the Act and it is further stated that under Sub-section (4) of Section 17 of the Act, in view of urgency, the provisions of Section 5-A of the Act shall not apply to this case. There was a long felt need for formation of broad-gauge line between the pilgrim center Velanganni and Nagapattinam. The foundation stone was laid in June, 1999 for formation of new broad-gauge railway line at the estimated cost of Rs.17 crores and the same should be completed in 18 months. In such a circumstance, in view of the need, namely to cater the tourist coming not only from all over India, but also from abroad to visit Velanganni Church, the Government of Tamil Nadu accorded permission to invoke urgency clause, namely Section 17 of the Act, by dispensing with enquiry under Section 5-A of the Act. A perusal of the entire materials, including the public purpose stated in Section 4(1) notification show that there is an urgent need and the broadgauge railway line has to be formed connecting Velanganni and Nagapattinam without further loss of time. I am satisfied that the respondents are fully justified in invoking the urgency clause for acquiring the land in question. When the concerned authority - Government, satisfies itself and decided to apply urgency provision, the same cannot be faulted with and interference by this Court is very limited. In this regard, it is relevant to note that it is settled legal position that decision on urgency is an administrative decision and is a matter of subjective satisfaction of the appropriate Government on the basis of the material available on record. The same view has been reiterated in the case of Union Bank of India vs. Praveen Gupta reported in A.I.R. 1997 S.C. 170. Accordingly, as observed earlier, the Government is fully justified in invoking the urgency provision, namely, Section 17 (2) & (4) of the Act.

11. Though learned counsel for the petitioners has argued that by referring Section 17 (2) of the Act, they cannot dispense with enquiry under Section 5-A of the Act. Inasmuch as in the same notification published in the Tamil Nadu Government gazette dated 28.10.2002, it is specifically stated, "Under sub-section (4) of Section 17 of the said Act, the Governor of Tamil Nadu hereby directs that in view of the urgency of the case, the provisions of Section 5-A of the Act shall not apply to this case," the contra argument made by the learned counsel for the petitioners is liable to be rejected. To put it clear, irrespective of the sub-section referred to in the notification as well as in the counter affidavit, the fact remains, on satisfying and in view of execution of a project, namely railway line which is a public purpose, they invoked the urgency provision, namely Section 17 of the Act, accordingly, I reject the first and last contentions of the learned counsel for the petitioners.

12. Coming to the other contention that no proper publicity was given as provided under Section 4(1) of the Act, the District Collector, Nagapattinam in his counter affidavit has specifically stated that Section 4 (1) notification was published in the Government gazette dated 28.10.2002, in two local dailies, namely "Dhina Boomi" and "Dr. Namadhu MGR" dated 13.11.2002. The notification was also published in the locality, where the land situates on 15.11.2002. First of all, there is no complaint in the affidavit complaining that those newspapers have no wide circulation in the locality. In the absence of such specific plea, the said objection cannot be countenanced. Even otherwise, it is the case of the respondents that both the newspapers, namely, "Dhina Boomi" and "Dr. Namadhu MGR" have wide circulation in the area concerned. After due publication of Section 4(1) notification, declaration under Section 6 was also published in the Tamil Nadu Government gazette on 03.12.2002; in local dailies namely, "Dina Boomi" on 13.12.2002 and in "Dr. Namathu MGR" on 12.12.2002 as well as in the locality on 13.12.2002. Therefore, the publication of Section 6 declaration has been properly effected. In this regard, it is relevant to refer the case of Ghaziabad Development Authority vs. Jan Kalyan Samiti reported in 1996 (2) S.C.C. 365, wherein their Lordships have held that the mandatory requirement of the publication of notification in the locality was dispensed with in a case where the Government had opined that the land was urgently needed under Section 17 (4) of the Act. After saying so, their Lordships further observed that the notification under Section 4(1) of the Act is not vitiated for non publication of the notification in the local newspapers.

13. Further, the following conclusion in the case of Mohan Singh vs. International Airport Authority of India reported in 1997 (9) S.C. C. 132, is also relevant.

"27. In the light of the above law, we have no hesitation to hold that though compliance with publication of the three steps required under Section 4(1) is mandatory while exercising the power of eminent domain under Section 4 (1), when the appropriate Government exercises the power under sub-section (4) of Section 17 dispensing with the enquiry under Section 5-A and directs the Collector to take possession of the land before making the award as the lands

are needed urgently either under sub-section (1) or (2) thereof, it is not mandatory to publish the notification under Section 4(1) in the newspapers and giving of notice of the substance thereof in the locality; the last of the dates of publication should not be the date for the purpose of exercising the power under Section 17(4). This interpretation of ours would sub-serve the public purpose and suppress mischief of noncompliance and seeks to elongate the public purpose, namely taking immediate possession of the land needed for the public purpose, envisaged in the notification. "

In the light of the information furnished in the counter affidavit with regard to publication in local dailies and in the locality and in view of the legal position as pointed out by the Supreme Court ( cited supra), I also reject the second contention raised by the learned counsel for the petitioners.

In the light of what is stated above, I do not find any merit in these writ petitions; accordingly, the same are dismissed. No costs. Consequently, connected WPMPs., and WVMP., are also dismissed.

Index:Yes

Internet:Yes

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