

PETITIONER:
STATE OF TAMIL NADU AND ANR.

Vs.

RESPONDENT:
A. MOHAMMED YOUSEF AND ORS.

DATE OF JUDGMENT 06/08/1991

BENCH:
SHARMA, L.M. (J)
BENCH:
SHARMA, L.M. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1992 AIR 1827 1991 SCR (3) 375
1991 SCC (4) 224 JT 1991 (3) 347
1991 SCALE (2) 235

ACT:

Land Acquisition Act, 1894--Section 4 Notification for acquisition of land for construction of houses by Tamil Nadu Housing Board without preparing scheme under the Madras State Housing Board Act, 1961-Validity of.

HEADNOTE:

Under Section 4 of the Land Acquisition Act, 1894 a notification was issued by the petitioners proposing to acquire the

scheme and not earlier, dismissing the Special Leave Petition of the State, this Court,

HELD: 1.01. The procedure prescribed for preparation of a scheme indicates that before it can be finalised, full publicity has to be given inviting objections; and in case of objections, the same have to be duly considered before granting sanction. Further, if anybody is still aggrieved, he has a right of appeal to the State Government. It is only after this stage is over that the scheme becomes final and enforceable. [378F]

1.02. Section 39 of the Madras State Housing Act, 1961 while enumerating the matters to be included in the scheme, specifically mentions acquisition of land in clause (a). If the acquisition is contemplated as a subject matter of the scheme itself, it follows that it must await the preparation of the scheme wherein it will be included. [379F]

1.03. The acquisition of the land is a part of the execution of the scheme itself. Since the acquisition is included in the scheme the process of execution of the scheme starts immediately when steps for acquisition are taken. [381A-B]

1.04. If the notification under section 4 under the Land Acquisition Act is published without waiting for the scheme, it will not be possible for the land owners to object to the proposed acquisition on the ground that the land is not suitable for the scheme at all, and therefore does not serve any public purpose, or that another piece of land in the area concerned, is far more suitable, leading to the possible conclusion that the proposed acquisition is mala fide. The provisions of the Housing Board Act also suggest the same. [381-DF]

1894 proposing to acquire their land before the Madras High Court. Their writ petition was allowed by a learned Single Judge and on appeal the order was confirmed by Division Bench. The State of Tamil Nadu has challenged the decision by the present Special Leave Petition.

2. The acquisition proceeding, which is the subject matter of present case, was started for obtaining land for construction of houses by the Tamil Nadu Housing Board, constituted under Section 3 of the Madras State Housing Board Act, 1961 (Madras Act No. 17 of 1961) (hereinafter referred to as the 'Housing Board Act') and this was mentioned in the impugned notification. The High Court has held that the public purpose mentioned in the notification was too vague in absence of details relating to the scheme for which the acquisition is sought to be made, and consequently the land owners cannot effectively avail of the benefits under Section 5A of the Land Acquisition Act by filing their objection. The learned Attorney General, appearing for the petitioner State, has contended that the notification has adequately described the nature of the public purpose by mentioning the proposed construction of residential buildings, and the respondents ought to have filed their objections under Section 5A instead of

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moving the High Court with a writ application. Relying on the decision in Babu Barkya Thakur v. The State of Bombay and Others, [1961] 1 SCR 128 it has been argued that even assuming that the public purpose was not mentioned in the notification with sufficient particularity, the proceeding cannot be quashed at this stage and the High Court should have dismissed the writ petition by pointing out that the remedy of the land owners was under Section

proceeding can be initiated only after the framing of the proposed scheme and not earlier. The learned Attorney General contended that having regard to the provisions of the Act and the other relevant considerations it must be held that the procedure in regard to the preparation of

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the scheme has to await the conclusion of the land acquisition proceeding. It is only after the possession of the land is delivered to the Board that its engineers and other experts can go over the land, make necessary inspection and collect vital data, on the basis of which the scheme can be drawn up. It is essential to have a clear idea of the area of the land, its boundaries, and the nature of the soil for deciding about the details of the proposed scheme, and this is not possible so long the owner of the land continues in possession. Any attempt to draw up a scheme earlier has been described by the learned counsel as an exercise in futility. Alternatively it has been contended that even if it be held to be permissible to frame the scheme without waiting for the acquisition and possession of the land, it cannot be further assumed that the land acquisition proceeding has to await the finalisation of the scheme. In other words, both the proceedings may continue simultaneously, or any of the proceeding including one for land acquisition can be commenced without waiting for the other. In any event, the land acquisition proceeding should not be condemned as pre-mature on the ground that the scheme has not been framed. We have closely examined the entire Act with the assistance of the learned counsel for the parties and in our view the contention on behalf of the respondents that the proceeding for acquiring land can be commenced only after the scheme is framed, is well founded.

7. As has been stated earlier, Chapter VII containing sections 35 to 69 deals with the framing of the scheme. The Act has laid down separate procedures for the different types of schemes, according to necessity and suitability. Some of the schemes do not require acquisition of

cancel the scheme even after it is finally sanctioned. The language of clause (b) of the proviso to the section, which is quoted below, once more leads to the same conclusion that acquisition of the land has to await the framing of the scheme:

"(b) If any alteration involves the acquisition otherwise than by agreement of any land not previously proposed to be acquired in the original scheme, the procedure prescribed in the forgoing sections of this Chapter shall, so far as it may be applicable, be followed as if the alteration were a separate scheme."

(emphasis added)

8. Mr. Attorney General repeatedly said that unless the Board gets actual possession of the land in question its officers cannot go over the same for collecting the information essential for drawing up of the scheme. It has, therefore, been suggested that it is wholly impractical to expect the scheme to be framed before obtaining the possession of the land. Mr. Parasaran, the learned counsel for the respondents, rightly pointed out that the provisions of section 147 furnish a complete answer to this argument. The section empowers the Chairman (now the Managing Director) of the Board or any person either generally or specially authorised by him in this behalf to enter into or upon any land with or without assistants or workmen for the purpose of making any inspection, survey, measurement, valuation or enquiry or to take levels or to dig or bore into sub-soil or to set-out boundaries and intended lines of work et cetera. The last clause in the section gives wide power to do any other thing which may appear necessary for achieving the purpose of the Act subject to certain reasonable restrictions.

The learned Attorney General also relied on sections 55 and 7

published without waiting for the scheme, as has been done in the present case, it will not be possible for the land owners to object to the proposed acquisition on the ground that the land is not suitable for the scheme at all, and therefore does not serve any public purpose, or that another piece of land in the area concerned, is far more suitable, leading to the possible conclusion that the proposed acquisition is mala fide. As discussed above, the provisions of the Housing Board Act also suggest the same. The Board has not been vested with the unrestricted power to frame any scheme, as suggested by its planners. It has to take into account the representation by the local authority as mentioned under section 50 and the objection of any other person under section 53 and decide the same on merits before according sanction. The matter is not concluded even at that stage; the aggrieved person may appeal to the State Government and it is only subject to the final result therein that the scheme becomes enforceable. In this set up it will be practical and consistent with common sense to have the scheme finalised before starting an acquisition proceeding. We, accordingly, hold that a proceeding under the Land Acquisition Act read with section 70 of the Madras Housing Board Act, can be commenced only after framing the scheme of 382

which the land is required. The notification issued under section 4 in the present case must, therefore, be held to be pre-mature, and it was rightly quashed by the High Court.

10. Before closing his argument Mr. Attorney General stated that in the past a large number of land acquisition proceedings have been concluded and lands acquired without first framing the scheme and on the basis of the present judgement there may be an attempt by the land owners of those lands to re-open the matter. We do not think that as a result of this judgment the concluded land acquisition proceedings can be allowed to be re-opened. Although we have held that the initiation of the proceeding for acquisition has to await framing of a scheme, it does not mean that the concluded acquisition proceeding can