

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.03.2016

Date of Reserving the Order	Date of Pronouncing the Order
18.02.2016	03.03.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.Nos.34347 & 15754 of 2012,
W.P.No.1358 of 2013

Mrs.Mullaikodi ... Petitioner in W.P.No.34347/2012

Antoine Antony Fathima Nathan
... Petitioner in W.P.No.15754/2012

Mrs.S.G.Metha ... Petitioner in W.P.No.1358/2013

Vs

1.Special Secretary to Govt.,
Department of Revenue & Disaster Management
Government of Puducherry.

2.Sub Collector (Revenue) cum
Land Acquisition Officer North,
Puducherry. ... Respondents in all W.Ps.

Common Prayer :- Petitions filed under Article 226 of the Constitution of India praying to issue Writ of Ceritorari, to call for the records relating to the respondents in relation to proceedings of the Section 4(1) notification in G.O. (Misc) No.26, dated 28.08.2009 and consequent Section 6 declaration issued in G.O.Ms.No.15, dated 28.05.2010 and the entire proceedings of award passed in No.657/DCR(N)/LA/U/2007, dated 05.10.2012 and quash the same for the reason that the entire proceedings for the acquisition of land shall lapse by virtue of 11-A of the Land Acquisition Act, 1854.

For petitioner .. Mr.K.Sukumaran

For Respondents .. Mr.M.Govindaraj G.P., (Pondy)

COMMON ORDER

In all these three Writ Petitions, challenge is to the land acquisition proceedings initiated by the respondents acquiring the lands owned by the petitioners for the purpose of establishment of Coir Growth Centre/coir village in Puducherry.

2. The petitioner in W.P.No.15754 of 2012, is the owner of the land in Survey No.197/1; the petitioner in W.P.No.34347 of 2012, owner of the land in Survey No.200/2; and petitioner in W.P.No.1358 of 2013 owner of the land in Survey No.196/2. The notification under Section 4(1) of the Land Acquisition Act, 1894, (Act), was issued by G.O.Ms.No.26, dated 28.08.2009, notice of enquiry under Section 5A was issued on 28.10.2009 and the declaration under Section 6 was issued in G.O.Ms.No.15, dated 28.05.2010, and the award was passed on 05.10.2012. After the land owners received the notice of enquiry under Section 5A of the Act, the land owners submitted their objection and according to them, the same was not considered.

3. In so far as W.P.No.34347 of 2012, it is submitted that the land acquisition proceedings, were proceeded in the name of a dead person namely Pavadai Nadar and Thangavel Nadar, who died on 11.01.1978 and 31.08.1984 respectively. Therefore, it is contended that the land acquisition proceedings, which were initiated against dead persons and continued till passing of the award, are illegal.

4. In W.P.No.1358 of 2013, it is contended that the petitioner S.G.Metha purchased the property on 26.10.2006, whereas the notification under Section 4(1) was issued in the name of Poongavana gounder, who ceased to be the owner on and after 1992. Further, it is submitted that the award was not passed in accordance with Section 11A of the Act and that these facts have been admitted in the counter affidavit filed in W.P.No.1358 of 2013.

5. Mr.K.Sukumaran, learned counsel appearing for the petitioners submitted that though the petitioners have raised several grounds challenging the acquisition proceedings, the first ground of challenge is that the notification under Section 4(1) of the Act was not published in the manner laid down under the statute and therefore, the entire land acquisition proceedings stands vitiated. It is submitted that there are other points which are favourable to the petitioner which can be urged before this Court, if this Court is not satisfied with the first contention.

6. Nevertheless, this Court heard the learned counsel on

the other contentions as well such as non-service of notice on the landowner, non-mentioning of the name of the landowner in the notification under Section 4(1) of the Act, failure to follow the procedure while conducting enquiry under Section 5A of the Act, failure to adhere to the manner in which the last of such publication has to be done under Section 6 of the Act and serious discrepancy in the file notings with regard to the award, which is said to have been passed, as the approval was received by the Deputy Tahsildar only on 15.06.2012 and the award could not have been passed one day prior i.e., on 14.06.2012 and from the perusal of the original files based on the permission granted by this Court shows that the date 14.06.2012, has been written in the separate ink, which shows that the authorities have attempted to show as if the award was passed in accordance with Section 11A of the Act.

7. Mr.M.Govindaraj, learned Government Pleader appearing for the respondents submitted that the procedure under the Act has been properly adhered to and the manner and method of publication of the notification has been scrupulously followed. Referring to the counter affidavit filed by the second respondent and the common reply affidavit filed by the second respondent, it is submitted that the modes of publication prescribed under Section 4(1) of the Act are no doubt mandatory, but the order of publication of the various modes is not mandatory and as such publication of Section 4(1) notification in the official gazette as the last mode of publication is permissible under the provisions of the Act. Further, it is submitted that the period of two years for the purpose of computing the time limit under Section 11A is to be calculated from the last day of such publication and giving of such public notice and in the instant cases, the last date of publication of Section 6 declaration is 22.06.2010 by affixure and the award passed on 14.06.2012, is well within the period of two years. On the above grounds, the learned Government Pleader sought to sustain the acquisition proceedings.

8. After hearing the learned counsels appearing for the parties and perusing the material papers, the first issue to be considered is as to whether the publication of the notification, under Section 4(1) of the Act has been done as mandated under the statute.

9. The law on the subject is well settled and there are several decisions on the point some of which were referred to by this Court in the case of M.Rajagopal and Ors., vs. Government of Tamil Nadu and Anr., reported in 1992-2-MLJ-404. The challenge in the said Writ Petition, where to proceedings initiated under the Land Acquisition Act and the

primary ground of challenge was that unless the decision to acquire a land is notified in the Government Gazette by an appropriate notification, the proceedings for acquisition cannot be said to have been initiated and the decision would remain a paper decision. Following the decision of the Hon'ble Supreme Court in the case of Collector (District Magistrate) vs. Raja Ram Jaiswal reported in (1985) 3 SCC 1 and other cases on the point, it was held as follows:-

4. As both these matters arise out of the same judgment, they were heard together and are being disposed of by a common judgment. It may be mentioned that connected Civil Appeal No. 2437 of 1981 was to be taken up for hearing after the hearing concluded in the present appeal and therefore, the judgment in this matter was postponed because the observations in one were likely to have some impact on the disposal on merits of the contentions in the cognate appeal. Though very much delayed by circumstances beyond our control, few days back the hearing in the cognate appeal is over and therefore, both the appeals can now be disposed of, though by separate judgments.

7. Petitioner Jaiswal along with the members of his family purchased land bearing Plot No. 26 with a building thereon admeasuring 2978 sq. yds. situated at K.P. Kakkar Road in March 1970. The petitioner wanted to build a sound-proof air-conditioned cinema theatre on the Plot No. 26 purchased by him. The plan for the proposed theatre was sanctioned both by the District Magistrate and the local municipality in December 1970. It may be recalled here that the judgment of this Court holding Hindi Sahitya Sammelan Act unconstitutional was rendered on February 23, 1971. The Sammelan was wholly opposed to the construction of a theatre near its campus as in its view a theatre and a research-cum-study centre can go ill together. Therefore, when the petitioner applied for a certificate of approval under Rule 3 read with Rule 7(2) of the U.P. Cinematograph Rules, 1951 for construction of a cinema theatre, authorities of the Sammelan raised a storm of protest, sometimes peaceful occasionally likely to turn violent impelling authorities to impose restrictive orders under Section 144, Code of Criminal Procedure. Sammelan also submitted a long memorandum setting out its objections with a view to persuading the authorities not to grant a certificate of approval for construction of a cinema building. Overruling the

objections the District Magistrate, the Licensing Authority under the U.P. Cinemas (Regulation) Act, 1955 granted the requisite certificate of approval under Rule 3 which would in law imply that having regard to the provisions of the 1955 Act and 1951 Rules, there was no legal impediment to constructing a cinema theatre on Plot No. 26. Thereupon, Secretary of the Sammelan addressed a letter to the Chief Minister of State of U.P. complaining against the grant of the permission by the District Magistrate and requesting the Chief Minister to cancel the permission. Ultimately, having failed to thwart the grant of certificate of approval, the Sammelan wrote a letter on October 13, 1971 for acquiring land bearing Plot No. 26. It may be recalled that the certificate of approval for constructing a cinema building was granted by the District Magistrate on March 24, 1972. The Sammelan addressed various letters to various authorities including the then Prime Minister of India requesting them to cancel the certificate of approval granted to the petitioner. Ultimately on January 31, 1974, a notification under Section 4(1) of the Land Acquisition Act, 1894 was issued stating therein that "the land bearing Plot No. 26 admeasuring approximately 2865 sq. yds. was needed for a public purpose namely for extension of Hindi Sangrahalaya of Hindi Sahitya Sammelan, Prayag". This notification was published in the U.P. Government Gazette on February 9, 1974. A notice under Section 4(1) bearing the same date was served upon the petitioner as also the same was published in the locality. The petitioner challenged the validity of this notification on diverse grounds in Writ Petition No. 1932 of 1974 and as a measure of interim relief, the High Court stayed further proceeding that may be taken to acquire the land. In the meantime by notification dated February 6, 1975, the earlier notification under Section 4(1) dated January 31, 1974 was cancelled and a fresh notification was issued to acquire "land bearing Plot No. 62 admeasuring 8265 sq. yds. for the earlier mentioned public purpose". Consequently the writ petition in which the validity of the earlier notification was questioned was disposed of as infructuous. The second notification dated February 6, 1975 was published in the U.P. Gazette on February 15, 1975. A notice dated March 6, 1975 under Section 5-A of the Land Acquisition Act was served upon the petitioner inviting him to file his objection, if there be any,

against the proposed acquisition. The petitioner filed detailed objections on March 8, 1975 inter alia contending that the acquisition is for a company and the pre-requisite for acquisition for a company having not been carried out, the acquisition is bad in law. It was also contended that the petitioner is not the owner of Plot No. 62 admeasuring 8265 sq. yds. Promptly on March 13, 1975, a corrigendum was issued and published in the Gazette on March 22, 1975 correcting the notification dated February 6, 1975 to read that instead of Plot No. 62, Plot No. 26 be read and instead of area 5265 sq. yds., 2865 sq. yds. be read. In between the issue of the notification and the corrigendum, the petitioner filed Writ Petition 3174 of 1975 questioning the validity of the notification dated February 6, 1975. The High Court struck down the notification as invalid and during the pendency of the writ petition in the High Court, further continuance of the acquisition proceedings were stayed.

8. If the petitioner questioned the validity of the notification on ground of mala fides, he ought to have joined Sammelan as respondent. Having failed to implead a proper party, he behaved curiously in opposing the application of the Sammelan for being impleaded as a party. The High Court was in error in rejecting the application. Therefore, when the Sammelan moved an application for intervention under Order 20 Rule 3 of the Supreme Court Rules, 1966, we granted the same and Mr S.N. Kacker, learned counsel appeared for the Sammelan at the hearing of these appeals and addressed his oral arguments and submitted written submissions.

10. In terms of the above decision, the notification in the gazette should be published first and then only paper publication should be made and Section 4(1) itself has given the modes of publication in seriatum namely, the first publication should be in the official gazette, the second publication to be two daily newspapers and the third by way of public notice of the substance of the said notification at the convenient place. This being the legal position, the cases on hand have to be tested as to whether they satisfy the same. For doing so, we need not labour much, since the respondents in their counter affidavit have clearly set out the dates on which the notification came to be issued/published under the three modes contemplated.

11. It is not in dispute that the Government Order under Section 4(1) was issued on 28.08.2009 and the same was published in the gazette on 15.09.2009 and such publication was the last mode of publication. This has been candidly admitted in paragraph 4 of the counter affidavit filed by the second respondent, dated 21.08.2014, stating that the notification under Section 4(1) of the Act, has been published through four modes as mandatory under the Act and the publication in the Government Gazette No.37, was made on 15.09.2009 and it is the last mode of publication. Thus applying the law laid down in the aforementioned decision, it has to be necessarily held that the notification issued under Section 4(1) of the Act is vitiated and has to be quashed. Similarly, in so far as the declaration issued under Section 6 in G.O.Ms.No.15, dated 25.08.2010 in paragraph 9 of the counter affidavit, it has been admitted that the declaration was published under four modes and before the declaration could be published in the Government gazette, they were published in the newspapers on 01.06.2010, whereas the declaration was published in the Government gazette No.24, only on 15.06.2010. Therefore, the declaration issued under Section 6 also stands vitiated.

12. Further, one more point argued by the learned counsel for the petitioner is that the publication in the locality was not made in accordance with the statute. In this regard, the learned counsel referred to the decision of this Court in the case of A.Vembuli Naicker vs. State of Tamil Nadu & Ors., reported in 1992-1-MLJ-26, wherein it has been held as follows:-

6. In so far as the second contention that public notice of the substance of the 4(1) Notification was not given in the locality as contemplated under Rule 1 of the Rules framed under Section 55 of the Act. Learned Government Advocate represented that the public notice of the substance of the 4(1) Notification was given in the locality by beat of tom-tom as required under the rules on 1.10.1985. In this context, it is relevant to consider the Rule 1 of the Rules which is as follows:

1. Issue and publication of notice by the Collector - Immediately after the publication of the notification under Section 4(1), the Collector shall issue a notice stating that the land is needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector within thirty days after the issue of the Notification, a statement in writing of their objection, if any, to the proposed acquisition. This notice should be published

at convenient places in the said locality, and copies thereof fixed up in the offices of the Collector, the Tahsildar, and in the nearest police station.

The above rule clearly prescribed that the notice should be published at convenient places in the said locality and copies thereof should be fixed up in the offices of the Collector the Tahsildar, and in the nearest Police Station. It is obligatory on the part of the respondents not only to see that the notice is published in the convenient places in the said locality but also to see that copies thereof are affixed in the offices of the Collector, the Tahsildar and in the nearest Police Station. The learned Counsel for the writ petitioner contended that mere publication of the Notification is not suffice but notice should be published at convenient places in the locality and copies thereof should be fixed up in the offices of the Collector, the Tahsildar and in the nearest Police Station and that is mandatory and failure to do so, vitiates the acquisition proceedings. In this context, the learned Counsel for the petitioner referred to the decision of a Division Bench of this Court in Valleeeswarar temple, Nerkundram represented by sole trustee Kasiv-iswanathan v. The State of Tamil Nadu represented by the Secretary to Government Housing and Urban Development and Anr. (1990)2 M.L.J. 142, in which it was held as under:

Mr. A. Sivaji, learned Counsel for the appellant, covets the quashing of the very notification under Section 4(1) of the Act and for this purpose, he advances the point that as enjoined by Section 4(1) of the Act and Rule 1 of the Tamil Nadu Rules under the Act, there was no publication of the substance of the notification under Section 4(1) of the Act, point to the above effect has been taken in the affidavit filed in support of the writ petition. But, this point has not been adjudicated upon by the learned single Judge. That the provisions of Section 4(1) of the Act and Rule 1 of the Tamil Nadu Rules under the Act with regard to publication of the substance of the notification under Section 4(1) of the Act, are mandatory in nature and non-compliance with them will vitiate the entire acquisition proceedings, is a proposition well settled,

which cannot permit any disputation. The respondents have not cared to file any counter affidavit rebutting the above contention of the appellant, based on violation of the mandatory provisions of law, either during the pendency of the writ petition or during the pendency of the writ appeal. Mr. K. Ravi Rajapandian, learned Additional Government Pleader (Writs), is also not in a position to put forth any voice of rebuttal supported by records in the course of his submissions, over this aspect. The result is, here we find a case where the mandate of law has been breached and the appellant must have the relief of quashing the Notification under Section 4(1) of the Act as coveted through its learned Counsel.

It is clear from the above decision that the procedure prescribed under Rule (1) of its rules framed under Section 55 of the Act for giving public notice of the substance of the 4(1) Notification is mandatory and failure to follow the procedure will vitiate the entire proceedings. In the instant case, except the averments that public notice of the substance of the notification under Section 4(1) of the Act publication was given in the locality by beat of tom-tom under rules on 1.10.1985, there is nothing on record to show that the respondent has followed the prescribed procedure for giving public notice of the substance of the Notification in the locality viz., publication of the notice at convenient places in the said locality, and affixing copies thereof in the offices of the Collector, the Tahsildar, and in the nearest Police Station. Having regard to the aforesaid peculiar circumstances of the case, the impugned proceedings are liable to be quashed.

7. That apart, the contention of the learned Counsel for the petitioner is to the effect that the procedure prescribed in Rule 3(b) of the Rules has not been followed in the present case while holding enquiry under Section 5-A of the Act and that the petitioner had not received the views of the requisition department. But according to the learned Government Advocate, the views of the requisition department were communicated to the petitioner, vide RC/58/4 dated 30.4.1986. The learned Counsel for the petitioner disputes about the factum of the receipt of the views by the writ petitioner. The learned Government Advocate is not in a position to

substantiate his plea that the views of the requisition department were communicated to the petitioner as alleged in the counter-affidavit. On this ground also, the proceedings are liable to be quashed.

8. With reference to the contention that the publication of the declaration under Section 6 of the Act was made beyond a period of one year from the date of publication of the Section 4(1) Notification. In the instant case, though the Section 4(1) Notification was published on 25.9.1985, the publication of declaration under Section 6 of the Act was made only on 29.9.1986 admittedly beyond a period of one year. The learned Counsel for the petitioner contended, that in view of the fact that the due publication of the substance of the notification was not published as contemplated as per Rule 1 of the Rules framed under Section 55 of the Act, the period of one year for publication of the declaration under Section 6 of the Act, should be computed from the date of publication of the Section 4(1) Notification in the Government Gazette. Since the declaration under Section 6 of the Act was published beyond the period of one year from the date of the publication of Section 4(1) Notification in the instant case, the proceedings in so far as its relates to the petitioner's lands are concerned are vitiated.

13. The counter affidavit does not spell out the manner in which the local publication was effected and it has been admitted that the local publication was done only by public affixure and the other procedure required have not been followed. Further, more the award could not have been published on 14.06.2012, as it has been admitted by the Deputy Tashildar that approval of the award was only granted on 15.06.2012. This is sufficient to hold that there was no valid award and it appears to have stated to have been published on 14.06.2012, to cover up the lapse. This is also evident from the original files. Thus, there no valid award in the eye of law.

14. Hence, for all the above reasons, the entire acquisition proceedings initiated by the respondents are vitiated for non-adherence to the mandatory provision stipulated under the Act with regard to the publication of the notification and the declaration.

15. In the light of the above finding, the other subsidiary contentions raised by the petitioner need not be gone into. Accordingly, the Writ Petitions are allowed and the impugned

acquisition proceedings are quashed. No costs. Consequently,
connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.Special Secretary to Govt.,
Department of Revenue & Disaster Management
Government of Puducherry.
- 2.Sub Collector (Revenue) cum
Land Acquisition Officer North,
Puducherry.
- +1 cc to Government Pleader cum Public Prosecutor for
Pondicherry, sr.13865
- +3 cc's to M/s.K.Sukumaran, Advocate, sr.13847

W.P.Nos.34347 & 15754 of 2012,
W.P.No.1358 of 2013

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