

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.A.No.1607 of 2017
and
C.M.P.No.21008 of 2017

Tamil Nadu Housing Board,
rep. by its Managing Director,
Nandanam, Chennai 600 035. Appellant

Vs

- 1.Mrs.Koundathal
- 2.A.Kuppusamy
- 3.Mrs.Palaniammal
- 4.Mrs.Meenakshi
5. The Government of Tamil Nadu,
represented by its Secretary,
Housing and Urban Development Department,
Fort St.George, Chennai - 600 009.
6. The Special Tahsildar,
(Land Acquisition), I,
Housing Scheme,
Coimbatore 18. Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order made in W.P.No.18195 of 1998 dated 24.11.2006 on the file of this Court.

Prayer in W.P.No.18195 of 1998:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of Ceritorari calling for the records from the file of the first respondent GO.MS.NO.495,Housing and Urban development(LA3(2)) Department dated 14.11.1996 and published in government Gazette dated 18.12.1996 Under Section 4(1) Notification and also Sec.6 declaration issued in GOMS.442 Housing and Urban Development (LA3(2))Department dated 23.12.1997 and published in the Government Gazatte dated 24.12.97 inrespect of the Petitioner's Lands Measuring 0.00.5 Hectre in SF.NO.10-1 and 1.80.5 Hectre in SF.NO.10-2 Situated in 19,Vallikinar Village,coimbatore North taluk,Coimbatore District and quash the same.

For Appellant : Dr.R.Gouri

For Respondents : Mr.I.Jenkins William for R4.

Mr.V.Anandhamoorthy, Additional
Government Pleader for R5 & R6.

R1 to R3 died.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been filed by the Requisition body viz., the Housing Board against the order of the learned Single Judge quashing the land acquisition proceedings for non-compliance of Sections 4(1) and 6 of the Land Acquisition Act. The acquisition proceedings have been initiated by the State of Tamil Nadu for providing housing units to general public by issuance of Notification under Section 4 (1) of the Land Acquisition Act dated 14.11.1996 in respect of the properties covered under survey numbers viz., S.F.No.10/1 & 10/2 totaling 4.47 Acres in 'Thudiyalur & Vellakinar Neighbourhood Scheme'. Various properties covered in various survey numbers are included.

2.The properties covered under the above survey numbers are owned by the private respondents herein. They challenge the said notification under Section 4(1) of the Act on various grounds by filing a Writ petition in W.P.No.18195 of 1998 and the learned Judge of the Court by order dated 24.11.2006, allowed the Writ petition on the ground that the notification under Section 4 (1) of the Act issued in G.O.M.S.No.495 Housing and Urban Development Department dated 18.12.1996 was published in 'Pirpagal' dated 03.01.1997 which does not have wide circulation in the area concerned and Section 6 of the declaration in G.O.Ms.No.442, Housing Urban Development Department dated 24.12.1997 published in Tamil Dailies viz., 'Malaimurasu'. The said order is being challenged before this Court by the Housing Board. The said appeal has been filed five years after the learned Single Judge passed the order on 24.11.2006.

3.Heard Dr.R.Gouri, learned Counsel for the appellant and Mr.I.Jenkins William for R4 and Mr.V.Anandhamoorthy, learned Additional Government Pleader for R5 & R6. It is seen that R1 to R3 had died.

4.Dr.R.Gouri, learned Counsel for the appellant would submit that publication had been effected in "Malaimurasu" as well as "Pirpagal" as the publication has to be effected in two leading widely circulated Newspapers in that area complying with the provision of law. Hence, there is no lacuna or illegality in the procedure followed.

5.Mr.I.Jenkins William for R8 would submit that no notice has been given to the land owner at any point of time. Even before passing of the award, Writ petitions have been filed and stay was also obtained. No compensation amount has been deposited by the authorities.

6.Though it has been contended by the appellant that other procedures have been followed, the learned Single Judge is right in quashing the proceedings for non-compliance of the provisions of the Act i.e., non-publication of the notification under Section 4(1) of the Act and the declaration under Section 6 of the Act in a Newspaper which is widely circulated in that area. Therefore, the appeal has to be dismissed.

7.The law regarding publication of Section 4(1) notification in newspapers has been settled by the Hon'ble Supreme Court in the decision reported in (2011) 1 Supreme Court Cases 330, Special Deputy Collector, Land Acquisition CMDA v. J.Sivaprakasam and Others, wherein it has been held that failure to publish in two daily newspapers which have no wide circulation in that locality make the notification under Section 4(1) of the Act and the consequential acquisition proceedings vitiated. Paragraph 27 of the said judgment is usefully extracted hereunder:-

"27.If there is failure to publish in two daily newspapers or if the publication is in two newspapers that have no circulation at all in the locality, without anything more, the notification under Section 4(1) of the Act and the consequential acquisition proceedings will be vitiated, on the ground of non-compliance with an essential condition of Section 4 (1) of the Act."

8.The newspaper "Pirpagal" is one of the newspaper in which Section 4(1) notification was published. As far as the said newspaper "Pirpagal" is concerned, this Court in the Judgment reported in "(2002) 1 MLJ 459, Arumugha Mudaliar v. State of Tamil Nadu" had already held that "Pirpagal" is not a widely circulated newspaper and therefore, the notification issued under Section 4(1) and declaration made under Section 6 of the Land Acquisition Act are liable to be quashed.

9.Moreover, in respect of 40 Acres covered under the very same scheme, proceedings have attained finality in favour of the land owners. In respect of 67.52 Acres, orders have been passed by this Court in favour of the land owners and only review petitions are pending before this Court. The sketch produced by the appellant before this Court would also denote that scheme was already implemented in respect of phases 1 to 5. In respect of phases 6 to 10, the scheme cannot be implemented as the acquired lands are scattered in bits and pieces and various land owners had already obtained orders in

their favour and the proceedings already attained finality. It is impossible for the appellant to implement phases 6 to 10 of the scheme making use of the small extent of lands which are found to be located at various places. The available lands are not located continuously making it difficult to execute the balance phases 6 to 10.

10. That apart, a Division Bench of this Court in the decision reported in 2006 (4) CTC 83, Tamil Nadu Housing Board v. Subanna Gounder and others had held that Writ Appeal against the order of quashing Section 6 declaration is not maintainable at the instance of Requisitioning body, viz., Tamil Nadu Housing Board. Therefore, the present Writ Appeal preferred by the Tamil Nadu Housing Board is not maintainable.

11. Therefore, the Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai - 600 009.

2. The Special Tahsildar,
(Land Acquisition) I,
Housing Scheme,
Coimbatore.

+2ccs to Mr. I. Jenkins William, Advocate SR.No. 8275

+1cc to M/s. R. Gowri, Advocate SR.No. 8506

W.A.No.1607 of 2017
and

C.M.P.No.21008 of 2017

A.SK (05/03/2020)