

SUPREME COURT OF INDIA

The Special Deputy Collector, Land Acquisition C.M.D.A.

Vs.

J. Sivaprakasam

C.A.No.9740 of 2010

(R.V. Raveendran and H. L. Gokhale JJ.)

18.11.2010

JUDGMENT

R.V.RAVEENDRAN, J.

1. Leave granted.

2. An area of 4.89 acres of land (which includes 54 cents in Survey No. 186/1 and 1.09 acres of land in Survey No. 186/2, in all 1.63 acres, which is the subject matter of this appeal) in Koyambedu Village, Chennai District was notified for acquisition for further implementation of Koyambedu Wholesale Market Complex, under preliminary notification dated 13.11.1998 issued under section 4(1) and final declaration dated 2.2.2000 issued under section 6 of Land Acquisition Act, 1894 ('Act' for short). The preliminary notification was published in the T.N. Gazette dated 15.12.1998. It was also published in two daily Tamil newspapers - "Maduari Mani" and "Kadiravan" on 6.1.1999.

3. The said lands (Sy. No.186/1 and 186/2) belonged to one V.T. Jayaraman and he was shown as the registered owner/pattadar of the said lands in the revenue records. He is stated to have died on 3.11.1978 leaving two sons and two daughters (respondents 1 to 4 herein) as his legal heirs. On the death of V.T. Jayaraman, the said lands bearing Sy. No.186/1 and 186/2 were not mutated in the names of his legal heirs but continued to be in the name of the deceased V.T. Jayaraman in the revenue records. Respondents 1 to 4 leased the said lands in favour of the eleventh respondent (a trust for running an educational institution) on 25.10.1987. Respondents 1 to 4 also sold portions of the said lands to respondents 5 to 10 who in turn, also granted a lease of their portions in favour of eleventh respondent. Thus respondents 1 to 4 were not shown as the owners/occupiers of the said lands in the revenue/municipal records, nor were they in physical possession of the said lands. It is stated that the eleventh respondent was in exclusive possession of the said lands at the time of issue of preliminary and final notifications and even thereafter.

4. The respondents 1 to 11 challenged the acquisition of Sy. No.186/1 and 186/2 under preliminary notification dated 13.11.1998 and final notification dated 2.2.2000 in a Writ Petition (W.P.No.7789/2000) filed on 21.4.2000, contending that the acquisition was invalid for the following reasons: (a) The preliminary notification and final notifications were issued showing the

name of a dead person (V.T. Jayaraman) as the owner of the said lands. Respondents 1 to 4 who were the owners of the lands, were not issued any notice in regard to enquiry under section 5A of the Act thereby denying them opportunity to file objections and participate in the enquiry under section 5A of the Act. (b) The preliminary notification was published in two Tamil Dailies "Madurai Mani" and "Kadiravan" which had no circulation in the locality, thereby violating the provisions of section 4(1) of the Act. (c) The eleventh respondent was serving the residents of Koyembedu and surrounding villages by using the lands for running a school and college and therefore the said lands should be excluded from acquisition. In the said writ petition, the writ petitioners (respondents 1 to 11) admitted that the eleventh respondent as also respondents 5 to 10 had received a notice dated 9.6.1999 from the appellant calling upon them to appear in the enquiry under Section 5A of the Act; and that respondents 5 to 11 on learning that the lands were notified under section 4(1) of the Act, had filed their objections dated 9.7.1999 against the acquisition proposal on the ground that a school was running in the said lands and that the lands were far away from the existing market complex.

5. A learned Single Judge of the Madras High Court by order dated 10.4.2003 allowed the writ petition holding that publication of the notification under section 4(1) of the Act in the newspapers "Kadiravan" and "Madurai Mani" which had no circulation in the locality, did not fulfill the mandatory statutory requirement under Section 4(1) of the Act. Consequently, he quashed the preliminary notifications under Section 4(1) and the subsequent final declaration under Section 6 of the Act.

6. Feeling aggrieved, the appellant and the State filed a writ appeal contending inter alia that it was not sufficient for the writ petitioners to allege that the newspapers had no circulation in the locality, but they ought to have substantiated the said claim, by production of relevant documents. It was further contended that section 4(1) of the Act did not require that the newspapers wherein the publication is made should have a wide circulation or be read by every person in the locality; and that it was sufficient if the newspapers were sold in the locality, that is, they had some circulation in the locality, and that one of them at least was in the regional language. The State Government and the appellant did not however choose to file before the High Court any document to show that the two newspapers had any significant circulation. The writ appeal was dismissed by an appellate bench of the High Court by the impugned order dated 22.2.2005, holding that no material had been placed by the State Government or the appellant to establish that the two newspapers in which the notification was published had a reasonably wide circulation in Chennai. The appellate bench of the High Court rejected the contention that even if the regional language newspapers in which preliminary notification was published had some circulation in the locality, it would meet the requirements of section 4(1) of the Act and held that the purpose of requiring circulation in the locality is to enable the concerned landowners to know about the said notification under section 4(1) of the Act and file their objections under section 5A of the Act or take other legal steps as they deem fit, or prepare to permit survey and marking by the officials; and therefore the newspapers in which the notification under section 4(1) of the Act is published must be newspapers having reasonably wide circulation in the locality. The appellate bench observed that there were many fake newspapers which had little or no circulation which existed only for securing such advertisements, and publication in such newspapers will not amount to compliance with the mandatory requirements relating to publication 'in two daily newspapers circulating in the locality' under section 4(1) of the Act even if the said newspapers were registered newspapers having some nominal circulation. The Appellate Bench of the High Court held that the appellants had failed to establish that "Kadiravan" and "Madurai Mani" had sufficient circulation in the City of Chennai, where the acquired lands were situated and therefore the publication of the preliminary notification in the said newspapers did not

comply with the mandatory requirements of notification under section 4(1) of the Act. The said order is challenged in this appeal by special leave. Appellant's contentions

7. The appellant contended that V.T. Jayaraman was shown as the registered owner of the land in the revenue records and respondents 1 to 4 had not got their names entered as owners/holders of the said land on his death; and that therefore they were not entitled to notice and the question of showing their names in the notification under Section 4(1) of the Act did not arise. It was submitted that the purpose of a preliminary notification was to notify the owners/holders/occupants/persons interested in the proposed acquisition; that the eleventh respondent who was admittedly in possession of the said lands and respondents 5 to 10 who were the owners of portions of the said lands were aware of the said acquisition notifications and had participated in the enquiry under Section 5A of the Act by filing their objections; and therefore respondents 5 to 11 also could not challenge the acquisition on the ground that they were prejudiced for want of notice. The appellant submits that in view of the above, the question whether the two newspapers in which the notification was published had wide circulation or not, is a non-issue.

8. The appellant produced before this Court, for the first time, a letter dated 31.3.2004 addressed by the Director of Information & Public Relations to the Special Government Pleader, Madras, informing that "Madurai Mani" had a circulation of 28475 in various parts of Madras area during 1998 to 2000 (that is an average circulation of 6200, 4657 and 5200 for Central Madras, South Madras and North Madras and 3100, 3450, 3550 and 2300 for Tambaram, Chengalpattu, Kancheepuram and Tiruvallur); and that "Kadhiravan" had a circulation of 42,000 to 48,000 copies per day in and around Madras City but it had stopped publication on 14.11.2001. It was submitted that these published figures are in public domain and therefore the said information, though not produced before the High Court, should be permitted to be placed on record in the interest of justice.

9. The appellant submitted that the publication of the notification under Section 4(1) of the Act in the official gazette and publication of a public notice of the substance of the said notification at convenient places in the said locality was not disputed; and that the challenge by the respondents is only on the ground that the third requirement of the section, that the notification shall be published in "two daily newspapers circulating in that locality" was not complied with. It is pointed out that the section does not say that the newspapers should have a substantial circulation nor uses the prefix 'widely' before the word 'circulating'; and in the absence of any definition of the word 'circulating' or prescription of any minimum figures relating to circulation, a newspaper which was regularly sold or was available for purchase in a locality, should be deemed to be a newspaper circulating in that locality. It is contended that the fact that the two newspapers in which the notification was published, had some 'circulation' in the locality was not denied by respondents and the contention of the respondents that the newspapers in question did not have 'wide' or 'sufficient' circulation, was not a requirement specified in the section. Respondents' contentions

10. The respondents contended that the failure to show the names of respondents 1 to 4 who were the owners of the land and showing the name of their deceased father V.T. Jayaraman as the owner in the preliminary notification vitiated the acquisition proceedings relating to Sy.No.186/1 and 186/2.

11. Respondents submitted that they had made a specific averment in their writ petition in regard to the lack of circulation of the two newspapers as follows: "The Notification was alleged to have been

published in "Kadiravan" and "Madurai Mani" newspapers, which were not at all having any circulation in the area". It is pointed out that the appellant (Chennai Metropolitan Development Authority) which was the second respondent in the writ petition, did not file any counter before the High Court; and only the State Government filed a counter before the High Court where the said averment was not traversed or denied. It was therefore contended that the appellant is deemed to have admitted the said allegation in the writ petition that the two newspapers in which the preliminary notification was published, did not have any circulation in the locality.

12. The respondents have also produced the circulation figures regarding various Tamil newspapers, published by the Information and Tourism department, to show the circulations of the two newspapers in the correct perspective. The figures are : Dinabhoomi:72676; Dinakaran:1,23,000; Dinamalar:85,980; Dinamani:90,000; Daily Thanthi:2,10,204; Madurai Mani:28,465 Makkal Kural:63,000; Malai Malar:65,205; and Malai Murasu:60,000. The said document gives the circulation figures of some other tamil newspapers having smaller circulations and confirmed that 'Kadiravan' was closed in November, 2001. On these comparative figures, it was contended by respondents that it could not be said that the two Tamil language newspapers 'Madurai Mani' and 'Kadiravan' had 'wide' circulation in Chennai and therefore the said newspapers cannot be described as daily newspapers "circulating" in that locality.

Questions for consideration.

13. On the contentions raised, two questions arise for our consideration: (i) Whether the finding of the High Court that the two regional language newspapers in which the Notification under section 4(1) was published did not have reasonably wide circulation in the locality and therefore there is non-compliance with the provisions of section 4(1), calls for interference?

(ii) Whether the acquisition is invalid?

Re: Question (i) : Publication in newspapers circulating in the locality

14. Sub-section 4(1) of the Act relates to publication of preliminary notification and relevant portion thereof is extracted below: "4. Publication of preliminary notification and powers of officers thereupon.--(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality" Section 4(1) of the Act requires publication of the preliminary notification by three modes : (i) publication in the official gazette; (ii) publication in two daily newspapers circulating in the locality, at least one of which being in the regional language; and (iii) causing public notice of the substance of such preliminary notification to be given at convenient places in the locality.

15. The controversy in this case relates to the second mode, that is publication in "two daily newspapers circulating in that locality". The provision does not use the words "two daily newspapers having a wide circulation in the locality". In the absence of any definition or explanation in the Statute, the question is as to how should the words 'circulating in that locality' be understood? Do they refer to newspapers having the widest circulation in the locality? Or do they refer to newspapers which are regularly sold or circulated in the locality, irrespective of numbers,

even if their circulation figures are very modest? If there are nine newspapers circulating in the locality, having a market share of 25%, 20%, 15%, 12%, 10%, 8%, 5%, 3% and 2% of the total daily sales of regional newspapers in the locality, whether all of them can be termed as 'newspapers circulating in the locality' or whether only newspapers with a particular minimum percentage can be described as 'newspapers circulating in the locality'. Can it be said that the newspapers having 5%, 3% and 2% of total sales of newspapers, are not newspapers circulating in the locality? Can it be said that only the newspapers having the maximum market share of 25% or 20% or 15% of the total sales in the locality, could be described as newspapers circulating in the locality? Whether the total circulation figures of the newspaper are relevant or whether the circulation figures in the locality alone are relevant? From a newspaper's point of view, if its total circulation is 40,000 and out of it circulation figure for Chennai is 21,000, it can very well say that its major circulation is in Chennai. But from the reader's point of view, if the total number of regional newspapers sold in Chennai is a million, a newspaper having a circulation of 21,000 (which is around 2%) may not be considered to be a newspaper with a wide circulation in the locality. Which perspective should be preferred? If section 4(1) is to be interpreted as requiring publication in two newspapers having reasonably wide circulation, as held by the High Court, what should be the guidelines to determine 'reasonably wide circulation'? Where should the line be drawn and whether any line should be drawn are questions that may arise, if we read the words 'newspapers circulating in that locality' as 'newspapers having wide circulation in that locality'.

16. The purpose of publication of the notification is two fold: First is to ensure that adequate publicity is given so that land owners and persons interested will have an opportunity to file their objections under Section 5A of the Act. Second is to put the land owners/occupants on notice that government officers will be entering upon the property for carrying on the activities enumerated in section 4(2) of the Act. Section 4(1), before its amendment in 1984, required publication of the preliminary notification only in the official gazette and public notice, of the substance of the notification at convenient places in the locality. This Court, in *Madhya Pradesh Housing Board vs. Mohd Shafi & Ors.* 1992 (2) SCC 168 explained the object of issuing a notification under Section 4 of the Act thus: "The object of issuing a notification under Section 4 of the Act is two-fold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the Government for the "public purpose" mentioned therein; and secondly, it authorizes the departmental officers or officers of the local authority, as the case may be to do all such acts as are mentioned in Section 4(2) of the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is afoot. The notification is, thus, required to give with sufficient clarity not only the "public purpose" for which the acquisition proceedings are being commenced but also the "locality" where the land is situate with as full a description as possible of the land proposed to be acquired to enable the "interested" persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., since it is open to such persons to canvass the non-suitability of the land for the alleged "public purpose" also. If a notification under Section 4(1) of the Act is defective and does not comply with the requirements of the Act, it not only vitiates the notification, but also renders all subsequent proceedings connected with the acquisition, bad."

17. By Amendment Act 68 of 1984, section 4(1) was amended introducing the additional requirement relating to publication of the notification in two daily newspapers circulating in the locality. The purpose of requiring such newspaper publication is to give as wide a publicity to the notification as possible, as the State Gazettes do not have a wide circulation and causing public

notice of the substance of the notification at convenient places in the locality would give notice only in specific pockets in the locality. Legislature therefore provided for publication in two newspapers (of which at least one being in the regional language) to have a wider reach. Having regard to the object and purpose of the provision, it is evident that publication should be in newspapers which have a reasonably good circulation in the locality. If the publication is to be made in obscure newspapers having only token or insignificant circulation, either to cut the cost of publication or by way of political or official patronage, that will defeat the very purpose of providing for publication in newspapers.

18. On the other hand, if the words 'newspapers circulating in that locality' are to be interpreted in a purely literal and normal sense, they would mean newspapers having a regular and steady circulation among the general public in the locality, irrespective of the number. In that sense even a newspaper having 2% to 3% market share out of the total circulation figures for regional newspapers sold in the locality, can be considered as a newspaper "circulating in the locality". Therefore, where there is compliance with the requirement relating to publication in two daily newspapers circulating in that locality (one which at least should be in the regional language) in a technical or literal sense, but it is found that those newspapers have only a circulation share of 2% to 3% of the total number of newspaper sold in the locality, it may not be possible to mechanically invalidate the entire acquisition, on the ground that the two regional newspapers in which the notification was published were not "circulating in that locality".

19. We have held that the object and purpose of the amended section 4(1) of the Act is to provide for publication of the preliminary notification in two daily newspapers having reasonably wide circulation in the locality so that people (persons interested) in that locality may become aware of the proposals for acquisition. We have also held that publications in two newspapers having regular and steady circulation, but having a market share of only 2% to 3% of the total newspapers can not invalidate the acquisition proceedings automatically, on the ground that such publication violates the requirement of section 4(1) relating to newspaper publication. As the said two findings are slightly contradictory, it is necessary to harmonize the consequences.

20. This leads us next to the consequences of publication of the notification in two newspapers having reasonably wide circulation and consequences of bonafide publication of the notification in two newspapers which do not have a wide circulation in the locality. 20.1) 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.

20.2) If the two newspapers carrying the publication of the notification have reasonably wide circulation in the locality, (apart from the publication of the notification in the Gazette and causing public notice of the substance of the notification to be given at convenient places in the locality), then the requirements of section 4(1) are complied with and all persons concerned in the locality shall be deemed to have notice of the notification. (For this purpose, the publication need not be in newspapers having the widest or largest circulation, but it is sufficient if the publication is in newspapers having reasonably wide circulation). In that event, neither the notification under section 4(1), nor the consequential acquisition proceedings would be open to challenge, on the ground of violation of Section 4 of the Act. 20.3) If the newspapers in which the notification is published were circulating in the locality, but did not have a reasonably wide circulation in the locality, then neither

the notification under section 4(1) nor the consequential acquisition proceedings, will become vitiated automatically. If the person aggrieved, apart from demonstrating that the two newspapers did not have reasonably wide circulation in the locality, also asserts that as a consequence, he did not have notice of the proposed acquisition that was provided for in Section 4(1) of the Act, in the absence of evidence to the contrary, the acquisition to the extent of the land of such person will be vitiated. But if such assertion is rebutted by the acquiring authority by placing evidence to show that the person concerned had in fact notice (as for example where he participated in the enquiry under section 5A of the Act), the acquisition will not be vitiated on the ground of violation of section 4A of the Act.

20.4) If the person challenging the acquisition is able to establish that the notifications were deliberately and with malafides, published in newspapers having negligible circulation, to avoid notice to the persons concerned, then section 4(1) will be violated.

21. The acquiring authority need not prove actual notice of the proposal to acquire under section 4(1) of the Act, to the person challenging the acquisition. As the purpose of publication of public notice provided in section 4(1) of the Act is to give notice of the proposal of acquisition to the persons concerned, such notice can also be by way of implied notice or constructive notice. For this purpose, we may refer to the difference between actual, implied and constructive notices.

21.1) When notice is directly served upon a party in a formal manner or when it is received personally by him, there is actual notice. 21.2) If from the facts it can be inferred that a party knew about the subject matter of the notice, knowledge is imputed by implied notice. For example, if the purpose of the notice is to require a party to appear before an authority on a particular date, even though such a notice is not personally served on him, if the person appears before the authority on that date or participates in the subsequent proceedings, then the person can be said to have implied notice.

21.3) Notice arising by presumption of law from the existence of certain specified facts and circumstances is constructive or deemed notice. For example, any person purchasing or obtaining a transfer of an immovable property is deemed to have notice of all transactions relating to such property effected by registered instruments till the date of his acquisition. Or, where the statute provides for publication of the notification relating to a proposed acquisition of lands in the Gazette and newspapers and by causing public notice of the substance of the notification at convenient places in the locality, but does not provide for actual direct notice, then such provision provides for constructive notice; and on fulfillment of those requirements, all persons interested in the lands proposed for acquisition are deemed to have notice of the proposal regarding acquisition.

Re : Question (ii) : Validity of the acquisition

22. The copy of the communication dated 31.3.2004 sent by the Director of Information and Tourism (Advertisement) Department in Tamil Nadu shows that between 1998 to 2000 "Madurai Mani" had a circulation of 6200, 4675, 5200 and 3100 in Central Madras, South Madras, North Madras and Tambaram areas and "Kadiravan" had a circulation of 42,000 to 48,000 in Chennai area. On the other hand the material produced by the respondents show that the total circulation of regional newspapers in Chennai was around a million, that several regional newspapers had circulations varying between 80,000 to 2,00,000 in Chennai, and the Madurai Mani with a Chennai circulation of 28465, had a market share of 3% out of the total circulation of regional newspapers.

'Kadiravan' also apparently had a market share of 4% before its closure. The two newspapers were not therefore newspapers having no circulation in the locality. We however agree, having regard to the circulation figures, with the finding of the High Court that the newspapers did not have a reasonably wide circulation in the locality.

23. As both Madurai Mani and Kadiravan were sold and circulated in Chennai and as a good chunk of their total circulations was in Chennai, it may not be possible to hold that the said newspapers were not 'regional daily newspapers circulating in the locality'. Nor will it be possible to invalidate the entire acquisition on the ground that the publication in the said two newspapers did not fulfill requirement of publication in 'newspapers circulating in that locality'. But if the respondents are able to assert and demonstrate that as a consequence, they were denied the opportunity of participating in the enquiry under Section 5A, or show any other disadvantage, they may be able to achieve the object of showing that the acquisition proceedings were vitiated in so far as their lands were concerned.

24. In this case respondents 1 to 11 have challenged the acquisition. Respondents 5 to 11 specifically admitted that they received a notice dated 9.6.1999 from the appellant herein calling upon them to appear before him in the Section 5A enquiry under the Land Acquisition Act. Respondents 5 to 11 further admitted that they enquired and found that the lands were notified and immediately thereafter filed their objections to the acquisition proposals. Therefore, the publication of the notification under section 4(1) of the Act, in two newspapers which did not have wide circulation in the locality, did not affect respondents 5 to 11 in any manner as they had notice of the proposals for acquisition and participated in the enquiry under section 5A of the Act.

25. We may now deal with the grievance of respondents 1 to 4. There is nothing to show that they had any subsisting interest in the two lands, when the preliminary notification was issued. When their father died they did not choose to get their names entered in the revenue records. The death of their father was in 1978 and the preliminary notification was issued in the year 1998 and for two decades they took no steps to get the lands mutated in their names. It is stated in the writ petition that they had let out the entire property to eleventh respondent and had sold portions of the property to respondents 5 to 10. But they have not disclosed the extents of the portions that were sold and which portions, if at all any, were retained by them. They admit that the purchasers from them (respondents 5 to 10) and their tenant (respondent No. 11) had notice. Therefore, in so far as respondents 1 to 4 are concerned, whether the notification was published in newspapers having wide circulation or not would make no difference and they cannot complain about the absence of publication or about defective publication of notification under Section 4(1) in the newspapers. Even if the publication had been in two newspapers having wider circulation, their names would not have figured therein.

26. It is significant to note that there is no averment in the writ petition that respondents were not aware of the proposed acquisition. It is evident that they were aware of the notification. It is also inconceivable that respondents 5 to 11 who knew about the proposed acquisition would not have informed respondents 1 to 4 about the proposed acquisition. Be that as it may. Therefore even if the publication in two regional language newspapers is considered to be not in compliance with the requirements of section 4(1), it cannot affect the validity of the preliminary notification or the consequential proceedings in regard to Sy. Nos.186/1 and 186/2.

27. No other ground is urged to interfere with the acquisition. The acquisition was for an urgent

public purpose that is for implementation of further stages of Koyambedu Wholesale Market Complex. The objections on behalf of the holders of the land had been considered. No prejudice has been caused on account of the publication of the notification in two newspapers having limited circulation in the locality.

Conclusion

28. To avoid such unnecessary controversies and litigation, acquiring authorities should ensure that the notification under section 4(1) of the Act is published in the newspapers having reasonable wide circulation.

29. In view of the above, we are of the view that the acquisition has to be upheld. Accordingly we allow this appeal, set aside the impugned judgment of the division bench of the High Court affirming the order of the learned Single Judge. We uphold the acquisition and dismiss the writ petition filed by the respondents. Our observations in para 25 above regarding absence of proof of title of respondents 1 to 4 being in the context of the validity of acquisition, will not come in the way of their establishing any claim for their share of compensation, if any, in the acquired lands in accordance with law.