

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.24814 of 2001

1.V.Venugopal Pillai
2.Madhurambal

.. Petitioners

Versus

1.State of Tamil Nadu, rep. by
The Secretary to Government.
Adi Dravidar Welfare Department,
Fort St.George, Chennai - 600 009.

2.The District Collector,
Cuddalore.

3.The Special Tahsildar,
Adi Dravidar Welfare HB 405,
Chidambaram.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records leading to the publication in the Tamil Nadu Gazette of Cuddalore District No.30 dated 18.10.2001, relating to the acquisition of the lands belonging to the petitioners comprised in Survey Nos.92/15, 91/8, 92/16, 92/17, 91/5 and 91/8 situated at Parivilakam Village, Cuddalore District and quash the same.

For Petitioners : Mr.C.Jagadeesh

For Respondents : Mr.R.Rajeswaran

Special Government Pleader

ORDER

With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2. Heard Mr.C.Jagadeesh, the learned counsel appearing for the petitioners and Mr.R.Rajeswaran, Special Government Pleader for the respondents.

3. The petitioners in this Writ Petition have challenged the land acquisition proceedings initiated under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 1978 (Tamil Nadu Act 1978). The petitioners

are the owners of the lands comprised in Survey Nos.92/15, 91/8, 92/16, 92/17, 91/5 and 91/8 situated at Parivilakam Village, Cuddalore District. The petitioners received a notice in Form-I under Rule 3 read with Section 4(2) of the Act, calling upon them to submit their objections. It is not in dispute that notice in Form-I contained only two Survey Nos. 92/15 and 91/8. The petitioners on receipt of the notice submitted their objections on 22.12.2000, which was received by the third respondent on the same date. They also appeared before the third respondent in person and submitted their written objections reiterating the earlier objections, which were sent by post.

4. In the objections, the petitioners have pointed out that they are poor farmers and they do not own any other property other than the lands in question and if these properties are acquired, they will be put to irreparable hardship as the said lands are "Nanja lands". Thereafter, the petitioners were not informed as to the subsequent proceedings and were shocked to note from the Notification issued on 18.10.2001, that the lands which are acquired were mentioned to be comprised in Survey Nos.91/5, 91/8, 91/14, 91/15 and 91/17. Therefore, the petitioners immediately sent their objections stating that the lands which are included under the Section 4(1) Notification, were not the lands, in respect of which, notice in Form-I was issued, in which only two Survey Numbers was included. Therefore, the Notification issued under Section 4(1) including other Survey Numbers which were not mentioned in the Form-I notice is unsustainable in law and therefore, the acquisition proceedings itself is liable to be set aside. Though such representation was made, no action was initiated to drop the proceedings and therefore, the petitioners approached this Court and filed this Writ Petition in the year 2001. At the time when the Writ Petition was entertained, interim order was granted, by virtue of which, the petitioners are in possession of the lands.

5. The learned counsel for the petitioners after reiterating the above contentions submitted that, apart from the above glaring legal infirmity, the acquisition was barred and in the light of the fact, show cause notice was issued by the Special Tahsildar, Adi Dravidar Welfare, Chidambaram and it is in violation of Section 4(3) (b) of the Act. Further the petitioners contended that the 1st petitioner is an Ex-Serviceman and cultivating the lands under "Pasumai Puratchi" scheme and there are several other lands in that area, which could be allotted for such housing purposes. Further, it is submitted that the report of the Special Tahsildar was not furnished to the petitioners and the notification does not state that there is due application of mind on the part of the District Collector. Further, it is submitted that in the Gazette

Notification under Section 4(1) dated 18.10.2001, there is reference to Survey Nos.91/8, mentioning the name of Venugopal as owner. However, the actual owners of the property are the 1st petitioner and his wife Tmt.Madurambal/2nd petitioner and so far as the lands in survey No.92/15 is concerned, the petitioners are stated to be the owner, but in the Gazette Notification, it is stated as 91/15. Therefore, it is the contention of the petitioners that if there is a mistake in the description of the property, then the entire notification should have been withdrawn as nonest and an error cannot be corrected at the stage of issuance of notification.

6. On the above submissions, I have heard the learned the Special Government Pleader who had referred to the factual details at great length and has drawn the attention of this Court to the averments set out in the counter affidavit. From the counter affidavit, more particularly at Paragraph No.5, it is admitted by the third respondent that there were some errors in the Notification, which was rectified and published at Page No.130 of the Cuddalore District Extraordinary Gazette No.11, dated 28.12.2001.

7. Admittedly, the acquisition proceedings was made pursuant to the impugned Notification dated 18.01.2001. Therefore, this so called error, which are very glaring, cannot give a right to the respondents to rectify the same and issue a fresh notification, since the petitioners had no opportunity to note that all the lands mentioned in the Notification are to be acquired, since the show cause notice did not include those lands. Therefore, the procedure adopted by the respondents in publishing an erratum, after receiving the petitioners' objections and that too, without further intimation to the petitioner does not have to sanction of law and at this ground, the petitioner is entitled to succeed.

7. Accordingly, this Writ Petition is allowed and the impugned notification in Tamil Nadu Government Gazette District No.30 dated 18.10.2001 is hereby quashed. No costs.

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Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

TO

1. The Secretary to Government,
Adi Dravidar Welfare Department,
Fort St.George, Chennai - 600 009.

2.The District Collector,
Cuddalore.

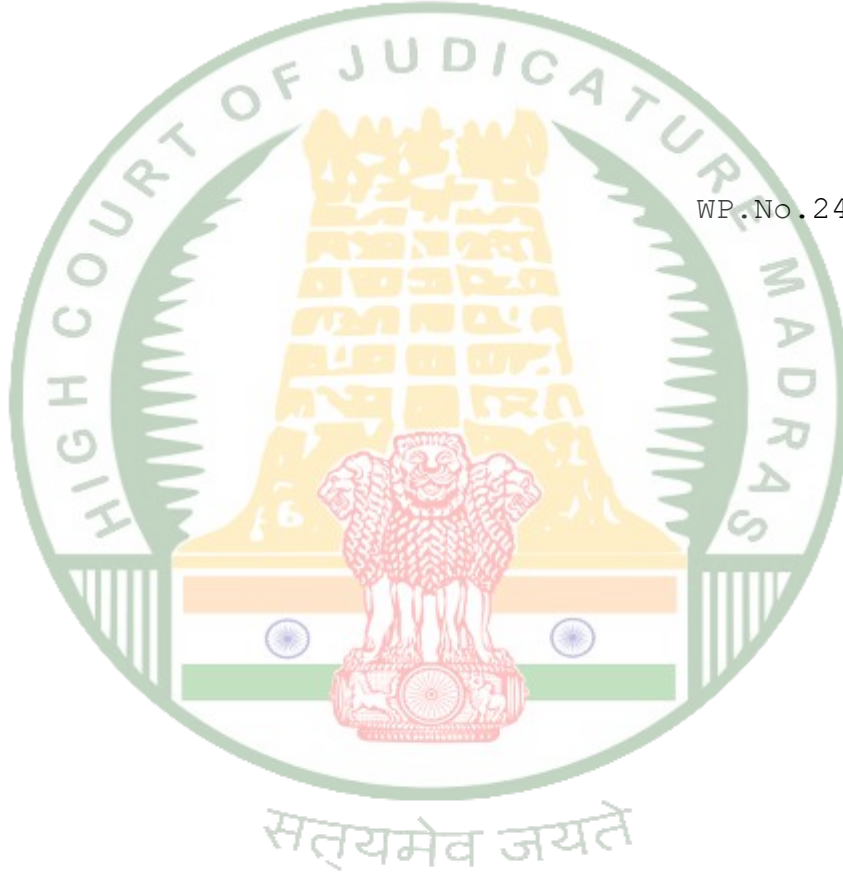
3.The Special Tahsildar,
Adi Dravidar Welfare HB 405,
Chidambaram.

+ 1 CC TO MR.T.V.KRISHNAMACHARI, ADVOCATE SR 62603.

+ 1 CC TO THE GOVT.PLEADER, SR 62680.

VD/CO
KR/10/12

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