

The State Of Tamil Nadu & Ors vs Ananthi Ammal & Ors on 22 November, 1994

Equivalent citations: 1995 AIR 2114, 1995 SCC (1) 519, AIR 1995 SUPREME COURT 2114, 1995 AIR SCW 355, 1995 (3) SCC(SUPP) 402, 1996 (1) SCT 446, 1995 (1) JT 247, (1996) 88 FJR 203, (1995) 2 LAB LN 530, 1995 LABLR 1076, (1995) 2 MAH LJ 210, (1996) 73 FACLR 1045, (1995) 3 BOM CR 701

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Bench: S.P Bharucha, Jagdish Saran Verma, K.S. Paripoornan

PETITIONER:

THE STATE OF TAMIL NADU & ORS.

Vs.

RESPONDENT:

ANANTHI AMMAL & ORS.

DATE OF JUDGMENT 22/11/1994

BENCH:

BHARUCHA S.P. (J)

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BHARUCHA S.P. (J)

VERMA, JAGDISH SARAN (J)

PARIPOORNAN, K.S.(J)

CITATION:

1995 AIR 2114

1995 SCC (1) 519

JT 1995 (1) 247

1994 SCALE (4) 1106

ACT:

HEADNOTE:

JUDGMENT:

1. This appeal by special leave is filed by the State of Tamil Nadu against the judgment and order of the High Court of Madras dated 9th September, 1981, whereby the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, was struck down as being ultravires the Constitution of

India. The High Court came to the conclusion that the said Act did not enjoy the protection of Articles 31-C or 31 -A and that it was violative of articles 14, 19 and 300A of the Constitution.

2. Learned counsel for the appellants submitted that the said act was not violative of Articles 14 or 19 or 300A and that, in any event, it was protected by reason of Article 3 1-A. Learned counsel for the respondents submitted that the said Act was violative of Article 14 inasmuch as it was enacted to acquire lands for a purpose which could as well be served by the provisions of the Land Acquisition Act, 1894, and that comparison of the provisions of the said Act with those of the Land Acquisition Act showed that the provision of the said Act were far harsher insofar as the land owner was concerned. Learned counsel for the respondents also submitted that the said Act did not enjoy the protection conferred by Article 31C notwithstanding the declaration in that behalf contained in Section 2 thereof

3. The said Act contains in section 2 the declaration aforementioned, namely, that it is enacted to give effect to the policy of the State towards securing the principles laid down in Part IV and, in particular, Article 46 of the Constitution. It is enacted to provide for acquisition of land for Harijan Welfare Scheme.

4. Section 3 of the said Act is the defines 'Court' to mean, in the City of Madras, the Madras City Civil Court and elsewhere, the Subordinate Judge's Court having jurisdiction, and if there is no such Subordinate Judge's Court, the District Court having jurisdiction. a "Harijan Welfare Scheme" is defined to mean any scheme for provision of house sites for Harijans, for constructing, extending or improving any dwelling house for Harijans, for providing any burial or burning ground for Harijans, for providing any pathway leading to such dwelling house, burial or burning ground or for providing any other amenity for the benefit of Harijans. Sections 4,5,6 and 7 of the said Act read thus:

"4. Power to acquire land (1) Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section. (2) Before publishing a notice under sub-

section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person. who, in the opinion of the District Collector or the officer so authorised may be interested in such land to show cause why it should not be acquired.

(3) (a) The District Collector may, where he has himself called upon the owner or other person to show cause under subsection (2), pass such orders as he may deem fit on the cause, so shown;

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-

section (2), the officer so authorised shall make a report to the the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering

such report the District Collector may pass such order as he may deem fit.

5. Land acquired to vest in Government free from all encumbrances When a notice under sub-section (1) of section 4 is published in the District Gazette, the land to which the said notice relates shall, on and from the date on which the notice is so published vest absolutely in the Government free from all encumbrances.

6. Right to receive amount Every person having any interest in any land acquired under this Act shall be entitled to receive and be paid an amount as hereinafter provided.

7. Determination of amount (1) The amount payable in respect of any land acquired under this Act shall be the market value of such land on the date of publication of the notice under sub-section (1) of section 4.

Section 8 sets out the matters that are to be ignored in determining the amount under section 7. Section 9 entitles any person who does not agree with the amount determined by the prescribed authority under section 7(2) to prefer an appeal to the "Court" within such period as may be prescribed. Sub-section (1) of section 10 requires the prescribed authority to determine who, in his opinion, are entitled to receive the amount where several persons claim to be interested therein and what is payable to each of them. Sub-section (2) states that where a dispute arises in this behalf the prescribed authority may refer it for the decision of the court and the court must in deciding such dispute, follow the provisions of Part III of the Land Acquisition Act, Section 11 reads thus:

"11. Payment of amount (1) After the amount has been determined, the prescribed authority shall tender payment of the amount to the persons entitled thereto and shall pay it to them -

(i) in a lump-sum in a case, where it does not exceed two thousand rupees, and

(ii) in all other cases, in such number of equal annual instalments not exceeding five as may be determined by the prescribed authority and the amount of each such annual instalment shall not be less than two thousand rupees:

Provided that where the balance of the amount due in any instalment is less than two thousand rupees, only the actual amount so due shall be paid.

(2) If the persons entitled to the amount do not consent to receive it or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the amount or as to the apportionment of it, the prescribed authority shall deposit the amount in the Court, and the Court shall deal with the amount so deposited in the manner laid down in sections 32 and 33 of the Land Acquisition Act, 1894 (Central Act 1 of 1894)".

Section 12 provides for payment of interest. It says that when the compensation amount is not paid or deposited on or before taking possession of the land, the prescribed authority shall pay it with interest at the rate of 6% per annum from the time of taking possession until payment. Section 13 reads thus:

" 13. Appeal to High Court Subject to the provisions of the Code of Civil Procedure, 1908 (Central Act V of 1908) applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, a second appeal shall lie to the High Court from any decision of the Court under this Act, if the amount as determined by the prescribed authority exceeds such sum as may be prescribed.

Sections 10 states that the provisions of the Land Acquisition Act, 1894, save as provided in the said Act, shall cease to apply to any land which is required for the purpose specified in section 4(1) and such land shall be acquired only in accordance with the provisions of the said Act. Section 22 reads thus:

"22. Application of the act to certain pending cases of acquisition (1) The provisions of this Act shall apply also to any case or cases in which proceedings have been started before the commencement of this Act for the acquisition of any land for the Harijan Welfare Scheme under the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter in this section referred to as the said Act) but no award has been made by the Collector under section 11 of the said Act before such commencement, as if

(i) the notification published under sub-section (1) of section 4 of the said Act, or

(ii) the declaration made under section 6 of the said Act, or

(iii) the notice given under sub-section (1) of section 9 of the said Act, were a notice to show-cause against the acquisition of the land served under sub-section (2) of section 4 of this Act. (2) Nothing contained in sub-section (1) shall apply in relation to any land unless and until after the District Collector has published a notice in the District Gazette to the effect that the said land is required for the purpose specified in sub-section (1) of section 4 of this Act.

5. It was submitted by learned counsel for the respondents that no enquiry by section 5 of the Land Acquisition Act was contemplated by the said Act. whereas it was the Government which was required to consider objections and the need for acquisition and make a declaration thereafter that the land was required for a public purpose under the Land Acquisition Act. It was, under the said Act, left to the District Collector to be satisfied that the land was required for the purpose of a Harijan Welfare Scheme. No enquiry into the value of the land was contemplated under the said Act inasmuch as a provision equivalent to section 11 of the Land Acquisition Act was not to be found in the said Act. Whereas the Land Acquisition Act set out the matters that were required to be considered for the purposes of award of compensation there was no such provision in the said Act.

The said Act did not provide for a reference to the court in regard to a claim for enhancement of compensation in the manner of section 18 of the land Acquisition Act; it provided only for an appeal to the court and, having regard to the terms of section 9, that appeal was restricted to the amount of solatium payable under section 7(2) of the said Act. Section 11 of the said Act provided for the payment of the compensation amount in instalments in the event that the amount thereof exceeded Rs.2,000/-. Section 13 of the said Act provided for a second appeal to the High Court only if the amount as determined by the prescribed authority exceeded such sum as might be prescribed. This sum, it may be mentioned, was at the relevant time Rs. 50,000/-, which was the amount prescribed for the purpose of all second appeals to the High Court under the rules for the purpose.

6. In *The State of Madhya Pradesh v. G.C. Mandawar*, (1955) 1 S.C.R. 599, a Constitution Bench held that Article 14 does not authorise the striking down of the law of one State on the ground that, in contrast with the law of another State on the same subject, its provisions are discriminatory, nor does it contemplate the law of the Center or of a State dealing with similar subjects being held to be un- constitutional by a process of comparative study of the provisions of the two. The sources of authority for the two being different, Article 14 can have no application. In *Sant Lal Bharti v. State of Punjab*. (1988) 2 S.C.R. 107, this was reiterated.

7. When a statute is impugned under Article 14 what the court has to decide is whether the statute is so arbitrary or unreasonable that it must be struck down. At best, a statute upon a similar subject which derives its authority from another source can be referred to, if its provisions have been held to be reasonable or have stood the test of time, only for the purpose of indicating what may be said to be reasonable in the context. We proceed to examine the provisions of the said Act upon this basis.

8. Sub-section (1) of section 4 empowers the District Collector, if he is satisfied that it is necessary to acquire some land for the purpose of an Harijan Welfare Scheme, to acquire that land by publishing in the District Gazette a notice to the effect that he has decided to acquire it in pursuance of section 4. Sub-section (2) of section 4 obliges the District Collector or any officer authorised by him in this behalf to call upon the owner or any other person who, in the opinion of the District Collector or the officer so authorised, is interested in such land to show cause why it should not be acquired. Where the District Collector has called upon the owner or other person to show cause under subsection (2), clause (a) of sub-section (3) requires him to pass orders on the cause so shown. Where an officer authorised by the district Collector has called upon the owner or other person to show cause under sub-section (2), clause (b) of section 3 requires that officer to report to the District Collector his recommendations on the cause so shown and the District Collector is required to pass such orders as he may deem fit after considering the report. Sub section (2) of section 4, therefore, obliges the acquiring authority to serve notice upon the land owner and other persons interested in the land to show cause why it should not be acquired. By reason of sub-section (3) of section 4, such cause has to be taken into account and orders passed in respect thereof. It is only thereafter that the acquiring authority can arrive at the satisfaction that it is necessary to acquire the land. The provisions of section 4, therefore, substantially encapsulate the provisions of section 4 to 6 of the Land Acquisition Act, the only major difference being that, under the said Act, it is the District Collector and not the State Government who must be satisfied that the land is required to be acquired. It does not appear to us that this is a provision which is unreasonable or arbitrary.

9. By reason of section 5, the land in respect of which notice under section 4(1) is published vests absolutely in the State Government on and from the date of such publication. Every person having an interest in such land is, by reason of section 6, entitled to receive compensation. Section 12 says that where the amount thereof is not paid or deposited on or before the taking of possession of the land, interest thereon is payable at the rate of 6% per annum from the time of taking of possession until payment or deposit.

10. Section 7 states that the amount payable in respect of land that is acquired under the said Act "shall be the market value of such land on the date of publication of the notice under sub-section (1) of section 4". What is payable as compensation is the market value of the land and it is to be determined as on the date on which the notice under section 4(1) is published. To that extent the provisions of the said Act are more favorable than those of the Land Acquisition Act for, under that statute, market value as on the date of the Section 4 notification is payable, not on the date of the Section 6 notification.

11. It is true that the said Act provides for matters which are to be ignored in determining the amount under section 8 but does not make provision, as the Land Acquisition Act does, in determining the amount. It has, however, to be realised that the concept of market value and how it is to be determined is well established. In *State of Gujarat v. Shantilal Mangaldas & Ors.* (1969) 3 S.C.R. 341, this Court said, "Specification of principles within the meaning of Article 31(2) as it then read means laying down general guiding rules applicable to all persons or transactions governed thereby. Under the Land Acquisition Act compensation is determined on the basis of "market value" of the land on the date of the notification under section 4(1) of the Act. That is a specification of principle. Compensation determined on the basis of market value prevailing on a date anterior to the date of extinction of interest is still determined on a principle specified". It is, therefore, of no great consequence that the said Act does not go on to specify what is to be taken into account in determining the amount payable as compensation for land that is acquired thereunder.

12. Sub-section (1) of section 7, as aforesaid, states that the amount payable in respect of the land that is acquired under the said Act shall be its market value on the date of publication of the notice under section 4(1). Sub-section (2) of section 7 states that, in addition to the market value of the land, the prescribed authority shall in every case award a sum of 15 per centum on such market value as solatium in consideration of the compulsory nature of the acquisition. Sub-section (3) of Section 7 states that the prescribed manner, determine by order the amount payable under sub-section (1) and a copy of the said order shall be communicated to the owner of such land and every person interested therein. The purport of section 7, read as a whole, is that the market value of the land is payable as compensation and subsection (3) states that the market value shall be determined after holding an inquiry contemplates notice to the owner and other person interested in the land and consideration of their claims for compensation and the basis thereof, namely, the evidence they adduce. Upon determination of the market value of the land after inquiry, the prescribed authority is obliged under sub-section (2) of section 7 to award as compensation for the acquisition the market value and as additional 13% as solatium.

13. An appeal is prescribed under section 9 to the court by any person who does not agree with the amount determined by the prescribed authority "under sub-section (7) of section 7". It was argued that the appeal was limited to the award of solatium and that, therefore, there was no appeal against the determination of market value and no reference to the court in that behalf in the manner of section 18 of the Land Acquisition Act. We do not think sections 7 and 9 may be so read as to render section 9 an absurdity. As aforesaid, it is the obligation of the prescribed authority under sub-section (2) of section 7 to award the market value of the land plus 15% as solatium. The appeal contemplated by section 9 is, therefore in respect of the award in respect of the land which comprises its market value and solatium.

14. That no reference as in Section 18 of the Land Acquisition Act in regard to the amount of compensation for land that is acquired is provided for does not, in our view, make the said Act unreasonable. Under the provisions of the Land Acquisition Act the award is no more than an offer. If the land owner or other person interested in the land does not accept the offer, section 18 gives him the right of having the compensation amount decided by the court (See Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer. (1962) 1 S.C.R. 676.) In the reference court compensation has to be established. (See Periyar and Pareekanni Rubbers Ltd. v. State of Kerala. (1991) 4 S.C.C.

195.) The record before the Collector does not ipso facto become the record of the reference court. In the case of the said Act an appeal is provided under section 9 from the award, that is, the market value of the land and solatium, under section 7. The market value is required to be determined by reason of sub-section (3) of section 7, upon an enquiry as hereinabove explained. The land owner or other person interested in the land has, therefore, the opportunity to establish its market value before the prescribed authority. Such evidence as he places before the prescribed authority becomes a part of the record of the court in appeal under section 5. The court in appeal under section 9 would also, in appropriate cases, have the right to call for additional evidence.

15. The provisions of section 13 of the Act provide for a second appeal to the High Court. The second appeal lies only if the amount as determined by the prescribed authority exceeds such sum as may be prescribed. The sum prescribed appears to be the sum which is otherwise prescribed in regard to all second appeals. There is no obligation to provide for a second appeal in all cases and there is, therefore, no unreasonableness in this behalf.

16. In the event that the court in appeal under section 9 or the High Court in second appeal under section 13 enhances the compensation amount the power to award interest as prescribed in section 12 is implicit.

17. Section 11 has already been quoted. By reason of sub-section (1) thereof, payment of the compensation amount can be made in a lump sum only where it does not exceed Rs. 2000/-. In all other cases it must be made in equal annual instalments not exceeding five, but so that the amount of each annual instalment is not less than Rs. 2,000/-. In our view, the provision in regard to the payment of the compensation amount by instalments in this manner is wholly unreasonable. The owner of the land or another person interested therein would require compensation in lieu of the

land forth with to re-establish himself whether in a new residence or another piece of agricultural land or other- wise. The provisions of the section in this behalf are clearly severable. The said Act can stand even when the provisions in regard to the payment of the compensation amount by instalment excised. To the extent that section 11 provides for payment of compensation by instalments it is ultra vires Article 14. The provisions of section 11(1) subsequent to the words "in a lump-sum" must, therefore, be struck down.

18. Section 20 of the said Act states that the provisions of the Land Acquisition Act, save as expressly provided in the said Act, shall cease to apply to any land which is required for the purpose specified in section 4(1) and such land shall be acquired only 'in accordance with the provisions of the said Act. Consequently, section 22 makes the provisions of the said Act applicable also to cases in which proceedings have been started before the commencement of the said Act under the Land Acquisition Act for the purpose of Harijan Welfare Schemes, provided that judgment under appeal striking down the said Act was delivered no award have been made under the Land Acquisition Act. We see no unreasonableness in this provision, particularly having regard to the terms of section 20. We must, however, take account the fact that the judgment under appeal striking down the said Act was delivered as far as back as September, 1981, and no stay thereof, was obtained from the court. It is likely, therefore, that in cases where proceedings under the Land Acquisition Act had already been started to acquire lands for Harijan Welfare Schemes, they might have been revived and completed in the interregnum. We, therefore, make it clear that the provisions of section 22 shall have no effect in such cases where awards have been made.

19. In the result, we do not find the provisions of the said Act, except for the provision as to instalments in section 11, violative of the provisions of Article 14 of the Constitution of India. It is, therefore, unnecessary to consider whether or not the said Act has the protection of article 31-C of the Constitution.

20. The appeal is allowed in part. The judgment and order under appeal is set aside. Except for the provision of Section 11 (1) of the said Act insofar as they provide for payment of the compensation amount in instalments, the said Act is intra vires the constitution. Section 11 (1) is valid only to this extent:

"11. Payment of amount- (1) After the amount has been determined, the prescribed authority shall tender payment of the amount to the person entitled there to and shall pay it them-

(1) in a lump-sum."

The rest of Section 11 (1) is ultra vires the Constitution. Civil Appeal 4461 of 1964 3978-4302 of 1990 & 2114 of 1991.

21. There civil appeals arise out of orders of the Madras High Court that, following the judgment dated 9th September, 1981, aforementioned, struck down the said Act. Having regard to the discussion set out above, we have held the said Act to be valid legislation, except in so far as the

provisions of Section 11 (1) thereof require the payment of the compensation amount in instalments. For the same reasons, these appeals are set aside. Except for the provisions of section 11 (1) of the said Act in so far as they provide for payment of the compensation amount in instalments, the said Act is intra vires the constitution. Section 11(1) is valid only to this extent:

"11. Payment of amount (1) After the amount has been determined, the prescribed authority shall tender payment of the amount to the persons entitled thereto and shall pay it to them-

(1) in a lump sum."

The rest of Section 11 (1) is intra vires the Constitution. Civil appeal(Nos.) 7886-7891 of 1994 (Arising out of S.L.P.

(c) Nos. 16729- 34 of 1983.

22. Leave granted.

23. The judgment and order of the Madras High Court under appeal in these civil appeals, following the aforementioned judgment dated 9th September, 1981, struck down the provisions of chapter VI of the Tamil Nadu Slum clearance. The provision of chapter VI are substantially similar to the provisions of the said Act, that is to say the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 except that by reason of Section 21, no solatium is payable to the land owner whose land is acquired. The Madras High Court, relying on the judgment dated 9th September, 1981 in relation to the said Act, found the provisions of chapter VI to be violative of Article 14 of the Constitution and struck them down.

24. We have held the provisions of the said Act to be intra vires the Constitution, except in regard to the provision for payment of the compensation amount in instalments. The Slum Clearance Act does not provide for payment of the compensation amount in instalments.

25. That no solatium is payable under the Slum Clearance act does not, in our view, make any substantial difference. In *Prakash Amichand Shah v. State of Gujarat & Ors.* (1985) Suppl. 3 SCR 1025, a Constitution Bench held that it could not be said as a rule that the State, which has to supply and maintain large public services at great cost, should always pay, in addition to reasonable compensation for acquired land, some amount by way of solatium: the interest of the public was equally important. It is, to our mind, not unreasonable that the State should not have to pay solatium in consideration of the compulsory nature of the acquisition of land that is slum land.

26. In the result, the appeals are allowed and the provisions of Chapter VI of the Slum Clearance Act are held to be intra vires the Constitution.

Civil Appeal No. 7885 of 1994 (Arising out of &L.P. (C) No. 16989 of 1991:

27. Leave granted.

28. This is an appeal by the owner of land whose land was sought to be acquired under the provisions of the Land Acquisition Act for the purpose of a Harijan Welfare Scheme after the coming into force of the said Act, that is the Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act, 1978 the appellant filed a writ petition in the Madras High Court for a direction to the State to for bear from continuing with the proceedings under the Land Acquisition Act having regard to the provisions of Section 20 of the said Act which required that for such purpose land could be acquired only in accordance with the provisions of the said Act. The learned single Judge dismissed the writ petition and the Division Bench the appeal filed therefrom, both on the ground that said Act, had been struck down as unconstitutional. Hence this appeal.

29. We have held the provisions of the said Act to be valid legislation except in so far as they provide for payment of the compensation amount in instalments. The said Act being valid legislation, its provisions preclude the State from acquiring land for the purpose of a Harijan Welfare Scheme under the Land Acquisition Act. The appeal is allowed and the proceedings under the Land Acquisition Act to acquire the appellant's land for the purpose of a Harijan Welfare Scheme are, therefore, quashed and set aside.

30. In all these civil appeals each party shall bear and pay its own costs.