

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.11.2015

C O R A M

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.10251 & 10252 of 2003

Kandasamy ...Petitioner in W.P.No.10251/2003

Krishnamoorthy ...Petitioner in W.P.No.10252/2003

Vs.

1.The District Collector
Nagapattinam District.

2.The Special Tahsildar,
Adi Dravidar Welfare,
Mayiladuthurai,
Nagapattinam District. Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records of the first respondent relating to his proceedings in Na.Ka.44301/2002 K6 dated 06.02.2003 published in Nagapattinam District Gazettee dated 13.02.2003 and quash the same.

For Petitioners : Mr.S. Sounthar

For RR1& RR2 : Mr.P.V.Selvakumar

C O M M O N O R D E R

By consent of the learned counsel on either side, the writ petitions are taken up for final disposal.

2. Heard Mr.S.Sounthar, learned Counsel appearing for the petitioners and Mr.P.V.Selvakumar learned counsel for the respondents.

3.In both these Writ Petitions, the petitioners are deaf and dumb and they have challenged the acquisition made by the respondents under the provisions of the Tamil Nadu Acquisition of land for Harijan Welfare Scheme Act, 1978.

4.It is submitted that the petitioners are deaf and dumb and they are residing in the said village for several years and all the villagers understand their sign and language. That apart, the petitioners would contend that the District Collector has not considered their objections, which they have submitted to the second respondent and the District Collector has not applied his mind and no satisfaction has been recorded prior to the issuance of the notification under section 4(1) of the Act.

5.Counter affidavit has been filed in both the Writ Petitions, in which the second respondent does not dispute the averments made by the petitioners that both the petitioners are physically challenged (deaf and dumb). With regard to the legal contentions raised by the petitioners that satisfaction has not been recorded by the District Collector, counter affidavit does not specifically state as to how the District Collector was satisfied that the objections given by the petitioners are not sustainable and more importantly as to how the District Collector came to the conclusion that inspite of the petitioners suffering such severe handicap, still they have to be dispossessed of the lands in question.

6.The Hon'ble Full Bench of this Court in the case of R.PARI v. THE SPECIAL TAHSILDAR, ADI DRAVIDAR WELFARE, DEVAKOTTAI, [2006 (4) CTC 609], considered the issue as to the manner in which the District Collector, who is the competent authority, to exercise the power under section 4(1) of the Act.

7.In terms of sub section (2) of Section 4 of the Act, before a notification under section (1) is published, the District Collector or any authorised officer by the District Collector in this behalf, shall call upon the owner or any other person to show cause as to why the land should not be acquired. In case where the District Collector has delegated his power to any officer for the purpose of issuing a show cause notice to the land owners, as in this case, then the officer so authorised, shall make a report containing his recommendations and the District Collector after considering such report may pass such order as he may deem fit.

8.This satisfaction of the District Collector is paramount and should be prior to issuance of the notification under section 4(1) of the Act and it is only thereafter, a notice under Form -2, could be issued. The respondents have not placed anything on record before this Court to establish that there has been due satisfaction of the District Collector based on the report submitted by the second respondent.

9.In the absence of any such record to establish that there was due satisfaction of the District Collector with regard to

the objections raised by the petitioners, this Court is left with no other option except to conclude that the District Collector has not recorded his satisfaction in the manner required to be done under the Statute and this vitiates the acquisition proceedings.

10.It is seen that at the time when the Writ Petition was admitted on 03.04.2003, an order of stay was granted and the interim order was also made absolute.

11.In the light of the above discussions, the petitioners are entitled to succeed. Accordingly, the Writ Petitions are allowed and the land acquisition proceedings are quashed. No costs.

rpa

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The District Collector
Nagapattinam District.

2.The Special Tahsildar,
Adi Dravidar Welfare,
Mayiladuthurai,
Nagapattinam District.

+ 1 cc to The Govt. Pleader, Sr 64559.

+ 1 cc to Mr.S. Sounthar, Advocate Sr 64224.

PVR/CO
KR/14/12

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