

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.11.2015

Date of Reserving the Order	Date of Pronouncing the Order
03.11.2015	25 .11.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.39709 of 2006

1. Kempaiya (Deceased)
- 2.Kary Ellappa
- 3.Timmakka
- 4.Muniyammal
- 5.Savithiramma
- 6.K.Venkatesh

... Petitioners

P2 to P6 are substituted as LRS of deceased P-1 Mr.Kempaiya as per order dated 01.10.2015 in M.P.No.1 of 2015 in W.P.No.39709 of 2006.

Vs.

- 1.The District Collector,
Dharmapuri District,
Charmapuri.
- 2.The Special Tahsildar,
ADW, Krishnagiri,
Dharmapuri District.

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari to call for the entire records in respect of the Land Acquisition Proceedings initiated by the respondents in Na.Ka.No.47073/98, which was published in Dharmapuri District Gazette on 08.01.1999 in respect of the petitioner's property in S.No.12/2 of Senamavu village, Hosur Taluk with an extent of 2.75 acre (0.95.0 Hectare) and quash the same.

For petitioner .. Mr.D.Rajagopal

For Respondents .. Mr.R.Vijayakumar AGP for RR1&2

O R D E R

The petitioners in this Writ Petition have challenged the land acquisition proceedings initiated by the respondents under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, (hereinafter referred to as the 'Act').

2. The learned counsel appearing for the petitioner contended that the impugned acquisition proceedings are vitiated for failure to follow the mandatory provision of the Act. It is submitted that the respondent without issuing Form - I notice prescribed under Section 4(2) of the Act, straight-away made the publication in the District Gazette. Further, the first respondent or any other officer authorised by the first respondent did not issue any show cause notice to the petitioners as to why the land should not be acquired and therefore, the proceedings are vitiated. It is further submitted that in terms of Section 4(3)(b) of the Act, the authorised officer shall make a report to the District Collector containing his recommendations, on the cause so shown for the decision of the District Collector and after considering such report, the District Collector may pass such orders as he may deem fit. It is the specific case of the petitioner that the Tahsildar did not send his recommendations and copy of such report/recommendation was not furnished to the petitioners which vitiates the entire proceedings. In support of such contention, reliance has been placed on the decision of the Hon'ble Supreme Court in the case of R.Pari vs. The Special Tahsildar, Adi-Dravidar Welfare, Devakkottai, reported in 2006 (4) CTC 609. Further by placing reliance on the decision of this Court in the case of M.Nagu & Ors. vs. The District collector, Sivagangai District, reported in 2008 (2) CTC 468, it is submitted that failure to take efforts to serve notice on individual land owners before making affixture, cannot be stated to be a notice served under Section 4(2) of the Act. Reliance was also placed on the decision of the Hon'ble Division Bench in the case of The Secretary to Government & 2 Ors., vs. P.Dhanabakkiam, reported in 2009-1-L.W.608, wherein the notification was quashed on the ground that it did not disclose the satisfaction of the District Collector. Another decision of the Hon'ble Division Bench in the case of R.Rasappa Gounder vs. The District Collector, Dindigul, reported in 2008-Writ-L.R. 585 was relied on for the same proposition. Reliance was also placed on the decision of the Hon'ble Division Bench of this Court in the case of Jainabi vs. The State of Tamil Nadu, reported in 2006 (5) CTC 163, with regard to the nature of satisfaction required to be recorded by the District Collector.

3. The learned Special Government Pleader appearing for the respondents submitted that the land acquisition proceedings has

been belatedly challenged and the first petitioner had participated in the enquiry, but he has not submitted any objection and the lands have been sub-divided and pattas have been issued. It is submitted that the notification under Section 4(1) of the Act was published in the District Gazette on 08.01.1999 and served on the petitioner on 16.03.1999 and the notification was also published in the village by affixture in a public place and also in the Village Administrative office. The petitioner's son filed a Writ Petition before this Court in W.P.No.2800 of 2000 and the same was dismissed on 26.06.2000. Further, by referring to the counter affidavit, it is submitted that the first petitioner attended the enquiry on 26.10.1998 and refused to give consent for acquisition or any statement, however, he has not sent any objection to the Land Acquisition Officer. Therefore, it is submitted that the entire land acquisition proceedings has been validly done and pattas have been issued to the beneficiaries.

4. The first petitioner, who is no more, had earlier filed an additional affidavit raising additional grounds stating that the petitioner is in possession and enjoyment of the said land and they are cultivating the said land and there are standing crops and the petitioner was not aware about the land acquisition proceedings and came to know of it only when the Officers visited the property and directed the petitioners to hand over possession to the beneficiaries. The petitioner would contend that the satisfaction of the District Collector under Section 4(1) of the Act, is mandatory and in the instant case no such satisfaction has been recorded nor evident from the impugned notification and therefore, the land acquisition proceedings are vitiated.

5. Heard the learned counsels appearing for the parties and perused the materials placed on record.

6. The challenge to the impugned acquisition proceedings is primarily on the ground that the District Collector has not recorded his satisfaction prior to issuing notification under Section 4(1) of the Act. The respondents contended that the petitioner was very much aware of the proceedings, but in the counter affidavit, it is admitted by the second respondent that the petitioner refused to hand over the land and objected to the acquisition. In such circumstances, it is to be seen that as what course of action has to be adopted by the respondents. The answer to this question lies in the various decisions rendered by this Court and in particular, the decision of the Hon'ble Full Bench of this Court in the case of R.Pari (supra). It has been settled in several decisions, some of which have been referred to by the learned counsel for the petitioners that the District Collector is the competent authority to exercise the power under Section 4(1) of the Act and such power cannot be

delegated. In terms of sub-section (2) of Section 4, before a notification under sub-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 such a show cause notice to the land owner, then the Officer so authorised, shall make a report containing his recommendations and the District Collector after considering such report, may pass such orders as he may deem fit. Thus the satisfaction of the District Collector is paramount prior to issuance of the notification under Section 4 (1) of the Act and it is only thereafter, a notice under Form-II could be issued.

7. In the instant case, the respondents in the counter affidavit have not stated as to the date on which the notice was served on the land owner prior to initiation of the land acquisition proceedings. All that is stated in the counter affidavit, is that the petitioner is aware of the land acquisition proceedings and the whole village is aware. This can hardly be a ground to justify the action of the respondents, when their action is put to challenge before this Court by raising such a specific plea. Further, there is nothing on record to show that the District Collector had recorded his satisfaction before issuing notice under Form-II.

8. As pointed out in the several decisions of this Court, the satisfaction of the District Collector is paramount and mandatory and cannot be dispensed with. In the counter affidavit, the respondents admit that the petitioner objected to the land acquisition proceedings. In such circumstances, the District Collector is bound to record his satisfaction and that should be evident from the face of the record. Since the respondents have not been able to satisfactorily demonstrate before this Court that the District Collector had recorded his satisfaction based on the recommendations of the second respondent, this Court is inclined to accept the case of the petitioners.

9. Though the respondents have stated that pattas have been issued to the beneficiaries, the fact that the petitioners are in possession and enjoyment of the land, has not been denied by the respondents, more particularly, the plea raised by the petitioners in the additional affidavit filed during November 2012. That apart, the petitioners had the benefit of the order of interim stay from 2006 onwards, which has continued till date.

10. In the light of the above discussion, the Writ Petition is allowed and the impugned acquisition proceedings are quashed.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

pbn

To

1.The District Collector,
Dharmapuri District,
Charmapuri.

2.The Special Tahsildar,
ADW, Krishnagiri,
Dharmapuri District.

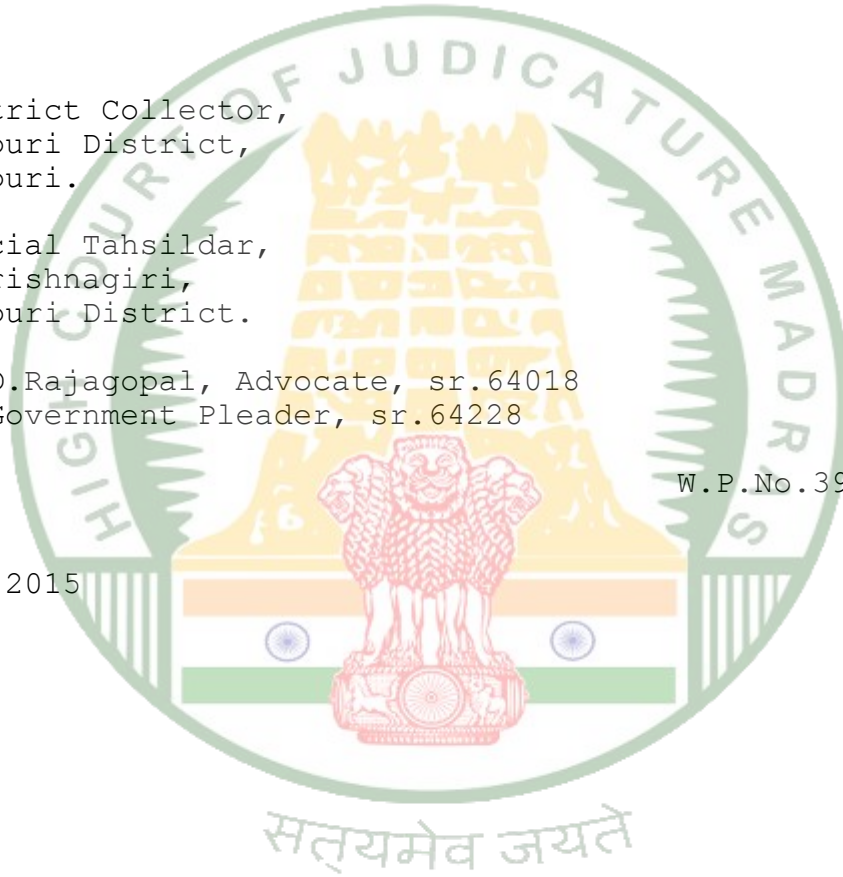
+1 cc to D.Rajagopal, Advocate, sr.64018

+1 cc to Government Pleader, sr.64228

W.P.No.39709 of 2006

vs co

kra 04.12.2015



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