

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :31.03.2015

Coram :-

THE HON'BLE MR.JUSTICE V.DHANAPALAN
and
THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.A.No.527 of 2012
and
M.P.No.1 of 2012

1. The District Collector,
Salem.
2. The Special Tahsildar,
(Adi Dravidar Welfare),
Omalur,
Salem District. ... Appellants/Respondents
- Vs.
1. Palanisamy
2. Radhamani
3. Selvam @ Selvarani
4. Palanisamy ... Respondents/Petitioners

Writ Appeal under Clause 15 of Letters Patent against the order dated 02.12.2010 made in W.P.No.6294 of 2004.

PRAYER in W.P.No.6294 of 2004: Writ Petition filed under Article 226 of the Constitution of India for the issue of Writ of Certiorari to call for the entire records relating to the Notification in ROC.No.51416/2002 (D-12) dated 01.01.2004 issued by the first respondent under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 published in Salem District Gazette Extraordinary issue dated 07.01.2004 and quash the same so far as it relates to the lands of the petitioners measuring 0.11.0 Hectares in S.No.310/4B2 in Chenreddiyur Hamlet of Kuttapatti Village, Mettur Taluk, Salem District.

For Appellants : Mr.R.Rajeswaran,
Special Government Pleader

For RR-1 & 2 : No Appearance

For R-3 : Mr.D.Shivakumar,

For R-4 : Mr.P.Mani

Date of reserving the Judgment : 18.02.2015
Date of Pronouncement : 31-03-2015

J U D G M E N T

G.CHOCKALINGAM, J.

This writ appeal is directed against the order dated 02.12.2010 made in W.P.No.6294 of 2004, wherein the relief sought for was to call for the entire records relating to the Notification in ROC.No.51416/2002 (D-12), dated 01.01.2004 issued by the first respondent under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 published in Salem District Gazette Extraordinary issue dated 07.01.2004 and quash the same so far as it relates to the lands of the writ petitioners measuring 0.11.0 Hectares in S.No.310/4B2 in Chenreddiyur Hamlet of Kuttapatti Village, Mettur Taluk, Salem District.

2. The case of the writ petitioners/respondents 1 to 3 herein is that the lands measuring 4.27 acres (1.71.0 Hectares) in Survey No.310/4B of Kuttapatti Village, Mecheri Taluk, Salem District was the ancestral property of the writ petitioners. By virtue of a registered Partition Deed dated 17.04.2003, the lands have been partitioned among the writ petitioners. However, for the sake of convenience, they are in joint possession of the lands and the first respondent herein is taking care of the lands which have fallen to the share of the respondents 2 and 3 also. It is the further case of the writ petitioners that the subject matter of the writ petition namely the lands comprised in Survey No.310/4B2 measuring about 0.11.0 Hectares out of 1.72.0 Hectares therein and many other pieces of lands, all put together more than 30 acres originally belonged to the father of the writ petitioners viz., Nallappa Gounder and his brothers and sisters and they have partitioned the land among themselves. The lands comprised in Survey No.310/4B2 and other lands came to the share of the father of the writ petitioners. The land in Survey No.310/4A measuring more than one acre on the west of S.No.310/4B2 also belonged to the father of the writ petitioners. On the eastern side of the land of the writ petitioners in Survey No.308, there was a Gramanatham and in the said Gramanatham Arunthathiar colony was situated and about 30 Arunthathiar families were living therein. On the western side of the Survey No.310, there is a main road namely Mecheri Nangavalli main road.

3. The said Arunthathiar in the Gramanatham in Survey No.308 wanted to shift their residence near the main road on the western

side. One Perumal has patta land in Survey No.308/1B measuring about 0.64 acres. He has built a terraced house in the place of his thatched shed and he is living in the old colony. Apart from the said Perumal, another person namely Kuppusamy, who is a native of a neighbouring village viz., Ellampillai is living in the colony. The said Kuppusamy owns patta land in the said Ellampillai village. Thus only two families are living in the Gramanatham in Survey No.308. The third respondent has purchased about 0.38.0 Hectares in Survey No.308/1B and another extent of 0.25.5 Hecs in Survey No.308/1E of Kuttampatti Village by virtue of a registered Sale Deed dated 14.03.1999. The third respondent also owns other patta lands, part of which are purchased from the paternal uncle of the writ petitioners viz., one S.Palanisamy in the year 1985. The third respondent has got a right of way to his other patta lands, through Survey No.301/4B2 belonging to the writ petitioners. But the third respondent has instigated some powerful persons hailing from Arunthathiar community and to make a request for a pathway to the Arunthathiar colony which is right now not in existence as a colony. The ultimate aim of the third respondent is to misuse and abuse the Government machinery to seek acquisition of the lands belonging to the respondents 1 to 3/writ petitioners to get a pathway laid by the Government by acquiring the lands of the writ petitioners.

4. It is the further case of the writ petitioners / respondents 1 to 3 herein that the second respondent had issued a notice dated 26.09.2003 under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [hereinafter referred to as "the Act"] stating that about 0.11.0 Hectares of lands in the major extent of 1.71.0 Hectares comprised in S.No.310/4B is necessary to be acquired for the purpose of provision of pathway to the Arunthathiar Colony, Chinna Reddikuppam. On receipt of the said notice, writ petitioners / respondents 1 to 3 herein have recorded their objections with the second respondent. But, without any application of mind over the objections raised by the writ petitioners / respondents 1 to 3 herein, the first respondent has issued a notification in ROC.No.51416/2002/D(D12), dated 01.01.2004 published in Salem District Gazettee extraordinary issue dated 07.01.2004 under Section 4(1) of the Act, acquiring the above said 0.11.0 Hectares of land. Aggrieved by the decision of the first respondent in publishing the notification, the respondents 1 to 3 herein have filed a writ petition in W.P.No.6294 of 2004 before this Court praying to quash the impugned notification dated 01.01.2004 published in the District Gazette, Salem, dated 07.01.2004.

5. The learned Single Judge, after hearing both sides, allowed the writ petition filed by the respondents 1 to 3/writ petitioners. As against the said order passed by the learned Single Judge, the appellants are before this Court by way of the above writ appeal.

6. Heard Mr.R.Rajeswaran, learned Special Government Pleader appearing for the appellants, Mr.D.Shivakumar, learned counsel appearing for R.3 and Mr.P.Mani, learned counsel appearing for R.4. Even though notice was served on R.1 and R.2, there is no representation on behalf of R.1 and R.2.

7. The learned Special Government Pleader appearing for the appellants would contend that the learned Single Judge has failed to consider the fact that the notices in Form I under Rule 3(1) of the Tamil Nadu Act 31/78 was issued to the land owners posting 4(2) enquiry on 15.10.2003 and the said notices were duly served on all the interested persons in the manner prescribed in the Rule formed under the Tamil Nadu Act 31/78. Further, the learned Special Government Pleader appearing for the appellants would contend that the learned Single Judge has failed to note that the notification under Section 4(1) of the Act has been duly approved by the District Collector and the same was published in the Salem District Gazette extraordinary Issue No.1, dated 07.01.2004. It is the further contention of the learned Special Government Pleader that the learned Single Judge has failed to see that the the second appellant had issued a notice under Section 4(2) of the Act stating that about 0.11.0 Hectares of land in Survey No.310/4B is necessary to be acquired for the purpose of provision of pathway to Arunthathiar Colony, Chenreddiyur. The learned Special Government Pleader also contended that the learned Single Judge ought to have held that the District Collector has applied his mind and after satisfaction alone, he issued the notification under Section 4(1) of the Act. It is further contended by the learned Special Government Pleader that the learned Single Judge has erred in holding that the satisfaction of the District Collector was not reflected in the order dated 01.01.2004, since the order has been passed by the District Collector after due application of mind and the acquisition proceedings were initiated to fulfill the basic amenities of poor Arunthathiar community people and the general public. In view of the above, the learned Special Government Pleader would contend that the writ appeal has to be allowed.

8. Per contra, the learned counsel for the third respondent would contend that in this case, the District Collector has not applied his mind before issuing the notification under Section 4(1) of the Act and therefore, the said notice is liable to be quashed. The learned counsel for the third respondent also filed synopsis of dates and events before this Court and contended that there is no necessity to acquire the land in Survey No.310/4B at Kuttapatti village for the purpose of provision of pathway to the Arunthathiyar colony of Chenreddiyur, since there is no Arunthathiyar community peoples residing in the said Survey No.310/4B, Kuttapatti village. It is further contended that a civil suit is pending between the parties and one of the parties is also claiming pathway right in the said property. In view of the

above circumstances, since there is no necessity to acquire the said land and no such Arunthathiyar community people are residing in the Survey No.310/4B, pathway is not at all necessary. Hence, the learned Single Judge has failed to give a finding on the above said ground. The learned counsel for the third respondent would further contend that the learned Single Judge mainly relied upon the notification issued by the District Collector under Section 4 (1) of the Act. The main contention of the learned counsel for the third respondent is that the District Collector has not applied his mind before issuing the notification under Section 4(1) of the Act and no such material was placed regarding the subjective satisfaction arrived by the District Collector for acquiring the lands and hence the impugned notification is not in accordance with law and therefore there is no illegality or infirmity in the order passed by the learned Single Judge. Hence, he prayed that the writ appeal has to be dismissed.

9. We have considered the rival submissions made by the learned counsel on either side and we have also gone through the documents available on record including the entire files for the acquisition of the lands produced before this Court by the Government and the order dated 02.12.2010 of the learned Single Judge of this Court made in W.P.No.6294 of 2004.

10. It is admitted by both sides that the land in question was acquired for providing pathway to Arunthathiar Colony in Kuttapatti Village. It is also admitted by the learned Special Government Pleader appearing for the appellants that Form Nos.I and II as prescribed in the Act was served to the land owners by the competent Authority. In this regard, it is worth referring to the Statement of Objects and Reasons and also Sections 2, 3 (g) and 4 (1) (2) & (3) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [hereinafter referred to as "the Act"] which read as under:

"STATEMENT OF OBJECTS AND REASONS

Provision of house-sites, pathways, burial grounds or any other amenities for the benefit of Harijans is a socio-economic measure and the necessity to provide them needs no emphasis. This Government find that the existing Land acquisition Act, 1894 (Central Act I of 1894) does not help achieving this object in a short period as there are number of provisions in the Act which are time-consuming. This Government is, therefore, of the view that it is necessary to quicken the process of land acquisition by conferring powers to prescribed officers and also making provision for payment of compensation in instalments for

phasing the financial commitment of the Government.

2. This Bill seeks to achieve the above objects.

1. ...

2. Declaration.- It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles laid down in Part IV and in particular Article 46 of the Constitution.

This section contains declaration that this Act is enacted to give effect to the policy of the State towards securing the principles laid down in Part IV (Directive Principles of State Policy of the Constitution and, in particular, Article 46 so as to enable for acquisition of Land of Harijan Welfare Schemes.

3. Definitions.- In this Act, unless the context otherwise requires,-

(a) to (f)

(g). "Harijan Welfare Scheme" means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling-house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans;

(h) to (j)

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 subsection (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 sub-section (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 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 orders as he may deem fit."

11. As per the provisions of the Act, the State Government, under the directive principles of the State Policy of the Constitution of India, is duty bound to provide pathway to Arunthathiar community people. All the welfare schemes were proposed and implemented by the State of Tamil Nadu through the District Collector of each District.

12. Hence, the State Government is competent to prepare the welfare scheme for Harijans in the particular State and the District Collector is the prescribed authority under the Act for acquiring the lands and allocating funds in the budget. In pursuance of the implementation of the Government scheme, the District Collector has taken steps to acquire the lands for Harijan Welfare Schemes to execute the same for providing pathway to Arunthathiar community peoples in Kuttapatti Village.

13. In the above circumstances, the District Collector, on being satisfied with the Harijan Welfare Scheme of the State Government for the welfare of Arunthathiars to provide pathway, published a notification under Section 4(1) of the Act after following the principles of law laid down under Section 4(2)(3) of the Act.

14. Thus, on the side of appellants, it is clearly established by the Government that the District Collector, after satisfaction alone, issued notification under Section 4(1) of the Act. Form II prescribed in the Act was scrupulously followed by the authorities concerned to acquire the lands for the Harijan Welfare Schemes. Hence, the argument of the learned counsel for the third respondent that the acquisition proceedings was vitiated since the District Collector has not followed the procedure as mentioned in Form II is not at all acceptable.

15. In this case, On a perusal of the original files produced before this Court, it is seen that before acquiring the lands for Harijans Welfare Schemes for providing pathway to Arunthathiars, the District Collector satisfied himself and issued Notification under Section 4(1) of the Act. The proceedings of the District Collector reads as follows:-

"PROCEEDINGS OF THE DISTRICT COLLECTOR,
SALEM.

PRESENT : THIRU. S.RAMACHANDRAN, I.A.S.,

Roc.No.51416/02/D12
1.2004

Dated:

Sub:- A.D.W. - Land Acquisition - Salem District
Mettur Taluk - Kuttapatti Village -
Provision of Pathway - Draft Notification u/s 4
(1) of the Tamilnadu Acquisition of Land
for Harijan Welfare Schemes Act 1978
(Tamilnadu Act 31 of 1978) approved and
published - reg -

Ref: 1. G.O.Ms.No.143, Adi Dravidar and Tribal
Welfare Dept., dated 1.8.95.
2. Report from the Special Tahsildar (ADW)
Omalur Roc.No.353/02 dt: 13.10.03.

ORDER:-

The Collector, Salem accepts the recommendation of the Special Tahsildar (ADW) Omalur for the Acquisition of 0.11.0 Hec. of land in S.No.310/4B Kuttapatti Village, Mettur Taluk in Salem District. सत्यमेव जयते

2. The Draft Notification under Section 4(1) of the Tamilnadu acquisition of land for Harijan Welfare Scheme Act 1978 (Tamilnadu Act 31 of 1978) submitted by the Special Tahsildar (ADW) Omalur in his letter 2nd cited, is approved and will be published in an extraordinary issue of the Salem District Gazette.

3. The Manager, Government Branch Press, Salem is requested to publish the enclosed Notification in an Extraordinary issue of the District Gazette of Salem District.

4. The entire cost of acquisition will be borne by the Government from the funds allotted for Salem District under the acquisition of lands for providing pathway to Arunthathiars in Kuttapatti Village in Mettur Taluk

5. The Special Tahsildar (ADW) Omalur is authorised to perform the functions of the land Acquisition prescribed under Sections 7,10,11,12 and 14 of the Tamilnadu Act 31 of 1978. The special Tahsildar (ADW) Omalur is requested to get the clearance certificate from the Assistant Commissioner (Land Reforms) before the award is passed.

/true copy/

Sd.S.Ramachandran,
Collector,
Salem.

To,
The Manager, Govt. Branch Press, Salem.(with enclosures)

He is directed to send sufficient copies to the District Adi Dravidar Welfare Officer, Salem, Collectorate, Salem)

Copy to the Special Tahsildar (ADW).

Form II
(See Rule 3 (II))

NOTICE UNDER SECTION 4(1) OF THE TAMIL NADU
ACQUISITION OF LAND FOR HARIJAN WELFARE SCHEME ACT
1978

Where as appears to the Government of Tamil Nadu that the land specified in the Schedule below and situated in the Kuttapatti Village, Mettur Taluk, Salem District are needed for the purpose of Harijan Welfare Scheme Wit, for the provision of Pathway to the Colony of Chenreddyur H/O. Kuttapatti Village notice to that effect is hereby given to all to whom it may concern in accordance with the provision of Sub Section (1) of Section 4 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (Tamil Nadu Act, 31 of 1978).

And, whereas, it has become necessary to acquire immediate possession of the land specified in the schedule.

Now, therefore in exercise of the powers conferred sub Section (1) of Section (4) of the said Act, the Collector Salem District hereby directs that the land be acquired under the provision of the said Section.

THE SCHEDULE

District : Salem Taluk : Mettur Village
28 Kuttapatti

Purpose : Provision of pathway to Colony of
Chenreddiyur H/o - Kuttapatti Village.

Government Dry S.No.310/4B2 belonging the
Palanisamy Son of Nallappan Tm. Selvam D/o. (late)
Nallappan (2) Tmt. Radhamani D/o. (late) Nallappan
bounded on the North by 310/4B1 East by 308,
310/5, South by S.No.388 and West by 333.

Tress Structures: Nil Extent
0.11.0

COLLECTOR,
SALEM."

On a perusal of the above proceedings of the District Collector, Salem, we are of the considered view that the District Collector, after satisfaction only, had issued the notification under Section 4(1) of the Act. So the argument of the learned counsel for the third respondent that before issuing the notification under Section 4(1) of the Act, the District Collector has not satisfied himself is not at all acceptable.

16. Further, the learned Single Judge, after hearing both sides, in paragraph No.3 of the order made in W.P.No.6294 of 2004, has stated as follows:-

"3. Even though other grounds have been raised to the effect that the purpose for which the land of the petitioners sought to be acquired viz., for the purpose of giving approach road to reach Adi Dravidas Colony, the colony itself has been shifted towards the main road, therefore, the approach road is not required."

17. The learned counsel for the writ petitioners even though raised so many grounds in the writ petition, he has not at all preferred any separate appeal for not considering the other grounds for allowing the writ petition.

18. We have perused the order of the learned Single Judge made in W.P.No.6294 of 2004 and the synopsis of dates and events submitted by the learned counsel for the third respondent. The other ground raised by the learned counsel for the third respondent is that a civil suit is pending between the parties and one of the parties is claiming pathway and the civil suit is also dismissed. It is not necessary to see whether the civil suit is pending or not. In the acquisition proceedings, the land is acquired by the Government after complying the procedure of Rules and the land is vested with free from all encumbrances. The argument of the learned counsel for the third respondent that the decree passed in the civil suit would affect the acquisition proceedings cannot be accepted. Further, the learned counsel for the third respondent has raised a ground in the writ petition and in the writ appeal that in Survey No.310/4B2, there is no Arunthathiyar community people residing and they are shifted to some other place adjoining to the main road and therefore there is no necessity to acquire the said land. Further, even in the synopsis of dates and events, the learned counsel for the third respondent specifically admitted that there are two Arunthathiyar family peoples residing for which pathway is absolutely necessary for the Survey No.308. It is not at all denied by the writ petitioners that there is no other separate pathway for S.No308. In the above circumstances, admittedly, there are two Arunthathiyar family peoples are residing in the Survey No.308 and absolutely necessary to acquire the land for pathway to the Arunthathiyar peoples. Some of the Arunthathiyar peoples were shifted from residence adjoining to the road cannot be a valid ground to set aside the land acquisition proceedings.

19. In view of the above, except the above two grounds alleged in the writ petition, no other ground was put forth on the side of the learned counsel for the third respondent in the synopsis of dates and events. Since there is no appeal filed by the third respondent for not considering the other grounds, all the other grounds raised by the learned counsel for the third respondent are not valid to quash the acquisition proceedings. In view of the above, we are of the considered view that the finding of the learned Single Judge is not correct and therefore the order of the learned Single Judge is liable to be set aside.

In the result, the writ appeal is allowed and the writ petition is dismissed by setting aside the order of the learned Single Judge dated 02.12.2010 made in W.P.No.6294 of 2004. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jrl

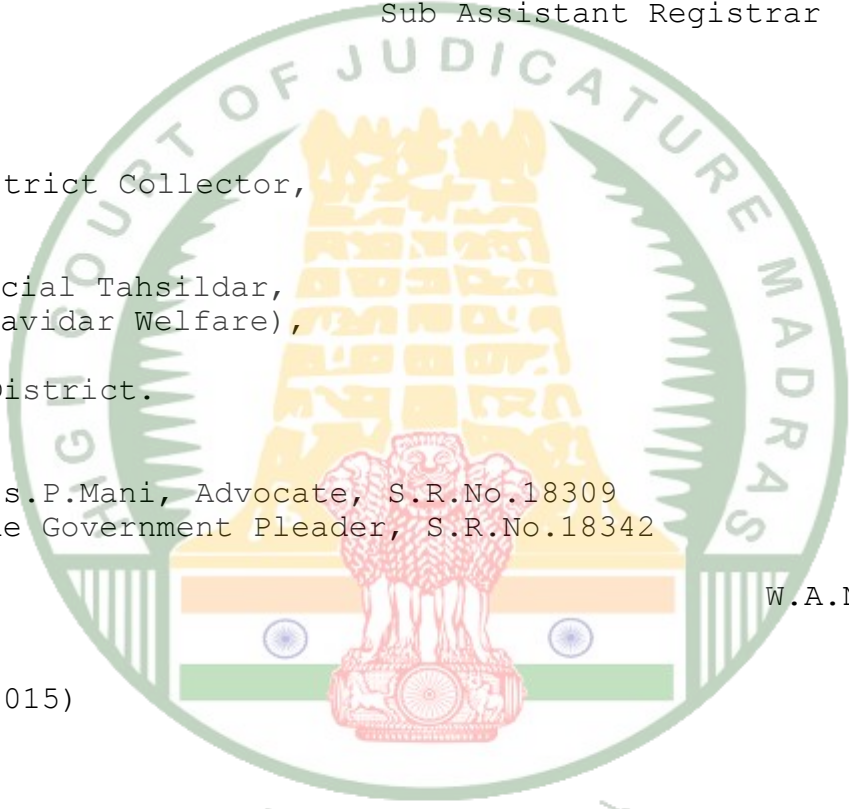
To

1. The District Collector,
Salem.
2. The Special Tahsildar,
(Adi Dravidar Welfare),
Omalur,
Salem District.

+1cc to M/s.P.Mani, Advocate, S.R.No.18309
+1cc to the Government Pleader, S.R.No.18342

W.A.No.527 of 2012

TAD(CO)
CA(07/04/2015)



सत्यमेव जयते

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