

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 5.10.2017
Delivered on : 8.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.151 OF 2012

- 1 TAMILNADU HOUSING BOARD
REP BY IS MD NANDANAM CH-35
- 2 THE EXECUTIVE ENGINEER & ADMN
OFFICER COIMBATORE HOUSING
UNIT TAMILNADU HOUSING BOARD,
TATABAD SIVANANDHA COLONY
COIMBATORE ..Appellants/Respondents 3&4
- versus
- 1 DPF TEXTILES
REP BY ITS MD S.MARTIN
METTUPAAYAM ROAD
GNANAMBIGAI MILLS POSTCOIMBTORE
..Respondents 1&2/Writ petitioners
- 2 P.JOHN BRITTO
- 3 The District Collector, Coimbatore
- 4 THE SPECIAL TAHSILDAR (LAND
ACQUISITION) HOUSING SCHEME NO1
(INCHARGE OF ERSTWHILE HOUSING
SCHEM NO.III) COIMBATORE 18
- 5 THE SPECIAL TAHSILDAR
(LAND ACQUISITION) HOUSING
SCHEME UNIT NO.II
COIMBATORE-18
- 6 THE SPECIAL COMMISSIONER AND
THE COMMISSIONER OF LAND
ADMINISTRATION
CHEPAUK CHENNAI ..Respondents 3to6/
Respondents 1,2,5 & 6 in
Writ Petitions

Appeal filed against the order passed by this Court dated 29.3.2010 passed in W.P.No.32827 of 2004. Writ petition filed under Art.226 of the constitution of India praying for a writ of certiorari calling for the records of the 1st respondent in Na.Ka. No.12553/83/F6 dated Nil.08/2004 issued U/s. 4(1) of the Land Acquisition Act, the declaration made u/s. 6 of the Land Acquisition Act by the 6th respondent in D.Dis.H2/28453/22005 in No.VI(1)/362(a)/2005 published in the Tamil Nadu Government Gazette, dated 24.08.2005 and the award passed by the 5th respondent in Award No.2/2007 dated 28.08.2007 and quash the same relating to the acquisition of the lands of the petitioners in SF.Nos.8,9/1, 9/2, and 12 of Ganapathy Village, Coimbatore North Taluk, Coimbatore.

For appellant : Mr.V.Anandhamoorthy
Additional Government Pleader

For Respondents : Mr.R.Thiagarajan, Senior Counsel,
for Mr.R.N.Amarnath,
for respondents 1 and 2
Mr.T.N.Rajagopalan, Spl.G.P.
For respondents 3 to 6.

J U D G M E N T

K.K.SASIDHARAN, J.

Introductory :-

The State initiated land acquisition proceedings on behalf of Tamil Nadu Housing Board. The notification under Section 4(1) of the Land Acquisition Act was published in the District Gazette instead of State Gazette. The writ court when a challenge was made on that ground, quashed the acquisition. The order is under challenge in this intra court appeal at the instance of the requisitioning body, which is a local authority under Section 158 of the Tamil Nadu State Housing Board Act, 1961, for the purpose of the Land Acquisition Act, 1894.

2. Summary of facts:-

(a) The Government of Tamil Nadu pursuant to the request made by the Tamil Nadu Housing Board acquired large extent of land in Ganapathy Village, Coimbatore, including the land involved in this intra court appeal. The land acquisition was quashed by the writ court as per common order dated 11 October 1999 in W.P.No.6879 of 1988 etc. batch. The subject land was included in the batch, the writ petitions being W.P.No.12154 of 1986 and 12155 of 1986. The order has become final, consequent to the dismissal of the interlocutory applications filed for

condoning the delay in filing the appeals. The respondents 1 and 2 purchased the land after the order quashing the land acquisition. The respondents 1 and 2 got planning permission for construction, pursuant to the order dated 31 January 2003 in W.P.No.3839 of 2002.

(b) The District Collector issued a fresh notification for acquisition under Section 4(1) of the Land Acquisition Act dated 20 August 2004 and it was published in the District Gazette. The respondents 1 and 2 challenged the notification in W.P.No.32827 of 2014. The High Court granted interim stay of dispossession.

(c) The Land Acquisition Officer during the currency of the Writ Petition, issued a declaration under Section 6 of the Act and passed the award. The respondents 1 and 2 challenged the declaration and award, by filing miscellaneous petitions, which was allowed by the writ court.

(d) Though the respondents 1 and 2 took several contentions, the writ court quashed the land acquisition proceedings on two legal grounds viz., (i) prior approval was not taken by the Government for acquisition of land for a local authority (ii) notification under Section 4(1) was not published in the State Gazette. The order is challenged by the Tamil Nadu Housing Board in this appeal.

(e) It is the case of the Board that prior approval is not necessary and publication in the District Gazette is sufficient.

3. We have heard the learned Additional Government Pleader for the appellants and the learned Senior Counsel for respondents 1 and 2.

Analysis:-

4. The notification in the subject case was published in the State Gazette on 7 March 1983. The said notification was quashed by the High Court. The subsequent notification issued under Section 4(1) was not published in the official gazette of the State. It was published only in the District Gazette.

5. Section 4(1) of the Land Acquisition Act provides for publishing the acquisition notification in the official gazette. The amendment made to Section 4 of the Land Acquisition Act by Act 10 of 1991 also provides for publication in the Gazette;

6. Section 3(39) of the General Clauses Act contain the meaning of Gazette. "Official Gazette" or "Gazette" shall mean the Gazette of India or the official Gazette of a State.

7. The State while amending the Land Acquisition Act by Act 16 of 1997 retained the provision regarding publication in the official gazette instead of prescribing publication in the

District Gazette. However, that is not the case with the State Act, dealing with acquisition of land for Harijan Welfare Scheme. Section 4(1) of the Land Acquisition Act provides that the Collector shall publish the notification in the District Gazette. The Legislature was aware of the distinction between "Official Gazette" and "District Gazette" and that is why two different modes of publication are prescribed, one under the Central Act and another under the State Act.

8. It is not as if the District Collector was not aware of the statutory requirement of publishing in the State Gazette. The District Collector published the earlier notification with respect to the very same acquisition only in the State Gazette. However, for the reasons best known to the concerned, the subsequent notification under Section 4(1) was published only in the Coimbatore District Gazette.

9. The precedents :-

(i) In *K. Dayanandalal and others. vs. State of Kerala & ors.*, 1996(9) SCC 728, the Hon'ble Supreme Court considered the question as to whether publication in the Police Gazette would satisfy the requirement of publication in the State Gazette. The Supreme Court held that Kerala Police Gazette would not be a substitute for the State Gazette.

The Hon'ble Supreme Court said :-

"The Kerala Police Gazette is a publication of the Office of Inspector General of Police issued for departmental use only. It contains various circulars and standing orders issued by the State Government as well as the circulars issued by the Inspector General of Police and other useful information for the members of the police force. The said Kerala Police Gazette cannot be equated with the State Gazette published under the authority of the State Government. The requirement in Section 69 of the Act regarding the rules being notified in the Gazette postulates publication of the rules in the Kerala State Gazette, and publication in the Kerala Police Gazette (which too is not established) would not be a substitute for the requirement of Section 69 regarding publication in the State Gazette."

(ii) This Court in *Kuppuswami Naidu, in re.*, reported in 1956 LW 326, *Sembanna Gounder and 3 ors. vs. State of Tamil Nadu*, 2001(1) CTC 481 and *A.S. Periasamy vs. State of Tamil Nadu*, 2004(2) CTC 406, consistently held that official gazette shall mean only the State Gazette.

(iii) The object of publication in the gazette was indicated by the Hon'ble Supreme Court in I.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 (See Pankaj Jain Agencies v. Union of India [(1994) 5 SCC 198]). In other words, the publication of an order or rule is the official irrefutable affirmation that a particular order or rule is made, is made on a particular day (where the order or rule takes effect from the date of its publication) and is made by a particular authority; it is also the official version of the order or rule. It is a common practice in courts to refer to the Gazette whenever there is a doubt about the language of, or punctuation in, an Act, Rule or Order. Section 83 of the Evidence Act, 1872 says that the court shall presume the genuineness of the Gazette. Court will take judicial notice of what is published therein, unlike the publication in a newspaper, which has to be proved as a fact as provided in the Evidence Act. If a dispute arises with respect to the precise language or contents of a rule or order, and if such rule or order is not published in the Official Gazette, it would become necessary to refer to the original itself, involving a good amount of inconvenience, delay and unnecessary controversies. It is for this reason that very often enactments provide that Rules and/or Regulations and certain type of orders made thereunder shall be published in the Official Gazette. To call such a requirement as a dispensable one

- directory requirement - is, in our opinion, unacceptable.

(iv) The Supreme Court in I.T.C. Bhadarachalam Paper Boards made it very clear that "where the parent statute prescribes the mode of publication or promulgation, that mode has to be followed and that such a requirement is imperative and cannot be dispensed with".

10. The publication of notification in the official Gazette is a mandatory requirement. The publication of the notification in the District Gazette would not serve the purpose. This statutory requirement was known to the Land Acquisition Officer. The Land Acquisition Officer by publishing the notification earlier in the State Gazette, followed the statutory provision strictly. The same Land Acquisition Officer for reasons best known to him, later published the notification in the District Gazette, which is not legal. The learned Single Judge was therefore correct in quashing the land acquisition proceedings. In view of this substantial ground, we are not dealing with the other reasons which weighed with the writ court for quashing the land acquisition proceedings.

11. For the reasons aforesaid, we dismiss the intra court appeal. No costs. Consequently, M.P.No.1 of 2012 is also dismissed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector, Coimbatore
 2. The Special Tahsildar, (Land Acquisition)
Housing Scheme No.1, Coimbatore 18
 3. The Special Tahsildar, (Land Acquisition)
Housing Scheme No.II, Coimbatore 18
 4. The Special Commissioner and
The Commissioner of Land Administration
Chepauk, Chennai
- + 1 cc to Mr. V. Anandhamurthy, Advocate Sr.87550
+ 1 cc to Mr.R.N. Amarnath, Advocate Sr.87463
+ 1 cc to Government Pleader Sr.88133

W.A.No.151 OF 2012

DK(CO)
EU(22/12/2017)