

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.1.2005

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ
and
THE HONOURABLE MR.JUSTICE T.V.MASILAMANI

WRIT APPEAL Nos.1640, 2653,2654 of 2001 and Writ Petition
Nos.23316 of 2001, 2277, 39618 of 2002, 12787 of 2003,
and

C.M.P.No.14180 of 2001 and W.A.M.P.Nos.20147, 20148 and 35006 of
and 37007 of 2002.

Union of India rep. By the
Defence Estate Officer,
Ministry of Defence,
Madras Circle,306, Annasalai,
Teynampet Chennai-18.

.. Appellant in WA Nos.1640, 2653
and 2654/2001, and 5th Respondent in
Wps 23316/2001, 2277 and 39618/2002
and WP 12787/2003.

Tmt. D.Meenakshi .. Petitioner in W.P.23316 of 2001

P.Kumarasamy Gounder .. Petitioner in W.P.2277 of 2002

M.Gowdhaman .. Petitioner in W.P.39618/2002

Flt.Lt.M.viswanathan .. Petitioner in W.P.12787/2003

Vs.

1.A.N.Natchimuthu. .. Ist respondent in W.A.No.1640/2001

2.Smt.R.Annapurani .. Ist respondent in W.A.No.2653/2001

3.Smt.S.Meena Sundaram.. Ist respondent in W.A.No.2654/2001

4.The Secretary to Government of
Tamil Nadu, Public Department
(Military), Fort St. George,
Chennai-9.

2nd Respondent in WAs 1640, 2653 and
2654 2001 and 1st respondent in WPs
23316/2001, 2277 and 39618/2002 and
12787/2003

5.The District Collector,
Coimbatore.

3rd Respondent in WA 1640/2001, and
2nd respondent in WPs 23316/2001,
2277, 39618/2002, and 12787/2003.

6.Land Acquisition Officer &
Assistant Collector,
Tiruppur.

4th Respondent in WA 1640/2001; 3rd
Respondent in WA 2653 and 2654/2001;
and WPs 23316/2001, 2277, 39618/2002
and 12787/2003

7.The Board of Officer,
Land Acquisition,
No.43 wing,
Air Force Station,
Sulur, Kangayampalayam Post
Coimbatore District.

4th Respondent in WPs 23316/2001,
2277, 39618/2002 and 12787/2003.

Writ Appeals under Clause 15 of Letters Patent and the
Writ Petitions under Article 226 of the constitution of India as
stated therein.

Mr.K.Veeraraghavan, ACGSC For Appellant in all the
W.As., and for R5 in WPs
2277,39618/2002 and
12787/2003

Mr.M.Radhakrishnan For Petitioner in all
the W.Ps.

Mr.M.Mahalingam
GA For RR 2 to 4
in W.A.1640/2001, RR 2 and
3 in WAS 2653,2654/2001
and RR 1 to 3 in all the
W.Ps.

Mr.K.Sridhar
SCGC For R5 in WP 23316/2001

No Appearance For R4 in all the WPs
For R1 in all the WAS

COMMON JUDGMENT

V.KANAGARAJ, J

The above Writ Appeals have been filed by the appellant
praying to set aside the Order of the learned single Judges of
this Court dated 23.4.2001 made in W.P.No.19123 of 1998 and the
common order of the learned single Judge of this Court dated
16.8.2001 made in W.P.Nos. 1915 and 1916 of 2001 thereby allowing
the above Writ Petitions.

Writ Petitions 23316 of 2001, 2277 and 39618 of 2002 and
12787 of 2003 have been filed praying to issue Writs of
Certiorari to call for the records in G.O.Ms.No.690 Public
(Military) dated 24th June 1997 and in G.O.Ms.No.1653, Public
(Military) dated 9th October 1998 issued by the first respondent
and quash the same so far as they relate to the lands in
S.F.Nos.334/4A and 345/1, Kadambadi Village, Palladam Taluk.

2. Since the subject matters concerned with the above Writ Appeals and the Writ Petitions are the lands forming part of one and the same village and since the causes of action have arisen from out of one and the same Land Acquisition Proceeding taken out by the Government of Tamil Nadu through its Land Acquisition Officer and Assistant Collector, Tiruppur pursuant to the issuance of Notification dated 20.6.1997 and 24.6.1997 respectively, under Section 4(1) of the Act, all the above matters are taken up for common hearing and for delivering a common judgment.

3. Tracing the history of the above Writ Appeals and the Writ Petitions coming to be filed before this Court, what comes to be known is that the first respondent in the Writ Appeal Nos. 1640/2001, 2653 and 2654/2001 viz., A.N.Natchimuthu, Smt.R.Annapurani and Smt.S.Meena Sundaram respectively have filed the Writ Petition Nos.19123 of 1998, 915 and 916 of 2001 against the appellant herein and the other respondents on the file of this Court, praying to issue a Writ of Certiorari to call for the records in G.O.Ms.No.690 Public (Military) dated 24th June 1997 and in G.O.Ms.No.1653, Public (Military) dated 9th October 1998 issued by the first respondent and quash the same so far as they relate to S.F.Nos.334/4A and 345/1 etc.,, situate in Kadambadi Village, Palladam Taluk.

4. The contentions of the petitioners are that they are the absolute owners of the said lands and they are in possession and enjoyment of the same; that the first respondent issued a notification under Section 4(1) of the Act for acquiring the lands along with other lands for the formation of Married Staff Accommodation of Indian Air Force, Kadambadi Village in G.O.Ms.No.690 Public (Military) dated 24.6.1997; that the same was published in the Tamil Nadu Government Gazette and the local dailies respectively on 9.7.1997 and 13.7.1997; that however, the petitioners names were not found in spite of the changes having been made in the Revenue Records; that the said notification was not served on the petitioners as contemplated in the said Act; that when the petitioners came to know about the acquisition proceedings, they sent their objections on 11.9.1997 to the third respondent by Registered Post; that the third respondent has issued a Form 3A notice dated 17.10.1997 calling for the objections further notifying that the enquiry would be conducted on 10.11.1997, but even before the said communication the petitioners had put forth their objections as early as on 11.9.1997; that the third respondent without considering their objections sent his report on 6.1.1998 recommending for the acquisition of the entire lands except the land in S.F.No.345/2 measuring about 10 cents; that on the basis of the report of the third respondent, the first respondent made a declaration under Section 6 of the said Act in G.O.Ms.No.1653 Public (Military) on 9.10.1998. On such averments, the petitioners have come forward to file the above Writ Petitions.

5. In the counter affidavit filed on behalf of the respondent, besides generally denying the allegations of the petition, they would further submit that the lands in S.F.No.333/1A, etc., measuring an extent of 18.34.5 hectares in Kadambadi Village of Palladam Taluk has been proposed for land acquisition under the Land Acquisition Act 1894; that 4(1) proposals were sent to the Government and the same were approved by the Government in their G.O.Ms.No.690, Public (Military) Department, dated 24.6.1997 and the same was published in the Government Gazette and in the Tamil dailies circulating in the locality and the substance of the notification was published in the locality on 13.10.1997; that the 5-A enquiry proceeding was signed on 12.10.1997 and the same was also published by beat of Tom-Tom in the village, in the Notice Board of Land Acquisition Officer, Taluk Office, Registrar Office and the Village Office; that after observing the usual formalities, 5A enquiry was conducted on 10.11.1997; that the declaration proposals under Section 6 of the Act were sent to the Government and the same was approved in their G.O.Ms.No.1653, Public (Military) Department, dated 9.10.1998 and the same was published in the Government Gazette and in the dailies having circulation in the locality on 14.10.1998 and in the locality on 28.10.1998; that only after the publication of the draft declaration under Section 6 of the Act, the land owners have filed the above writ petitions before this Court. On such averments the respondent has prayed to dismiss the above Writ Petitions with costs.

6. It is the case of the petitioners in all the above Writ Petitions and the first respondents in the above Writ Appeals that Section 4 of the Land Acquisition Act was amended under Act 16 of 1997 which came into force from 16.7.1997 onwards, according to which the last publication should have been made at least within 60 days from the date of amendment.

7. Heard the learned counsel for the appellants and the learned counsel appearing for the respondents as well and the materials placed on record have also been perused.

8. The learned counsel appearing for the petitioners in all the above Writ Petitions and the first respondent in the above Writ Appeals would submit that the publication in the locality should have been effected within 60 days from the date of 4(1) notification and since admittedly the same had not been done in these cases, the publication of the notification under Section 4 (1) of the Act cannot be sustained.

9. On the contrary, it would be argued on the part of the appellant and the learned Government Advocate appearing on behalf of the State to the effect that the amendment to Section 4 of the Act came into force later to the issuance of the 4(1) Notification regarding the acquisition proceedings of these cases and therefore, the limitation of 60 days as contemplated under the amendment to Section 4 of the Act is not applicable to the cases in hand and even in calculating the 60 days from the date of the publication in the locality is not correct and therefore,

according to the appellants and the respondent/Government in the Writ Petitions since 4(1) notification in these cases having been made respectively as on 20.6.1997 and 24.6.1997 much earlier to the amendment to Section 4 of the Act coming into being which was on 16.7.1997, the issuance of notification under Section 4(1) dated 20.6.1997 and 24.6.1997 respectively being crucial for decision, the same is very well valid under law and hence would pray for allowing the above Writ Appeals setting aside the orders of the single Judges of this Court and for dismissal of the above Writ Petitions.

10. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, since it is clear that the amendment Act came into force on 16.7.1997 whereas the Section 4(1) notification in this case was published on 24.6.1997, the provisions of the said amendment Act would not apply to the 4(1) notification issued in the cases and since no retrospective effect was given to the amendment Act. The very case decided by the learned single Judge of this Court as per the order dated 25.10.2000 in W.P.Nos.17417 and 17418 of 2000 since being not on the right line, and since the same was followed in the orders impugned in the Writ Appeals above, they become liable only to be set aside.

11. The above Writ Petitions also since being for the very same relief raking up the plea that within 60 days from the date of 4(1) notification, the publication in the locality was not effected and since as observed supra, the publication in the locality was effected within the statutory period of the law in force at the time of issuance of 4(1) Notification in the cases in hand, they too become liable only to be dismissed and hence the following order:

In result,

(i) for the foregoing reasons assigned, W.A.Nos.1640,2653,2654 of 2001 succeed and they are allowed;

(ii) the Order of the learned single Judge of this Court dated 23.4.2001 made in W.P.No.19123 of 1998 and the common order dated 16.8.2001 made in W.P.Nos. 1915 and 1916 of 2001 are set aside;

(iii) W.P.Nos.23316 of 2001, 2277, 39618 of 2002, and 12787 of 2003 are dismissed;

(iv) Consequently, C.M.P.No.14180 of 2001, W.A.M.P.20148 of 2001, 35006 and 35007 of 2002 and 20147 of 2001 are closed.

(v) however, in the circumstance of the case, there shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

TO

1.The Defence Estate Officer,
Union of India,
Ministry of Defence,
Madras Circle,306, Annasalai,
Teynampet Chennai-18.

2.The Secretary to Government of
Tamil Nadu, Public Department
(Military), Fort St. George,
Chennai-9.

3.The District Collector,
Collectorate Coimbatore.

4.The Land Acquisition Officer &
Assistant Collector,
Tiruppur.

5.The Board of Officer,
Land Acquisition,
No.43 wing,
Air Force Station,
Sulur, Kangayampalayam Post
Coimbatore District.

+ 1 cc to Mr.K.Veeraraghavan SCCG CCSR 1975

+ 1 cc to Mr.K.Sridhar, Advocate CCSR 1828

+ 1 cc to Mr.K.Chozhan, Advocate CCSR 1847

+ 1 cc to Government Pleader CCSR 1778

सत्यमेव जयते

COMMON

JUDGMENT IN W.A.Nos.1640,
2653,2654 of 2001 and
W.P.Nos.23316 of 2001,
2277, 39618 of 2002,
AND 12787 of 2003.

TEK (CO)
SR/22.2.2005

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