

(2006) 11 MAD CK 0034

Madras High Court (Madurai Bench)

Case No: Writ Petition No. 972 of 2004 and WPMP. No. 967 of 2004

K. Vishnupriya

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Nov. 4, 2006**Acts Referred:**

- Land Acquisition Act, 1894 - Section 10, 17, 17(2), 4(1), 5A

Citation: (2007) WritLR 240**Hon'ble Judges:** P.K. Misra, J**Bench:** Single Bench**Advocate:** M. Rajaraman, for the Appellant; G. Gandhirajan, for the Respondent**Final Decision:** Dismissed

Judgement

P.K. Misra, J.

This writ petition has been filed for issuing Certiorarified Mandamus for quashing the records relating to G.O.(RT) No. 239 dated. 21.4.2004 and the declaration made in Government Gazette No. 112 dated 30.4.2004. To be precise, the petitioner is seeking for quashing the land acquisition proceedings.

2. The allegations made in the writ petition are as follows:

Petitioner is the owner of 1/3rd undivided share along with her co-sisters Mrs. Uma Devi wife of T.R.S. Vijayram and Mrs. Sumathi wife of T.R.S. Babu of the vacant land measuring 19.591/2 acres in Eliarpathi village. Such property had been acquired by a registered sale deed dated 7.1.2004 for establishing a textile mill. It is stated by the petitioner that before purchasing, she had verified from the office of the Tahsildar, Madras South that the lands are patta lands and they are not coming within the purview of any land acquisition proceeding and no notice had been issued by any Department u/s 4(1) of the Land Acquisition Act and the land was also not affected by the provisions contained in the Land Reforms Act, 1961 and the Urban Land Ceiling Act, 1978. Since the Public Works Department was constructing a canal from

Silaiman to Kambikudi, one of the land owners had filed W.P. No. 1338 of 2003 seeking for a direction against the Public Works Department and other officials not to interfere with the possession of his patta land. Subsequently, since there was apprehension that the authorities are likely to encroach upon the land of the petitioner without following the rules and regulations, the petitioner filed W.P. No. 6227 of 2004 against the State and the District Collector, Madurai and also the Chief Engineer and the Superintending Engineer of P.W.D seeking for a writ of mandamus directing those respondents not to interfere with the possession of the petitioner. The writ petition was disposed of on 15.3.2004 by observing as follows:

2. Learned Government Pleader submits that if the respondents want to make certain improvements in the property or require the property for public purpose, due process of law would be followed after putting the petitioner in notice.

3. In view of the said submission of the learned Additional Government Pleader, there is nothing more to be adjudicated in the present writ petition, except recording the statement of the learned Additional Government Pleader that the petitioner's possession would not be interfered without following due process of law.

It is further stated that thereafter neither the petitioner nor her co-sisters have been served with any notice by the respondents regarding their proposal to acquire the land belonging to the petitioner and her co-sisters. However, subsequently the petitioner and her co-sisters were served with notice dated 2.8.2004 on 25.8.2004 in Form-7 purporting to be under Sections 9(3) and 10 of the Land Acquisition Act. Thereafter, an official from the office of the third respondent came with a model consent letter and requested the petitioner to sign the same. At that stage the petitioner discovered that the property, measuring 0.70.5 hectares of land had purportedly been acquired by the third respondent for the alleged purpose of extension of Nilaiyur Channel and upon subsequent verification the petitioner learnt that the third respondent had given a letter dated 1.6.2004 purporting to be an advertisement published in Tamil daily "Namathu MGR" for acquisition of the property. It was learnt that the first respondent had approved the acquisition by G.O. No. 239 dated 21.4.2004 and declaration u/s 6 dated 30.4.2004 was published in Government Gazette No. 112. The petitioner claims that such acquisition proceedings are vitiated, mala fide and against law and have been taken in arbitrary exercise of power. The petitioner claims that still she is continuing in possession. It is further stated that the canal was not at all necessary to pass through the property of the petitioner and such canal can be diverted through poramboke lands belonging to the State without affecting the patta lands. It is further stated that there is absolutely no emergency in the matter to invoke Section 17 of the Land Acquisition Act and no reason has been mentioned for invoking such emergency clause. It has been further stated that the Gazette publication had been made in the name of the vendor of the petitioner and no notice had been given to the petitioner

enabling her to file any objection u/s 5A of the Act. It has been further claimed that the Tamil daily, wherein such publication was made, is not circulated in and around Madurai and is only a Madras edition and, therefore, the publication is not in accordance with law. A further ground is taken that in W.P. No. 6227 of 2004 the respondents had undertaken to give proper notice to the petitioner and action had been taken without even complying with such undertaking. On the basis of such allegations, the petitioner has sought for quashing the land acquisition proceedings mainly on the ground that no notice had been served and illegality has been committed in following the procedure contemplated u/s 5A of the Land Acquisition Act and there is no justification for invoking the emergency clause and further that the canal can be diverted through adjacent poramboke lands.

4. A counter affidavit has been filed on behalf of Respondent No. 2. In such counter affidavit it has been submitted that in G.O.Ms. No. 348, Public Works Department dated 29.6.1999, the Government of Tamil Nadu issued administrative sanction for the scheme of extending the Nilayur Channel from the upstream of Perungudi tank of Madurai District to Kambikudi series of Virudhunagar District to feed about 94 tanks in Madurai, Virudhunagar and Sivagangai districts which would benefit 9947 acres of land. It has been stated that the proposals were submitted to the Government for approval of notification u/s 4(1) and 6 of the Land Acquisition Act simultaneously invoking urgency clause during October 2002. The Government of Tamil Nadu have approved the notification u/s 4(1) invoking urgency clause u/s 17(2) of the Land Acquisition Act in respect of 20 cases out of which award had been passed in respect of 13 cases and further action was being taken for the remaining cases. Notification u/s 4(1) in respect of the disputed land had been approved by G.O.Ms. No. 72, Public Works Department, dated 26.2.2004, which was subsequently published in Government Gazette and Tamil dailies and substance of the notification had also been published. Declaration u/s 6 of the Act had been approved by the Government on 21.4.2004 and the same has been published on 30.4.2004 in the Government Gazette and thereafter in the newspapers. It is further indicated that as per the observation of the High Court in W.P. No. 6227 of 2004, notice u/s 9(1) of the Act had been sent in the name of the petitioner. The rules have been followed and there has been no violation of any of the provision. It has been further indicated that the lands have been acquired by invoking the urgency clause for which proposal had been sent on 6.8.2002. The petitioner purchased the land only on 7.1.2004. The name of the vendor, who sold the property to the petitioner, has been notified in 4(1) notification and the purchaser had never approached the officials to include her name as the land owner. Importance of the scheme had been projected in the counter and it has been submitted that since it is an irrigation project, the Government has invoked the urgency clause and there is no illegality.

5. Learned Counsel appearing for the petitioner has submitted that in view of the observation made by the High Court in the earlier W.P. No. 6227 of 2004, the respondents should have issued notice to the petitioner before taking any action

relating to acquisition of the land.

6. A perusal of the order passed by the High Court on the earlier occasion indicates that the effect of the undertaking was that the respondents would not take any steps to acquire the land for public purpose except by following the due process of law and the petitioner would be given necessary notice. By no stretch of imagination it can be construed that the Government had agreed to forego its right to acquire the land in accordance with the provisions contained in the Land Acquisition Act. It is of course true that it was stated that notice would be given, but in the context of things it must be understood that notice as contemplated in law is required to be given at the proper stage.

7. In [Chameli Singh and others etc. Vs. State of U.P. and another](#), it was observed in paragraphs 3 and 16 as below:

3. It is settled law that the opinion of urgency formed by the appropriate Government to take immediate possession is a subjective conclusion based on the material before it and it is entitled to great weight unless, it is vitiated by malafides or colourable exercise of power. Article 25(1) of the Universal Declaration of Human Rights declares that "every one has the right to standard of living adequate for the health and well-being of himself and his family including food, clothing, housing, medical care and necessary social services." Article 11(1) of the International Covenant on Economic, Social and. Cultural Rights, 1966 laid down the State Parties to the Covenant recognise "the right to every one to an adequate standard of living for himself and for his family including food, clothing, housing and to the continuous improvement of living condition." The State parties will take appropriate steps to ensure realisation of this right. In [P.G. Gupta Vs. State of Gujarat and Others](#), a Bench of three Judges of this Court considering the mandate of human right to shelter read it into Article 19(1)(e) and Article 21 of the Constitution of India to guarantee right to residence and settlement. Protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life the Preamble to the Indian Constitution assures to every citizen social and economic justice and equity of status and of opportunity and dignity of people so as to fasten fraternity among all sections of society in an integrated Bharat. Article 39(b) enjoins the State that ownership and control of the material resources of the community are so distributed as to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequality in income and endeavour to eliminate inequality in status. Article 46 enjoins the- State to promote with special care social, economic and educational interests of the weaker sections of the society, in particular, Scheduled Castes and Scheduled Tribes. Right to social and economic justice conjointly commingles with right to shelter as an inseparable component for meaningful right to life. It was, therefore, held that right to residence and settlement is a fundamental right under Article 19(1)(e) and it is a facet of inseparable meaningful right to life under Article

21. Food, shelter and clothing are minimal human rights. The State has undertaken as its economic policy of planned development of massive housing schemes. The right to allotment of houses constructed by the Housing Board to the weaker sections, lower income group people under Lower Income Group Scheme, was held to be constitutional strategy, an economic programme undertaken by the State and the weaker sections are entitled to allotment as per the scheme.

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16. It is true that there was pre-notification and post-notification delay on the part of the officers to finalise and publish the notification. But those facts were present before the Government when it invoked urgency clause and dispensed with inquiry u/s 5A. As held by this Court, the delay by itself accelerates the urgency. Larger the delay, greater be the urgency....

8. In [Union of India and others Vs. Praveen Gupta and others](#), it was observed in paragraph 9 as under:

9. It is now 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 therefore, there was no need to pass any reasoned order to reach the conclusion that there is urgency so as to dispense with the enquiry u/s 5A in exercise of power u/s 17(4)....

9. In [First Land Acquisition Collector and Others Vs. Nirodhi Prakash Gangoli and Another](#), while considering the applicability of Section 17(1) and (4) of the Land Acquisition Act, the Supreme Court observed:

4. ... Bearing in mind the aforesaid principles, if the circumstances of the case in hand are examined it would appear that the premises in question was required for the students of National Medical College, Calcutta and the notification issued in December 1982 had been quashed by the Court and the subsequent notification issued on 25-2-1994 also had been quashed by the Court. It is only thereafter the notification was issued under Sections 4(1) and 17(4) of the Act on 29-11-1994 which came up for consideration before the High Court. Apart from the fact that there had already been considerable delay in acquiring the premises in question on account of the intervention by Courts, the premises was badly need for the occupation of the students of National Medical College, Calcutta. Thus, existence of urgency was writ large on the facts of the case and therefore, said exercise of power in the case in hand, cannot be interfered with by a Court of law on a conclusion that there did not exist any emergency. The conclusion of the Division Bench of Calcutta High Court, therefore, is unsustainable.

10. In the present case, the Government decided to invoke emergency clause and, therefore, there was simultaneous publication of notification u/s 4(1) and declaration u/s 6 dispensing with the enquiry u/s 5A of the Land Acquisition Act.

Undoubtedly in law the Government is entitled to invoke such emergency provision available under the Land Acquisition Act. Except baldly stating that emergency clause has been invoked without any reason, the petitioner has not buttressed her submission as to why the emergency clause could not have been invoked. It is no doubt true that the proposal for acquiring the land has been initiated long back, in the year 2002 or even before that. However, merely because the proposal had remained pending since long, it cannot be said that there was no necessity to invoke the emergency clause.

11. Even though it has been asserted by the petitioner that the land acquisition proceedings are vitiated by malafides, except such bald assertion no material worth the name is forthcoming to substantiate such allegation. There cannot be any doubt that the purpose for which the land is sought to be acquired is a public purpose. Keeping in view the fact that the land was required for the purpose of digging a channel to connect some irrigation sources, it cannot be said that there was no urgency.

12. It is of course true that the petitioner at the stage when she purchased the land was given to understand that the land was not under any acquisition. However, it does not preclude the Government subsequently to decide that the land would be acquired for public purpose in accordance with the procedure laid down under law. The fact that the petitioner wanted to use the land for commercial purpose is also not very relevant. Similarly the vague assertion of the petitioner that the canal could have been dug in some poramboke land belonging to the State is also not worthy of acceptance in the absence of any detail whatsoever about such poramboke lands. While considering the question of digging a canal, obviously certain scientific and technical aspects must have been taken into account and in the absence of any specific challenge it has to be presumed that the officials must have undertaken the proper survey work and decided to dig the channel in a particular area. Ordinarily those are matters best left to the specialists or experts rather than the Court.

13. Learned Counsel for the petitioner has placed reliance upon several decisions of the Madras High Court to the effect that notice relating to notification u/s 4(1) should be published in the newspapers having wide circulation in the area. All the decisions cited by the learned Counsel for the petitioner relate to acquisition proceedings wherein the normal procedure of issuance of notification followed by enquiry u/s 5A of the Land Acquisition Act were followed. Since the notice relating to 4(1) had not been published in the newspaper having wide circulation, it was held in those cases that the land owner was deprived of opportunity of filing objection and consequently such owner lost an opportunity of being heard as contemplated u/s 5A of the Land Acquisition Act.

I do not think the ratio of such decisions can be made applicable to the present case, wherein the enquiry u/s 5A itself is dispensed with by invoking the urgency clause envisaged u/s 17(1) read with 17(4) of the Land Acquisition Act.

14. For the aforesaid reasons, I do not find any scope to interfere with the acquisition proceedings and the writ petition is accordingly dismissed. No costs. Consequently, the connected WPMP. No. 967 of 2004 is closed.