

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:: 11.12.2017
Delivered on	:: 14.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.1401 to 1403 of 2017

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

2.The Sub Collector, (Revenue) North) cum
Land Acquisition Officer (North)
Puducherry
versus

... appellants

Mullaikodi ... Respondent in W.A.No.1401 of 2017

Antoine Antony Fathima Nathan ... respondent in W.A.No.1402/2017

S.G.Metha ... respondent in W.A.No.1403 of 2017

Appeals filed against the order passed by this Court dated 3 March
2016 passed in W.P.No.34347, 15754 of 2012 and 1358 of 2013.

For appellant : Mrs.V.Usha,
Additional Government Pleader, Puducherry

For Respondents : Mr.K.Sukumaran

COMMON JUDGMENT

K.K.SASIDHARAN, J.

Introductory :

The land acquisition proceedings initiated by the Government of Puducherry was quashed by the learned Single Judge on the ground that notification under Section 4(1) and declaration under Section 6 of the Land Acquisition Act were not published in the manner indicated in the Act; that there was no proper local publication, and that the award was passed beyond the period of limitation. The appellants have come up with the appeals with a contention that none of the grounds taken by the writ court for quashing the land acquisition proceedings have legal or factual support.

Summary of facts:-

2. The Government of Puducherry initiated proceedings for acquiring 04.19.00 hectares of land in Manavelly Village, Puducherry, for establishment of Coir Growth Centre / Coir Village. The notification under Section 4(1) was published in the newspapers at the first instance and thereafter it was gazetted. Similar was the case with the declaration under Section 6 of the Land Acquisition Act. The notification was published in the locality also. The award was passed on 14 June 2012.

3. The respondents challenged the land acquisition on the following

two grounds:-

(a) Enquiry under Section 5A was not conducted properly;

(b) Award was not passed within two years from the date of statutory declaration.

4. Before the learned Single Judge, the first ground was not pressed. However, two new grounds were raised during the course of arguments that the notification was not published in the prescribed manner, and that there was no local publication. The other contention relates to the delay in passing the award.

5. The learned Single Judge quashed the land acquisition by recording the contention regarding improper publication of notification under Section 4(1) and declaration under Section 6, failure to publish the notification in a convenient place in the locality and the delay in passing the award.

Submissions by parties :

6. The learned Additional Government Pleader contended that there is no legislative mandate to publish the notification in the manner suggested by the learned Single Judge. The learned Additional Government Pleader by producing the file contended that there was notice of publication in the locality and as such, the contra finding given by the writ court is against facts. The award was passed within two years and it was

well within the period of limitation.

7. The learned counsel for the respondents supported the order passed by the learned Single Judge and made submissions on facts and on law.

Discussion :-

8. The notification under Section 4(1) of the Land Acquisition Act was published in two newspapers, one in English and another in Tamil on 2 September 2009. The publication in the gazette was on 15 September 2009.

9. The core question is whether the notification under Section 4(1) of the Land Acquisition Act is bad in law in case it was published in the gazette only after paper publication.

10. The proceedings for acquisition of land by exercising the power of eminent domain would commence by issuing a notification under Section 4 (1) of the Land Acquisition Act. This notification which is preliminary in nature, is a general notice to the public that the land mentioned in the schedule is the subject matter of acquisition. It would also enable the Land Acquisition Officer and other designated officers to enter upon and survey the land. In order to inform the public at large, the provision contemplates

publication of notification in two daily newspapers circulated in the concerned locality, out of which, one shall be in the regional language. There is a further requirement of giving public notice of the substance of the notification at a convenient place in the locality. The crucial date of the publication for computing the period of limitation is the date of publication and the giving of public notice.

11. The publication in the gazette is a mandatory requirement. However, there is no clear indication in the provision that the publication must be in the gazette at the first instance. The publication in the Gazette after paper publication at the most is only an irregularity, which would not go to the root of the matter.

The Law on the subject:-

12. The Hon'ble Supreme Court in ***Venkataswamappa vs. Special Deputy Commissioner (Revenue), 1997(9) SCC 128***, made it very clear that though publication of the notification under Section 4(1) in the Gazette is a mandatory requirement, publication in newspapers before such notification would only be an irregularity and it would not vitiate the acquisition.

The Supreme Court said :-

“5. It is true that normally publication in the newspapers would be preceded by a publication

in the Gazette notification. It would appear that in this case while sending the notification, which was approved by the Government for publication in the Gazette, simultaneously direction was issued to have it published in the Gazette. Therefore, it would appear that before publication in the Gazette was made, it was published in one of the newspapers. This is only an irregularity in the procedural steps required to be taken under the Act. It does not vitiate the validity of the notification published in the Gazette on 23-2-1989.”

13. The Supreme Court in **Venkataswamappa**, while rejecting the contention taken by the land owners that procedure prescribed under Section 4(1) of the land acquisition should be strictly complied with, made it clear that the object of the publication of Section 4(1) is to put a notice to the owners that the land is proposed to be acquired for a public purpose and the publication in newspapers would put the owners on notice of the proposed acquisition.

The Supreme Court said :-

“6. There is no dispute on the proposition that publication of the notification

under Section 4(1) in the Gazette is a mandatory requirement. In fact, in that case, that was not done. The contention raised in *Jaiswal case* [(1985) 3 SCC 1 : (1985) 3 SCR 995] was that it is only an intention and not mandatory. This Court has rightly rejected that contention. As noted earlier, since the publication of the notification under Section 4(1) was made on 23-2-1989, the intention of the Government to acquire the land for public purpose had been set in motion and it was directed to take the procedural steps in that behalf as mandated under sub-section (1) of Section 4 of the Act. What transpires, therefore, is that the notification was made in one of the newspapers published earlier to the actual publication in the Gazette. As stated earlier, it was only an irregularity in the procedural steps to be taken under the Act. It is to be seen that the object of the publication of Section 4(1) is to put a notice to the owners that the land is proposed to be acquired for a public purpose and that they are prevented to deal with the lands in any manner detrimental to the public purpose. Obviously,

therefore, the publication in the newspaper would put the owners on notice of the proposed acquisition even prior to the actual publication. Admittedly, in one of the newspapers notification was unauthorisedly published before the publication in the Gazette, namely on 1-2-1989. The substance was also published, as indicated in the proceedings of the Land Acquisition Officer conducted under Section 5-A, on 20-3-1989; the last of the dates was taken for the purpose of notification under Section 4(1). In that view we hold that there was no infraction of the compliance of the requirement under Section 4(1) of the Act.”

14. The object of publication in the gazette was indicated by the Hon'ble Supreme Court in ***J.T.C. Bhadarachalam Paper Boards and another vs. Mandal Revenue Officer, A.P. & ors., (1996(6) SCC 634)***.

The Supreme Court said :-

13. ... The object of publication in the Gazette is not merely to give information to public. Official Gazette, as the very name indicates, is an official document. It is published under the

authority of the Government. Publication of an order or rule in the Gazette is the official confirmation of the making of such an order or rule. The version as printed in the Gazette is final. The same order or rule may also be published in the newspapers or may be broadcast by radio or television. If a question arises when was a particular order or rule made, it is the date of Gazette publication that is relevant and not the date of publication in a newspaper or in the media.

15. In view of the judgment in **Venkateswarappa**, we are not in agreement with the findings given by the writ court that the publication of Section 4(1) in the newspapers earlier to the publication in the State Gazette would vitiate the notification for acquisition.

16. The next ground relates to the failure to publish the substance of the notification in the locality.

17. We have perused the award file in its entirety. It is found that there was clear public notice of the substance of the notification at the convenient places in the locality. Such publication was certified by various

authorities including the Tahsildar and Village Administrative Officer. The reports regarding publication of notification in the locality and public notice of the substance of the notification are part of record. We therefore set aside the finding that there was no public notice of the substance of notification under Section 4(1) of the Act in the concerned locality.

18. The other reason for quashing the land acquisition proceedings is the delay in passing the award.

19. There is a statutory requirement under section 11A of the Act to pass the award within a period of two years from the date of publication of the declaration under Section 6 of the Act.

20. In the subject case, the declaration under Section 6 of the Land Acquisition Act was published in the local newspapers on 1 June 2010 and in the gazette on 15 June 2010. It was published by public affixure on 22 June 2010. The award was passed on 14 June 2012.

21. The last mode of publication of declaration is the determining factor for calculating the period of limitation. The affixure was made after the gazette publication on 22 June 2010. In case the two years period is taken from the last mode of publication, it can be safely concluded that award was made within the statutory period.

22. Even if the date of publication in the gazette viz., 15 June 2010 is considered as the crucial date, still the award was well within the period of limitation, as it was passed on 14 June 2012.

23. The file notings and the relevant proceedings support the case of the appellants that the award was passed on 14 June 2012.

24. The Hon'ble Supreme Court in **A.P.Industrial Infrastructure Corporation Limited v. Chinthamaneni Narasimha Rao & Ors. [2011 (10) Scale 460]** considered the issue relating to delay in challenging the acquisition proceedings and observed that if the land owners had been really aggrieved, they ought to have challenged the proceedings immediately after declaration made under Section 6 of the Act. The Supreme Court referred to the earlier judgment in **Swaika Properties (P) Limited and another v. State of Rajasthan and Others [(2008) 4 SCC 695]**, wherein, it was held that a writ petition challenging the notification for acquisition of land, if filed after possession had been taken is not maintainable and further observed thus:

"11. This Court has held in several judgments that if the land owners are aggrieved by the acquisition proceedings, they must challenge the same atleast before an award is made and the possession of the land

in question is taken by the government authorities."

25. The Land Acquisition Officer followed the mandatory provisions of the Land Acquisition Act in each and every stage of the proceedings. The Writ Petitions were filed six months after passing the award with contentions having no factual or legal standing. We are therefore of the view that the learned single Judge was not correct in quashing the land acquisition proceedings.

26. For the reasons aforesaid, we set aside the common order dated 3 March 2016. The Writ Petitions in W.P.No.34347, 15754 of 2012 and 1358 of 2013 are dismissed.

27. In the upshot, we allow the intra court appeals, without any liability to pay costs. Consequently, C.M.P.Nos.19153, 19155, 19157 of 2017 are closed.

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(K.K.SASIDHARAN, J.)

(P.VELMURUGAN, J.)

14.12.2017

Index: Yes/no
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To

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2.The Sub Collector, (Revenue) North) cum
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P.D. Judgment in
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