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W.A.Nos.1372, 1424, 1425 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2023

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE P. B.BALAJI

W.A.Nos.1372, 1424 and 1425 of 2010

In W.A.No.1372/2010

Tamil Nadu Housing Board,
rep. by its Executive Engineer and
Administrative Officer, Erode Housing Unit,
EVN Road, Surampatti Nall Road,
Erode-9.

... Appellant

//vs/

1. P.Shanmugam
2. C.Krishnasamy,
legal heir of C.Rajamani Gounder.
3. Valliammal
4. Marappa Gounder
5. Meenatch Piramanayagam,
Legal heir of late Maragathammal
6. S.Amutha
7. R.Rajamani
8. Lakshmipathy
9. T.Ramasamy
10. N.Parameswari
11. P.Palaniappa Gounder
12. R.Rangasamy

Page 1 of 17



W.A.Nos.1372, 1424, 1425 of 2010

13. P.Nalliappan

14. T.Gokia

15. P.Vijayalakshmi

16. P.Franchis

17. The State of Tamil Nadu

Rep. by the Secretary to Government,
Housing & Urban Development Department,
Secretariat, Chennai 600 009.

18. The District Collector,
Erode District, Erode.

19. The Special Tahsildar (LA),
Neighbour Hood Scheme, Erode-9.

... Respondents

In W.A.No.1424/2010

Tamil Nadu Housing Board,
rep. by its Executive Engineer and
Administrative Officer, Erode Housing Unit,
EVN Road, Surampatti Nall Road,
Erode-9.

... Appellant

//vs/

1. P.Palaniappa Gounder,
2. P.Rangasamy (deceased)
3. P.Nallappan

4. The State of Tamil Nadu
Rep. by the Secretary to Government,
Housing & Urban Development Department,
Secretariat, Chennai 600 009.

5. The Special Tahsildar (LA),
Neighbour Hood Scheme, Erode-9.

Page 2 of 17



W.A.Nos.1372, 1424, 1425 of 2010

6. Valliyammal
7. R.Thiyagarajan
8. R.Gunasekaran

(R6 to R8 brought on record as LR's of the deceased second respondent, vide of this court dated 14.11.2017 made in CMP No.19501/2017 in W.A.No.1424/2010)

... Respondents

In W.A.No.1425/2010

Tamil Nadu Housing Board,
rep. by its Executive Engineer and
Administrative Officer, Erode Housing Unit,
EVN Road, Surampatti Nall Road,
Erode-9.

... Appellant

//vs/

1. Ramasamy Gounder
2. V.R.Chandrasekaran (died)
3. V.R.Duraisamy
4. V.R.Anandaraj
5. V.R.Mani @ Manoharan (died)
6. The State of Tamil Nadu
Rep. by the Secretary to Government,
Housing & Urban Development Department,
Secretariat, Chennai 600 009.
7. The Special Tahsildar (LA),
Neighbour Hood Scheme, Erode-9.
8. Thangammal
9. C.Dhanalakshmi
10. Arun Kumar



W.A.Nos.1372, 1424, 1425 of 2010

11. Saravanakumar

(R8 to R11 are impleaded as LR's of
second respondent, vide order of the court
dated 11.12.2017 made in CMP No.21567/2017
in W.A.No.1425/2010)

12. M.Banumathi

13. Sujith Kumar

14. Minor Ravina Shree

(R12 to R14 are impleaded as LR's of fifth respondent,
vide order dated 11.12.2017 made in CMP No.21568/2017
in W.A.No.1425/2010. ... Respondents

Prayer in W.A.No.1372/2010: Writ Appeal filed under Clause 15 of Letters
Patent to set aside the order passed by this Court in W.P.No.16840/2000
dated 16.06.2009.

Prayer in W.A.No.1424/2010: Writ Appeal filed under Clause 15 of Letters
Patent to set aside the order passed by this Court in W.P.No.14553/1999
dated 16.06.2009.

Prayer in W.A.No.1425/2010: Writ Appeal filed under Clause 15 of Letters
Patent to set aside the order passed by this Court in W.P.No.4410/1999
dated 16.06.2009.



W.A.Nos.1372, 1424, 1425 of 2010

In W.A.No.1372/2010

For Appellant

: Mr.A.M.Ravindranath Jayapal
Standing Counsel

For Respondents

: Mrs. P.Raja Rajeswari, Govt.Advocate
for R17 to R19

In W.A.No.1424/2010

For Appellant

: Mr.A.M.Ravindranath Jayapal
Standing Counsel

For Respondents

: Mr.V.P.Sengottuvel, Senior Counsel
for Mr.S.Bala ganesh
for R1, R3, R6, R7 and R8

Mrs.R.L.Karthika, Govt.Advocate
for R4 and R5

In W.A.No.1424/2010

For Appellant

: Mr.A.M.Ravindranath Jayapal
Standing Counsel

For Respondents

: Mr.V.Kadhirvelu
for R3 and R4

Mr.S.Ravichandran, Addl.Govt.Pleader
for R6 and R7



W.A.Nos.1372, 1424, 1425 of 2010

COMMON JUDGEMENT

WEB COPY (Judgment of the Court was delivered by D.KRISHNAKUMAR, J.)

These Intra Court Appeals have been filed by the Tamil Nadu Housing Board against the common order passed by this Court in W.P.No.4410/1999, W.P.No.14553/1999 and W.P.No.16840/2000 dated 16.08.2009, wherein, the impugned notification issued under Section 4(1) of the Land Acquisition Act in G.O.Ms.No.25, Housing & Urban Development Department, dated 17.01.1997 and the declaration made under Section 6 of the Act in G.O.Ms.No.35, Housing and Urban Development Department, dated 04.03.1998 were quashed.

2. The learned single, while allowing the writ petitions, has observed as follows.

" 2. The very same notification came to be challenged in W.P.No.14715/1998 and the same was dismissed on 01.04.2002 and the writ appeal filed against the said order in W.A.No.3078/2002 (Nallappa Gounder (died) rep. by LRs Vs. Government of Tamil Nadu, rep. by its Secretary to Government, Housing and Urban Development Department, Fort St. George, Chennai 600 009 and another) was allowed by the Division Bench, thereby quashing the notification on the ground that the



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W.A.Nos.1372, 1424, 1425 of 2010

notification under Section 4(1) of the Act was not published duly in accordance with Section 4(1) of the Act in two dailies, having circulation in that locality and summarily rejected all the other grounds raised by the appellant therein.

3. In the case on hand also, the same grounds are very much available for the petitioners. When the Division Bench has held that the notification has not been properly published in two dailies having circulation in that particular locality, this court cannot take a different view in respect of the very same notification. The other contentions raised by the petitioners are summarily rejected. Therefore, the impugned notification is liable to be set aside, in view of the aforesaid judgment of the Division Bench of this Court."

Following the above said decision of the Division Bench of this Court in W.A.No.3078/2002, dated 14.03.2007, the learned single judge has allowed the writ petitions.

3. In this context, Mr.A.M.Ravindranath Jayapal, learned standing counsel appearing for the appellant/Housing Board submitted that the notification under Section 4(1) of the Act and the declaration under Section 6 of the Act were published in "Pirpagal", and "Malai Murasu", in which, one paper publication, namely, "Malai Murasu" has wide circulation in the said locality. However, the Division Bench has not discussed in its order



W.A.Nos.1372, 1424, 1425 of 2010

about the wide circulation of the "Malai Murasu" newspaper in the said locality. Therefore, the order passed by the Writ Court is liable to be set aside.

4. It is submitted by Mr.V.P.Sengottuvel, learned Senior Counsel appearing for the private respondents that, following the earlier order passed by the Division Bench of this Court in W.A.No.3078/2002 dated 14.03.2007, which was filed as against the very same impugned notifications, the Writ Court has rightly allowed the writ petitions and the respondents herein also similarly placed persons. He further submitted that, the impugned notifications have been issued, without proper paper publication, having wide circulation in the above said locality, as per the rules and Act and hence, the order passed by the learned single judge does not warrant any interference.

5. The identical issue of wide circulation of the newspapers was discussed by a Division Bench of this Court in ***W.A.Nos.1241 and 1242 of 2005, dated 25.11.2008***, and the relevant paragraphs are extracted



W.A.Nos.1372, 1424, 1425 of 2010

hereunder.

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14. It was also argued that in respect of survey nos.411/1 and 411/2 of vilankurichi village, Coimbatore Taluk, 4(1) notification was published in the newspapers "Theekadhir" and "Pirpagal" and in respect of survey no.405/1, 4(1) notification was published in the newspapers "Namadhu MGR" and "Pirpagal". Section 4(1) of the Act contemplates, among other things, a notification to be published in the Official Gazette and in two daily newspapers circulated in that locality of which at least one shall be in the regional language. The said section contemplates only a publication of the gazette in the newspapers circulated in that locality. Even though Section 4(1) of the Act refers to the publication of the notification in two daily newspapers circulated in that locality, while interpreting the said section, the Courts have taken the view that circulation in that locality must also mean wider circulation. The object behind the said provision is to enable the owners of the land to know the acquisition proceedings. As to whether a newspaper has got wider circulation in the locality or not is a question of fact, the test that should be applied is as to whether the newspapers in question are approved by the Government. The Government in G.O.Ms.No.288 Information and Tourism (Public-I) Department dated 1.8.85 on recognition of the newspapers namely, "Theekadhir" and "Pirpagal" had approved the revised rates for advertisements and it is also stated that these newspapers were approved by the Press Council. On the contrary, it is the contention of the respondents that the papers have no wider circulation. When such rival contentions are made, the stand taken by the State Government must be accepted vis-a-vis the stand taken by the land owners. This



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W.A.Nos.1372, 1424, 1425 of 2010

question came up for consideration before the Supreme Court in Talson Real Estate (P) Ltd., v. State of Maharashtra and others, (2007) 13 SCC 186 and the Supreme Court negatived such a plea raised by the land owners by holding that "the appellant-company has not brought on record any iota of evidence to show that the above named newspapers are not widely circulated in the locality where the land in question was situated."

15. A Division Bench of this Court in the judgment in W.A.Nos.261, 262 319 and 320 of 2006 dated 24.3.2006 has also accepted the stand of the Government as to the fact that the newspaper, namely, "Kumari Murasu", "Makkal Kural" were approved newspapers and all the legal advertisements of the Government, Local Bodies and Cooperatives are published in the newspapers. In the wake of the specific stand taken by the Government that "Theekadhir", "Pirpagal" and "Namadhu MGR" are approved by the Government and all the legal advertisements of the Government, Local Bodies and Cooperatives are published in these newspapers, the above judgment of the Division Bench is alone applicable to the facts of this case. That apart, as we have held that once an award is passed and possession is taken, the acquisition proceedings cannot be put in issue and challenged even in case of violation of the mandatory provisions of Section 4(1) in regard to the mentioning of the name of the owners and publication of the notification in the two dailies having circulation in the locality being procedural and as to whether these newspapers have wider circulation is a question of fact, in our opinion, the acquisition proceedings which were completed as early as on 23.4.94 and 18.4.95 when the awards were passed cannot be interfered with.



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W.A.Nos.1372, 1424, 1425 of 2010

16. There is one more aspect as to the power of judicial review of this Court under Article 226 of the Constitution of India to probe into the matter as to whether the newspapers are being circulated in the locality, a reference can be made to a judgment of the Division Bench in State of Tamil Nadu through its Secretary, Adi Dravidar and Tribal Welfare v. Kailasa Nambiar (W.A.Nos.1536 and 1554 of 2001), wherein the Division Bench had taken the view that ***"unless and otherwise the facts are indisputed, nor it is permissible for this Court to jump into the conclusion that the publication of the notification was not made in the newspaper having circulation in the locality, more so when the records produced disclose that it is otherwise and the public notice was also made by beat of tom-tom."*** The said judgment was quoted with approval by a subsequent Division Bench in the judgment in Ramgopal Estates Pvt.Ltd., represented by Managing Director K.S.Hemant Kumar, Chennai v. State of Tamil Nadu represented by Commissioner and Secretary to Government, Industries Department, Chennai and others, 2007 (2) CTC 369, wherein it has been held that ***"when the State strongly contends that these newspapers are being circulated in the locality, it may not be proper for this Court to interfere, while exercising the power of judicial review under Article 226 of the Constitution of India, as the power under Article does not permit this Court to go into the factual disputes of the case."***

17. Coming to the facts, W.A.No.1241 of 2005 is concerned with the Survey Nos.411/1 and 411/2 and the notification under Section 4(1) is dated 5.3.91. Award No.2/94 was passed on 23.4.94 and the writ petition admittedly came to be filed only on 30.11.94. Hence the writ petition is liable to be dismissed on both the grounds that it was filed after the award was passed and the possession was taken as well as the



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W.A.Nos.1372, 1424, 1425 of 2010

challenge to the 4(1) notification published in "Theekadhir" and "Pirpagal" newspapers. W.A.No.1242 of 2005 relates to the Survey No.405/1 and the 4(1) notification is dated 5.2.92. Award No.1/95 was passed on 18.4.95 and even before the award was passed, the writ petition came to be filed on 30.11.94. Hence the first ground of attack as to the passing of award and taking of possession cannot be applied to the said challenge. Nevertheless, in view of our finding as to the publication of the notification in the newspapers, namely, "Namadhu MGR" and "Pirpagal", the said writ petition is also liable to be dismissed.

18. For the foregoing reasons, the writ appeals are allowed, the common order passed in W.P.Nos.19925 and 19927 of 1994 is set aside and the writ petitions shall stand dismissed. Consequently, W.A.M.P.Nos.2254 to 2256 of 2006, 299, 300, 860 & 861 of 2006 are closed. No costs.

Here in this case, it is the contention of the appellants that after observing all formalities under the Land Acquisition Act, notifications under section 4(1) and 6 of the Act were published in the newspapers, viz., "Pirpagal", "Malai Murasu", that are being circulated in the locality and also local publication was made on 06.03.1997 by beating "tom tom". The above facts are not disputed by the respondents. However, it is the contention of the respondents that the above said newspapers have no wide circulations in the locality. But, they have not placed any materials to establish their above said



W.A.Nos.1372, 1424, 1425 of 2010

contentions. Therefore, following the decision of the Division Bench of this Court in the above said judgment in W.A.Nos.1241 and 1242 of 2005 dated 25.11.2008, we are of the view that, when the appellant has strongly contends that these newspapers are being circulated in the locality, it may not be proper for this Court to interfere, while exercising the power of judicial review under Article 226 of the Constitution of India, as the power under Article does not permit this Court to go into the factual disputes of the case. Therefore, the order passed by the Writ Court warrants interference by this Court.

6. Apart from that, a perusal of the records submitted by the Appellant Board would show that the compensation amount has been deposited on 21.02.2000 as "work deposit" and the Award has been passed on 03.03.2000. Further, there is no materials to show that the said compensation amount has been deposited either in the " Revenue deposit" or in the " Court deposit ", after the award being passed. In such circumstances, the respondents/land owners are entitled to work out their remedy under under Section 24(2) of the Right to Fair Compensation and



W.A.Nos.1372, 1424, 1425 of 2010

Transparency in Land Acquisition Rehabilitation and Resettlement Act,
2013 i.e. New Act, if so they so advised.

7. At this juncture, it is brought to the notice of this court by the learned counsel for the respondents that in a similar case filed by **one M.Sampoornam in W.P.No.4069/2016**, challenging the very same notification in G.O.Ms.No.25, dated 17.01.1997 and the declaration in G.O.Ms.No.34, dated 04.03.1998, the Writ Court has allowed the writ petition by order dated 23.06.2002. Therefore, the respondents being the similarly placed persons, are also entitled to get the same relief. But, in the instant writ petitions, no such prayer has been sought by the respondents under Section 24(2) of the Act. Therefore, the respondents/ land owners can approach the appropriate forum, seeking such relief.

8. Accordingly, it is ordered as follows.

(i) Liberty is granted to the respondents/ land owners to approach the concerned forum seeking their remedy under Section 24(2) of the New Act, within a period of four weeks from the date of receipt of a copy of this



W.A.Nos.1372, 1424, 1425 of 2010

order. Till such time, status-quo shall be maintained by both parties.

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ii) It is made clear that, the issue of paper publication, having no wide circulation in the locality alone was discussed and decided in the instant appeals.

9. With the above directions, the writ appeals in W.A.Nos.1372, 1424, 1425 of 2010 are allowed and the order passed by the Writ Court in W.P.No.4410/1999, W.P.No.14553/1999 and W.P.No.16840/ 2000, dated 16.06.2009 is set aside. No costs.

(D.K.K.J.)

(P.B.B.J.)

20.09.2023

Internet: Yes/No

Index : Yes/No

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To

1. The Executive Engineer and Administrative Officer,
Tamil Nadu Housing Board, Erode Housing Unit,
EVN Road, Surampatti Nall Road, Erode-9.
2. The Secretary to Government, State of Tamil Nadu
Housing & Urban Development Department,
Secretariat, Chennai 600 009.



W.A.Nos.1372, 1424, 1425 of 2010

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3. The District Collector, Erode District, Erode.

4. The Special Tahsildar (LA),
Neighbour Hood Scheme, Erode-9.



WEB COPY



W.A.Nos.1372, 1424, 1425 of 2010

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W.A.Nos.1372, 1424 and 1425 of 2010

20.09.2023