

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.27342 of 2003

and

W.P.M.P.No.23207 of 2005

Dr.A.Dhava Palani,
Rep. by Power of Attorney holder
Prof.N.Alagappan ... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Govt.,
Highways Department,
Fort St.George, Chennai-9.
2. The Spl. Dy. Collector (Land Acquisition Officer),
(Land Acquisition Unit),
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records as comprised in G.O.Ms.No.71, Highways (HW), dated 19.04.2000 issued under Section 4(1) of the Land Acquisition Act, which was published in the Tamil Nadu Government Gazette No.18A dated 10.05.2000 and followed by a declaration made under Section 6 of the Act in G.O.Ms.No.90, Highways (HW1), dated 23.05.2001 as published in the Tamil Nadu Government Gazette Extraordinary Part-II Section 2, dated 23.05.2001 and is culminated into issuing of award enquiry notice under Section 9(3) of the Act in proceedings in Na.Ka.No.NiA/A2/594/95, dated 02.05.2003 on the file of the Special Deputy Collector (Land Acquisition Officer), Land Acquisition Unit, CMDA, Chennai-8 in respect of the petitioner's premises bearing Door No.4 and comprised in S.No.369/6 as assigned in Patta No.6854 on the file of the Zonal Dy. Tahsildar, Mambalam-Guindy Taluk, Chennai-78 and to quash the same and consequently forbear the respondents from dispossessing the petitioner without authority of law.

For Petitioner : Mr.R.Krishnamoorthy, Senior
Counsel for Mr.V.B.Perumal Raj

For Respondents : Mr.S.Diwakar, Spl.G.P.

ORDER

The petitioner has come forward with the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records as comprised in G.O.Ms.No.71, Highways (HW), dated 19.04.2000 issued under Section 4(1) of the Land Acquisition Act, which was published in the Tamil Nadu Government Gazette No.18A, dated 10.05.2000 and followed by a declaration made under Section 6 of the Act in G.O.Ms.No.90, Highways (HW1), dated 23.05.2001 as published in the Tamil Nadu Government Gazette Extraordinary Part-II Section 2, dated 23.05.2001 and it has culminated into issuance of award enquiry notice under Section 9(3) of the Act in proceedings in Na.Ka.No.NiA/A2/594/95, dated 02.05.2003 on the file of the Special Deputy Collector (Land Acquisition Officer), Land Acquisition Limit, CMDA, Chennai-8 in respect of the petitioner's premises bearing Door No.4 and comprised in S.No.369/6 as assigned in Patta No.6854 on the file of the Zonal Dy. Tahsildar, Mambalam-Guindy Taluk, Chennai-78 and to quash the same and consequently forbear the respondents from dispossessing the petitioner without authority of law.

2. It is the case of the petitioner that he has purchased the property on 23.05.1990 from one K.Shanmugam through his Power Agent Munusamy. The property originally belonged to one Bakiyammal, who has executed a Will dated 09.11.1951 in favour of her children Sankaralingam and Chellappan. In the year 1994, the property in question was sub-divided as S.No.369/6 and patta was issued in the name of the petitioner. Thereafter, there was a Notification dated 19.04.2000 issued under Section 4(1) of the said Act for the purpose of widening Velacherry Bye-pass Road. It is the grievance of the petitioner that his name does not find place in the said Notification and the G.O. referred only the name of the said Bakiyammal, who is the original owner and there is also no mention of his name in the local publication issued in newspaper. It is further stated by the petitioner that there was notice for enquiry under Section 5-A of the said Act issued on 17.07.2000 and there had been enquiry. Thereafter, there was a declaration issued under Section 6 of the Act on 23.05.2001, in which also, there was no mention of the petitioner's name. The petitioner received the notice dated 02.05.2003 for award enquiry, in which, for the first time, the petitioner was served with the notice by wrongly mentioning the Survey Number as S.No.369/10 instead of S.No.369/6. The

petitioner made a request/representation within ten days from 02.05.2003, i.e. on 12.05.2003 before the Land Acquisition Officer, to drop the acquisition proceedings.

3. It is the further case of the petitioner that the office of the respondents took measurement of the petitioner's land for the purpose of marking the acquired portion of the land in question. The petitioner submitted that as there was no Notification in his name and that the Survey Number was also mentioned as S.No.361/2-A1 part and that in the notification under Section 4(1) and in the declaration under Section 6, only the original owner's name, i.e. Bakiyammal is mentioned. It is his further grievance that, award enquiry under Sections 9(3) and 10 of the said Act was issued for the first time in his name on 02.05.2003, in which also the Survey Number has been wrongly mentioned as S.No.369/10 instead of S.No.369/6. There is non-compliance of Section 4(1) Notification regarding local newspaper publication which was not effected in English daily, and hence, the entire proceedings initiated against the petitioner with regard to the acquisition of the land of the petitioner, are bad. Hence, he has filed the above Writ Petition for the relief stated supra.

4. The second respondent has filed counter affidavit stating that Section 5-A enquiry was issued in the name of the original registered owner and it was acknowledged by one Chellappan. It is also stated that the Land Acquisition Officer has fixed the date of enquiry under Section 5-A on 04.09.2000 and 05.09.2000 and nobody from the original owner's side attended the enquiry. Further, after considering the objections of the land owners and the remarks of the requisitioning body, the decision has been taken and that there was no representation on behalf of the petitioner, even though notice was received on the said Chellappan and order was passed by the Land Acquisition Officer on 19.02.2001 in LA/A2/594/95. It is further stated that the acquisition of land in S.No.369/10 measuring an extent of 1 cent is needed for the public purpose of widening Velacherry Bye-pass Road. It is further averred in the counter that at the time of publication of Section 4(1) Notification and enquiry under Section 5-A, it was not known as to whether the petitioner has purchased the piece of land in the above survey field. At the time of preparation of sub-division records and after gathering the details from the Revenue Records, it was properly notified in the name of the petitioner assigning a separate sub-division S.No.369/10. Moreover, the remarks of the requisitioning body has already been communicated to the land owners and that the petitioner is aware of the acquisition proceedings and vast publication had also been made in the local daily. It is further stated that the petitioner has filed objections on 12.05.2003 and the petitioner is not entitled to the relief sought for in this Writ Petition. It is further averred in the counter that the Court will have to take into account the date on which the proceedings have been initiated

and the acquisition proceedings have been taken. Before taking possession, the petitioner has approached this Court and obtained interim order of stay of dispossession alone if the possession is not taken; but for the said interim order of this Court, the Court would have taken up the matter and the respondents would have acquired the land. Pendency of the proceedings and the interim order of this Court, cannot be quoted against the respondents. Hence, the respondents pray for dismissal of the Writ Petition.

5. Heard both sides and perused the materials available on record.

6. From the records produced before this Court, it is seen that the land in question was purchased in the year 1990 and that there was sub-division in 1994. The petitioner has produced patta, dated 31.05.1994 showing that the property in question stands in his name. Though it has been stated by the respondents that there was Section 4(1) Notification, dated 19.04.2000 and that the notice has also been served on the original owners, they are not the original owners as per the records, but they are previous owners, who have sold the property in the year 1990 and that there was mutation of records, as could be seen from the records produced by the petitioner. It is not the case of the respondents that the patta issued was a bogus one. After twenty years of purchase of the property by the petitioner, the Notification dated 19.04.2000 had been issued under Section 4(1) of the Land Acquisition Act, for the purpose of widening of Velacherry Bye-pass Road. Pursuant to the interim order of this Court, the land in question has not been acquired and the petitioner is in possession of the property.

7. Learned Senior Counsel appearing for the petitioner contended that the Notification in this case has not been published as per the mandate prescribed under the Land Acquisition Act, as the Notification had not been published in an English newspaper and notice in vernacular alone had been published. In support of his submissions, learned Senior Counsel appearing for the petitioner relied on the following decisions:

(i) 2011 (10) SCC 714 (J & K Housing Board Vs. Kunwar Sanjay Krishan Kaul):

"31. Though all the above decisions arose under the Central Act, it is not dispute that similar provisions have been incorporated in the State Act. We have already extracted Sections 4, 5, 5-A and 6 of the State Act which are similar to the provisions of the Central Act. From the materials placed before us, we are satisfied that the conditions prescribed in Sections 4(1)(a) and (b) had been complied with except Section 4(1)(c) which has not been followed. In the light of the language used in Section 4(1), namely, "the Collector shall notify it", the procedures/directions provided in Sections 4(1)(a), (b) and (c) ought to be strictly complied with. There

is no option left with anyone to give up or waive any of the modes and all such modes have to be strictly resorted to.

32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein. Merely because the land owners failed to submit their objections within 15 days after the publication of notification under Section 4(1) of the State Act, the authorities cannot be permitted to claim that it need not be strictly resorted to.

33. In the case on hand, admittedly, the notification was published in two daily newspapers i.e. in Himalayan Mail and in Greater Kashmir, but any one of them was not a newspaper published in the regional language, i.e. Kashmiri which is the requirement of Section 4(1)(c) of the Act. We have already held that all the requirements provided in Sections 4(1)(a), (b) and (c) are mandatory and have to be strictly adhered to. In addition to the same, though on 11.06.2003 a corrigendum was issued for enlarging the area of acquisition, admittedly, this corrigendum was not published in any newspaper."

(emphasis supplied)

(ii) 2002 (1) CTC 28 (Madras High Court) (Arumugha Mudaliar Vs. State of Tamil Nadu):

"10. That apart, the infirmity pointed out on behalf of the petitioners on the matter of publication of the Notification in the local dailies also merits acceptance inasmuch as, no material was placed before the Court as to how of the two newspapers, one called "Pirpagal" was widely circulated in the locality in question. Therefore, that would also seriously impinge upon the sustainability of the Notification issued under Section 4(1) of the Act.

11. Sri.R.Krishna Moorthy, learned Senior Counsel also brought to my notice the recent decision of the Division Bench of this Court rendered in W.A.Nos.1534 and 1536 of 2001, etc., dated 8.11.2001 holding that as regards the publication to be made in the newspapers while one should be in the regional language, the other should be in English Daily and failure to effect such publication would render the notification itself

invalid. I find force in the submission of the learned counsel, especially in a case of this nature, where right from the beginning the claim was that school was being run in there land in question, catering to the needs of the local public, it was imperative that the publication in the newspapers, as well as, in the locality publication was made in an effective manner or otherwise it would seriously affect the purport and intent of such publication which was meant specifically for bringing to the notice of the local people in order to come forward with their say with regard to the acquisition sought to be made. Therefore, on this ground as well, the Notification issued under Section 4 (1) definitely calls for interference."

8. Learned Senior Counsel appearing for the petitioner further relied on a decision of this Court reported in AIR 1984 Madras 246 (A.Soundarapandian Vs. State of T.N. and others) in support of his contention with regard to non-mentioning of the petitioner's name in Section 4(1) Notification and Section 6 Declaration and only for the first time, in award enquiry notice under Section 9(3) and 10, his name is being mentioned and the said notice had been served on the petitioner, that too the survey number has been wrongly mentioned, despite the fact that the patta stands in the name of the petitioner. Even notice under Section 5-A enquiry is also not served on the petitioner. In the said decision reported in AIR 1984 Madras 246, this Court has observed as follows:

"3. The contention of the learned counsel for the petitioner, Mr.D.Raju, is that the petitioner did not have any notice whatever of the acquisition proceedings. When the power of eminent domain is exercised compulsorily acquiring the land belonging to the petitioner, the least that one could expect will be the notice, but such a notice was not given. The Revenue records disclose that long before Section 4(1) Notification came to be issued, the petitioner had been given a patta on 11.06.1977. Where, therefore, the revenue records bore the name of the petitioner under patta No.1115, there is absolutely no justification for excluding him under Section 4(1) notification. The Supreme Court and this Court have taken the view that the right to make representation during the enquiry under S.5-A is very valuable right. No person can be deprived of such a valuable right. If it is so done, there is clear violation of the principles of natural justice and the petitioner is being deprived of his property without he having any say in the matter. It is no consolation to say that Section 6 declaration contained the name of the

petitioner. It is well settled that such a declaration crystallises the rights of the parties more so in view of the presumption contained to such a declaration as stated in Section 6 sub-section (3) of the Act. Therefore, the proceedings are liable to be quashed. In support of his contention, the learned counsel for the petitioner relies on the ruling of mine reported in *Bhama Ramamoorthy Vs. State of Tamil Nadu*, AIR 1977 Mad 272.

... ..

6. Obviously, he had lost all interest in the land; more than that his whereabouts were not known. Therefore, even if the substance of Section 4(1) notice had been published at convenient places as required by Section 4 that will not improve the situation. If a person happens to see the notification, he will merely find the name of K.T.Stephen as against Survey No.84/6A. The owner whose land is sought to be deprived like the petitioner could not, in the wildest of the imagination, link his land to the notice, which he may happen to see and if at all he sees. Therefore, the reason why I am referring to this is that a faint argument was advanced by the learned Government Pleader that the petitioner on seeing the notice which was published in the Corporation Middle School and in the notice boards of the Taluk Office, etc., could have come to know about the acquisition. This is a far-fetched argument. It cannot be gainsaid that the power of eminent domain can be exercised for compulsory acquisition of land for a public purpose. However, no person can be denied the right to put forth his objections however worthy or unworthy they may be to such an acquisition because either actuated by sentiments or by desire, he may cling on to the ownership of the land which he is legitimately entitled to hold. Where by compulsory process of law the ownership is sought to be displaced, it must be displaced only by exercising all care and caution that is attendant to such an acquisition. This is because still we are governed by rule of law. Certain corner stones of the principles of natural justice right from the days of Magna Carta still are available to the citizens, in that no person can be deprived of his ownership except under due process of law and one such thing the hearings of the objection of the owner. That right has come to be held the very valuable right. That is the least 'mercy' the Land Acquisition Act confers upon the owner. Even that is being denied to the petitioner in this case for no fault of his. On the contrary, the entire blame has to be attached to

the second respondent (The Special Deputy Collector (Land Acquisition) Neighbourhood Schemes, Saidapet). He cannot assume for a moment that from the time he submitted a draft Section 4(1) notification up to the date it came to be approved by the Government in G.O.Ms.1096 Housing and Urban Development on 17th July 1978, the ownership will remain static. Perhaps, because by the indifference to look into the revenue records has resulted in this position. This imperious attitude is to be deprecated. After all, what is wrong if a person objects to the acquisition let him to do so; let him be heard and then acquire if need be. Therefore, I am unable to accept the contention of the learned Government Pleader that because Patta came to be issued after the submission of the draft of Section 4(1) notification to the Government; hence there was no need to include the name of the petitioner in Section 4(1) notification notwithstanding the fact that patta had come to be issued long before the issue of Section 4(1) notification, viz., on 11.6.1977 itself. If the argument of the learned Government Pleader is to be accepted, it would only mean deprivation of a man's property without he having any say in the matter. It is precisely under these circumstances I have held in *Bhama Ramamorthy Vs. State of Tamil Nadu*, AIR 1977 Mad 272, that such a procedure is opposed to the principle of natural justice and equally constitutes a violation of the provisions of the Act. Therefore, the learned counsel for the petitioner Mr.D.Raju is right in his reliance on this ruling.

7. Turning to the second argument, of course, the Courts are not to set aside the progressive measures of the Government like the proceedings of the land acquisition in this case which undoubtedly is for public purpose in a sense of bravado. The Courts have always remembered that the right of a private individual must be subservient to public interest because it is that which constitutes the guiding star for land acquisition matters. It is true that by accepting the conception of the learned counsel for the petitioner the entire neighbourhood scheme which covers an extent of 96.92 acres may come to standstill or may even get balked. But who is to be blamed for this ? It is easy to point out the accusing finger to the Court. But where situations as presented in this case, been brought about by the indifference of the officers concerned, the Court cannot but come to the rescue of the petitioner. This is eminently one such case where the Court must hold the acquisition to be illegal, because it is in violation of the principles

of natural justice as well as the provisions of the Act. The failure to do so will amount to shutting one's eyes to the hard realities. That is not the law as I am able to see. The failure to issue notice under Section 5-A, and hear the objection of the petitioner has deprived him of very valuable right. As rightly contended by the learned counsel for the petitioner, Section 6 declaration may contain the name of the petitioner, but by then all damage had been done because the rights of the parties both that of the Government as well as the individual owners become crystallized when declaration under Section 6 comes to be issued. Where, however, without hearing the petitioner and without he knowing about the acquisition, if he is sought to be deprived, the declaration under Section 6 containing his name cannot be put against him as an answer to the illegality attached to Section 4(1) notification.

8. If there is no valid Section 4(1) notification in that the petitioner had not been heard at all during Section 5-A enquiry, Section 6 declaration also would become illegal notwithstanding the fact that it contains the name of the petitioner. For all these reasons, I hereby set aside both Section 6 declaration as well as Sec.4(1) notification. The rule nisi is made absolute. The writ petition is allowed. The petitioner will be entitled to costs. Counsel's fee is Rs.300/-."

9. Thus, the mandate as per the provisions of the Land Acquisition Act is that the Notification under Section 4(1) should be published in two daily newspapers circulating in the locality, of which, atleast one shall be in the regional language. As per the said decision of the Supreme Court reported in 2011 (10) SCC 714 (cited supra) and of this Court reported in 2002 (1) CTC 28 (cited supra), the Notification should be published in two dailies, out of which, one should be in vernacular and the other should be in English and the respondents have admitted in paragraph 9 of the counter affidavit that the publication had been made only in two Tamil dailies and in the counter, stand of the respondents is that the original owner had been served with notice and the notice for enquiry under Section 5-A of the said Act was also served on the original owner. After almost the acquisition proceedings were over, only at the time of award enquiry, notice had been served on the petitioner, and that too, the survey number has been wrongly stated and the records show that the petitioner is the owner of the property, and that due notice as contemplated under the said Act should have been served on the petitioner even at the inception of the land acquisition proceedings and further,

with regard to Section 4(1) Notification, publication of the proceedings in two dailies, one in English and one in Tamil, had not been followed. Hence, I find much force in the contentions of the petitioner.

10. For the foregoing reasonings, the Writ Petition is allowed as prayed for. No costs. W.P.M.P. is closed.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

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To

1. The Secretary to Govt.,
Highways Department,
Fort St.George, Chennai-9.
2. The Spl. Dy. Collector (Land Acquisition Officer),
(Land Acquisition Unit),
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

+1 CC Mr.GOV.T. PLEADER Advocate SR.No.74430
+1 CC Mr.V.BALAMURUGANAE Advocate SR.No.73846

VP (CO)
EGR 13/11/2017

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