

(2013) 08 MAD CK 0300

Madras High Court

Case No: Writ Petition No. 10171 of 2013 and M.P. No. 1 of 2013

Kutti Porichan Kandy Fousy and
Ayisha Farath rep. by their Power
of Attorney Madamullathil Abdul
Naser

APPELLANT

Vs

The Special Secretary to
Government (Revenue) cum
District Magistrate Department
of Revenue and Disaster
Management Government of
Puducherry, The Member
Secretary Mahe Planning
Authority, Commissioner Mahe
Municipality and The Deputy
Tahsildar-cum-Executive
Magistrate

RESPONDENT

Date of Decision: Aug. 13, 2013

Acts Referred:

- Constitution of India, 1950 - Article 300A
- Land Acquisition Act, 1894 - Section 4(1)

Citation: (2013) 6 MLJ 722

Hon'ble Judges: K.K. Sasidharan, J

Bench: Single Bench

Advocate: K. Raja Srinivas, for the Appellant; N. Mala, AGP for Government Pleader
(Puducherry), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K.K. Sasidharan, J.

Whether it is open to the planning authority to return the application submitted by the land owner for development on the ground of pendency of proposal to acquire the land, is the core issue that arises for consideration in this writ petition.

The facts:

The petitioners are stated to be the owners of land in R.S. No. 166/17 in Pandakkal Revenue Village, Mahe. The predecessors in interest of the petitioners after obtaining possession certificate made an application before the Mahe Planning Authority for the purpose of granting planning permission to construct a compound wall. The planning authority was pleased to grant permission vide proceedings dated 1 June 2011. The property was purchased by the petitioners thereafter vide registered documents dated 23 April 2012 and 21 May 2012.

2. The petitioners wanted to construct a two storied building and for the said purpose made an application before the second respondent on 28 September 2012. The second respondent kept the application pending under the pretext that the Government was addressed as to whether any land acquisition proceeding was pending. The second respondent ultimately passed the impugned order rejecting the application for planning permission on the ground that it has been ascertained from the Taluk office that the land is proposed for acquisition for construction of a bus stand at Palloor. Feeling aggrieved by the said order, the petitioner is before this Court.

3. The Member Secretary, Mahe Planning Authority, filed a counter affidavit contending that the Government have taken steps to acquire the subject property for the purpose of constructing a bus stand at Palloor. According to the second respondent, there is an imminent need to construct a bus stand at Pandakkal Revenue Village and as such the land in question was proposed for acquisition. It was stated that in case the planning permission is granted at this stage, it would delay the construction of bus stand and the acquisition would be delayed. Accordingly the second respondent justified the impugned order.

Summary of Submissions:

4. The learned counsel for the petitioner contended that there is no land acquisition proceedings pending in respect of the suit property and as such the second respondent has no right to reject the application for planning permission. According to the learned counsel, the Government have not issued notification u/s 4(1) of the Land Acquisition Act and as such it cannot be said that the land is the subject matter of land acquisition proceedings.

5. The learned Government Pleader submitted that the Government has decided to issue a notification for acquiring the subject property for the purpose of constructing a bus stand. The notification would be issued very soon. The learned

Government Pleader further submitted that in case the petitioners are permitted to put up a building pending intimation of acquisition proceedings, it would complicate the issue.

Dates and Events:

6. This writ petition was posted before me on numerous occasions and the learned Government Pleader (Pondicherry) invariably took adjournment under the pretext that a notification would be issued within a couple of days. I have given sufficient time to produce the notification u/s 4(1) of the Land Acquisition Act. Finally I have heard the arguments in the writ petition on 10 July 2013 and judgement was reserved. Thereafter once again the matter was re-opened for further hearing and to produce the notification u/s 4(1) of the Land Acquisition Act. When the writ petition was taken up on 23 July 2013, the learned Government Pleader submitted that the notification is yet to be issued and wanted further time to produce the notification. Since this Court was considering the legality and correctness of the order passed by the second respondent, there was no point in keeping the writ petition pending for the purpose of producing the acquisition notification.

Discussion:

7. There is no dispute that the petitioners are the land owners of the property in R.S. Nos. 166/17 and 166/17A in Pandakkal Revenue Village, Mahe admeasuring 18.50 acres. The predecessor in interest of the petitioners earlier obtained possession certificate. The planning authority vide proceedings dated 1 June 2011 granted permission to put up a compound wall. The petitioners wanted to put up a commercial building after purchasing the property. The petitioners made an application on 28 September 2012 before the second respondent for planning permission. The application was kept pending for months together on the pretext

8. The second respondent ultimately rejected the planning permission application not on the ground of any technical violation but solely on the ground that the land is proposed for acquisition.

9. The only question that arises for consideration is whether the planning authority was justified in denying permission on the ground that the Government have got a proposal to acquire the land.

10. The land acquisition proceedings would commence only by issuing notification u/s 4(1) of the Land Acquisition Act. Till the notification is issued proposing to acquire the land, it cannot be said that there is a land acquisition proceeding pending with respect to a particular property. The land owners are having every right to enjoy the property till it is acquired by the Government. It is not open to the Government to come up with a contention that the property should be kept idle in view of its decision to acquire the same. In case the Government wanted lands to be acquired, earnest efforts should be taken to issue the required notification. The

Government is having every right to acquire the property either by following the normal procedure or by resorting to the urgency provisions under the Land Acquisition Act. Nobody is disputing the power of eminent domain. However, under the guise of pendency of proposal to acquire the land, it is not open to the statutory authorities to keep the application for planning permission pending or to reject the same. Land acquisition would commence only by issuing Section 4(1) notification.

11. The issue raised by the petitioner is no more *res integra* in view of the judgement of Division Bench in [Thiyagavalli Panchayathai Serntha Nochikkadu Grama Vivasayigal Pathukappu Mattrum Makkal Pothunala Sangam Vs. The Chairman, Tamil Nadu Electricity Board, Anna Salai, Chennai -2, The Inspector General of Registration, Santhome High Road, Santhome, Chennai - 28, The Joint-II Sub Registrar, Thiruppadiripuliyur, Cuddalore -2 and The District Registrar, District Registrar's Office, Cuddalore District](#) . In the said case, the Government prohibited registration of documents relating to the land in two villages on the ground that those lands are likely to be acquired. There was no notification for acquisition on the date on which the Government Order was issued. The Division Bench was pleased to set aside the Government Order holding that there is no provision empowering the Government to issue direction to the registering authority not to register any document in view of the proposal to acquire the land.

12. This Court in W.P. No. 13067 of 2011 vide dated 24 February 2012 found that the application submitted before the Puducherry Planning authority was rejected on the ground that there was a proposal for acquiring the property. The learned Judge considered the question as to whether such a proposal, which has not fructified into any notification would stand in the way of considering the application submitted by the petitioner for conversion of land and for approval of building plan in accordance with law. The learned Single Judge after following the judgement of the Division Bench quashed the order and directed the Puducherry planning authority to consider the application for planning permission on merits.

13. There is no dispute that the right to property is no more a fundamental right. However it is a constitutional right under Article 300A of the Constitution of India which provides that no person shall be deprived of his property save by authority of law. The rejection of the application for planning permission on the ground of proposal to acquire the property would result in denying the enjoyment of property by the land owner. The impugned order rejecting planning permission on the ground that the Government is having a proposal to acquire the land would offend the property right of the petitioner under Article 300A of the Constitution of India.

14. The second respondent proceeded as if by granting planning permission the land owners would get a right to nullify the land acquisition proceedings. Nothing prevented the second respondent from issuing planning permission without prejudice to the proposal to acquire the property.

15. The petitioners wanted to put up a building in spite of the knowledge that the property is proposed to be acquired for public purpose. It is for the petitioners to enjoy the land subject to the law of the land. Therefore, by granting permission no specific right would confer on the petitioners to retain the land and to avoid the land acquisition. This aspect was not considered by the second respondent. Therefore, I am inclined to set aside the impugned order.

16. The learned Government Pleader produced a copy of the notification issued u/s 4(1) of the Land Acquisition Act on 29 July 2013. By the time I have already dictated the order.

Conclusion:

17. Since the Government have already issued the notification on 24 July 2013, there is no question of quashing the impugned order. Even though as on the date on which the impugned order was issued, there was no justifiable reason to deny planning permission, there are no valid materials to sustain the order. In the result, the writ petition is dismissed. However, it is made clear that this order would not stand in the way of challenging the Land Acquisition proceedings by the petitioners. Consequently, the connected MP is closed. No costs.