

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON:15.09.2014

DATED: 06.01.2016

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.34000 of 2007

and

M.P.No.2 of 2007

K.R.S.Mohanraj

.. Petitioner

vs.

1. The District Collector,
Coimbatore District,
Coimbatore - 641 018.

2.The Special Tahsildar-Adi Dravidar Welfare,
(Land Acquisition Officer),
District Collectorate,
Coimbatore - 641 018.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India, praying this Court for issuance of Writ of Certiorari to call for the records of the 1st respondent herein relating to the Notification under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) published in the Coimbatore District Gazette (Extraordinary) No.11, dated 18.07.1998 in so far as it relates to the lands of the petitioner in S.Nos.296/1 measuring 0.62.05 hectares in Kuniamuthur Village, Coimbatore South Taluk and District and quash the same.

For Petitioner ... Mr.A.S.Vijayaraghavan

For Respondent ... Mr.M.S.Ramesh
(Additional Government Pleader)

ORDER

The petitioner submits that he is the sole and absolute owner of lands situated in S.F.No.296/1, of Kuniamuthur Village, Coimbatore South Taluk and District, measuring 0.62.5 hectares having purchased them from one Sellappa Gounder son of Subbanna Gounder under registered Sale Document 191 of 1940. The said

lands are being cultivated by him and the income from this occupation forms part of the major source of his income. He stated that 10th October 2007 when he had been with the lands in question a person residing in the nearby Harijan Colony informed him that certain officials who claimed that they are from the Department providing house sites to Adi Dravidas inspected his lands sometime in the 1st week of October 2007. Since, he is not residing on the lands in question and he was not aware of such inspection. Thereupon, he went to the office of the 1st respondent and enquired as to any on going schemes for the provision of house sites to Adi Dravidas in Kulathupalayam area of Kuniamuthur Revenue Village and he was directed to approach the Special Tahsildars functioning as Land Acquisition Officers for provision of house sites to Adi Dravidas in Kulathupalayam area of Kuniamuthur Revenue Village and he was directed to approach the Special Tahsildars functioning as Land Acquisition Officers for provision of house sites to Adi Dravidas for any information in this regard. On 15.10.2007 and he was able to understand and know from the subordinates of the 2nd respondent that as early as 1997 proceedings under Tamil Nadu Act 31 of 1978 were initiated and he was shocked to hear about it as he was never served with any mandatory and statutory notices at any point of time all these years.

2. On further enquiry he came to know that the second respondent issued a notice dated 17.09.1997 under Section 4(2) of the Tamil Nadu Act 31 of 1978 in reference No.Na.Ka.1391/97A to one Vellakkal and another by name Ranganayaki Ammal as if they are the landowners and calling for their objections against the proposed acquisition lands in S.F.Nos.296/1 and 296/2 measuring 0.62.5 and 1.88.0 Hectares respectively owned by them for provision of free house sites to Adi Dravidas. He has stated that the said Ranganayaki Ammal is the owner of S.F.No.296/2 measuring 1.88.00 Hectares of lands and she does not have any right, title or interest in S.F.No.296/1 measuring 0.62.5 Hectares. He has further stated that another person viz., Velakkal in the Form I notice issued by the 2nd respondent also does not have any right, title or interest in so far as S.F.No.296/1 is concerned and she is an absolute stranger in so far as the said lands are concerned. He further understood and came to know through the subordinates of the 2nd respondent that the notices said to have been sent to Velakkal returned unserved with endorsements "No Such Person" and he enquired from the family members of Sellappa Gounder (who is no more) who sold the lands to him in 1976 and came to know that there was no such person called Velakkal in their family and that Sellappa Gounder was the sole owner who was in possession and enjoyment of the lands till he sold them to him from 1940.

3. He further came to know that the officials of the 2nd respondent without making any further verification as to the ownership of the lands in S.F.No.296/1 proceeded to decide the acquisition proposals. It appears that the service regarding the said Velakkal was treated as completed on the ground that the Form I notice had been affixed in the Salai (hut) in the said lands, even though at any point of time right from 1940 till date there was never existence a salai in the said lands. He has respectfully submits that even though he purchased the lands as early as 1976 and had been cultivating the same till date he has not put up construction of any nature. The patta No.602 for the said lands stood transferred in his name and it does not reflect any name as Velakkal as a Joint owner. He has submits that from the officials of the 2nd respondent and he came to know that the 1st respondent issued a notification under Section 4(1) of the Tamil Nadu Act 31 of 1978 in Ref.No.5028/97 (No.8) dated 02.07.1998 and published the same in the Coimbatore District Gazette No.11, dated 18.07.1998 and the 2nd respondent had also initiated proceedings for award enquiry in 1999. He was not aware of the proceedings initiated by the respondents for acquiring his lands to an extent of 0.62.5 Hectares in S.F.No.296/1, Kuniamuthur Village since at no point of time any notice of any kind was issued to him. He has respectfully stated that the proceedings initiated by the respondents are invalid, illegal and void in as such as the mandatory and statutory Notices that ought to be served on the land owner have not been served on him and for the reason that even the notice in Form I under Section 4(2) of the Tamil Nadu Act 31 of 1978 was sent to wrong persons and not to the owner of the land.

4. The first respondent had caused publication of a Notification under Section 4(1) of Tamil Nadu Act 31 of 1978 in the District Gazette (Extraordinary) No.11, dated 18.07.1998 declaring that the lands covered by the Notification are being acquired under the said Act. Aggrieved thereby, having no other efficacious alternative remedy, he is invoking the jurisdiction of this Court under Art 226 of the Constitution of India. Hence, this writ petition. He has submitted that even though the impugned notification was published in 1998 and he was not aware of the same otherwise and he was not put on notice about the acquisition proceedings by any other mode he was not able to challenge the same even in 1998 or at any point of time later till he was able to understand about the proceedings upon enquiries with the subordinate of the II respondent in the II week of October 2007 and later. In this connection he submits that even after passing of an award, the land acquisition proceedings could be challenged if the authorities failed to comply with mandatory legal requirements as has been held by this Court in 2006 (1) MLJ Page 527. However, he came to know that an award was passed in this case in favour of Velakkal. Assuming that an award being passed in her favour of a non-

existent and imaginary person and as such it is void abinitio and can have no legal consequences. Thus he has submitted the delay, if any, in challenging the impugned notification is not in any way attributable to him, more so when there is no service of statutory notice on him. The impugned notification of the second respondent in so far as it is against the petitioner and concerning his lands in S.F.No.296/1 of Kuniamuthur Village, Coimbatore, South Taluk and District of an extent of 0.62.5 hectares is arbitrary, illegal and unjust and is liable to be set aside. Hence, he has filed the above writ petition.

5. The first respondent in his counter statement has submitted that based on the representation of the poor Adi Dravidars, the Special Tahsildar (LA) Adi Dravidar Welfare, Coimbatore, initiated land acquisition proceedings under Tamil Nadu Acquisition Act 31/78 to provide house sites to about 115 Adi Dravidars residing in and around the Kulathupalayam Hamlet of Kuniamuthur Village, Coimbatore South Taluk, it was proposed to acquire an extent of 2.47.0 Hectares of lands in S.No.296/1 and 296/2 of Kuniamuthur Village, Coimbatore South Taluk and Coimbatore District. As per the village accounts, the lands in S.No.296/1, 0.62.5 Hectares stands registered in the name of Tanganayagiammal and Tmt.Velakkal and S.No.296/2, 1.84.5 Hectares stands registered in the name of Tmt.Ranganayagiammal. Notices under Section 4(2) were issued to the landowners on 17.09.1997. The above notices were served to one Thiru.Purushothaman, S/o.Tmt.Ranganayagiammal who was authorized to represent the matter. As the another landowner Tmt.Velakkal had refused to receive the notice, the same was affixed on the farm house on 18.09.1997 and a certificate to that effect was obtained from the V.A.O Kuniamuthur and filed. Tmt.Ranganayakiammal filed her objections on the date of enquiry on 08.10.1997 and additional objection on 20.10.1997.

6. The Special Tahsildar (LA) Adi Dravidar and Tribal Welfare, Coimbatore had gone through the objections and found that there was no truth in her objections. The Collector, Coimbatore has also considered her objection and overruled the objections and approved the 4(1) notification. The Notification was published in the Coimbatore District Gazette (Extraordinary) No.11, dated 18.07.1998. The Special Tahsildar (LA) Adi Dravidar and Tribal Welfare, Coimbatore, had issued notice under Section 5(1) of the Tamil Nadu Land Acquisition Act 31/78 to the above landowners to appear for the award enquiry on 06.11.1998. But the landowner Tmt.Ranganayakiammal approached the High Court, Chennai and filed a writ petition in W.P.No.17198/98 in W.M.P.No.26036/98 against the land acquisition and obtained interim stay of dispossession, it is possession has not already been taken. In this case possession was not taken. Award was passed as per Award No.6/98-99, dated 12.03.1999 and the awarded amount of Rs.9,85,052/- was deposited in the Sub-Court,

Coimbatore on 20.11.2001. This Court in its Judgment dated 27.11.2006 in W.P.No.17198/1998 and W.M.P.No.26036/1998 has dismissed the petitions filed by Tmt.Ranganayakiammal on the ground that there is no suitable poramboke land available for 115 poor Adi Dravidars to provide house sites.

7. The respondent has submitted that according to the Village accounts the lands in S.F.No.296/1, 0.62.5 hectares stands registered in the name of Tmt.Ranganayakiammal and Velakkal and the another land in S.F.No.296/2, 1.88.0 hectares stands registered in the name of Tmt.Ranganayakiammal only. Notice under Section 4(1) of the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act 1978 was published in the Coimbatore District Gazette (Extraordinary) as per notification No.11, dated 18.07.1998. But the petitioner has not turned up for enquiry to prove his ownership and to file his objections if any for the acquisition of land. The above land was inspected by the Special Tahsildar (LA) Adi Dravidar Welfare Coimbatore, on 30.08.1997 and at the time of his inspection the above lands were kept waste and there was no cultivation as stated by the petitioner. According to the adangal maintained by the Village Administrative Officer, Kuniamuthur, the above lands were kept waste for the last several years. Hence, the contention of the petitioner is false. According to the petitioner, he has stated that he is a resident of Kulathupalayam where the proposed lands situate. The Notification for the proposed acquisition was published in the Coimbatore District Gazette (Extraordinary) No.11, dated 18.07.1998. He might have filed his objection soon after the publication of the above notification. The petitioner has not turned up to the Office of the Special Tahsildar (LA) Adi Dravidar Welfare Coimbatore as stated by him.

8. The Land Acquisition Officer had issued notice under Section 4(2) to the landowners and conducted enquiry on 08.10.1997. The Collector, Coimbatore had published the notification in the Coimbatore District Gazette (Extraordinary) No.11, dated 18.07.1998. In the meantime one of the landowner Tmt.Ranganayakiammal approached the High Court, Chennai and obtained interim stay another landowner had refused to receive the notice for enquiry and hence it was affixed on the farm house and a certificate to that effect was obtained from the Village Administrative Officer, Kuniamuthur. Though, the petitioner got the opportunity to file his objection, he has not done so. Neither, Velakkal nor the petitioner attended the enquiry. It is submitted that according to the Kuniamuthur Village accounts, the land in S.F.No.296/2 measuring 1.88.0 hectares stands registered in the name of Tmt.Ranganayakiammal only. The Land Acquisition Officer had followed the procedure stipulated in the Tamil Nadu Land Acquisition Act 31/78 and award passed on 12.03.1999. The land in S.F.No.296/1, 0.62.5 Hectares was in the name of Tmt.Ranganayakiammal and

Tmt.Velakkal upto 14.08.2006 (i.e., Fasli 1416). There after the petitioner got his name registered in the Village and Taluk accounts only on 14.08.2006, much later. If he had registered his name soon after the purchase of the above land and his name could have been seen in the village accounts and notices issued. The respondent has submits that the title of ownership stood in the name of Tmt.Ranganayakiammal and Tmt.Velakkal at the time of land acquisition. The Collector had issued the notification under Section 4(1) of Tamil Nadu Land Acquisition Act 31/1978 and published in the Coimbatore District Gazette (Extraordinary) No.11, dated 18.07.1998. The petitioner has failed to get his name registered in the village accounts as early in the year 1976 and defaulted though he is well versed with rules and regulations.

9. The respondent has submitted that based on the petition dated 06.12.1996 of the poor Adi Dravidars residing in the same area for providing free house site, the Collector, Coimbatore, had decided to acquire the above lands and followed the procedures laid down in the Tamil Nadu Land Acquisition Act 31/1978. The petitioner had failed to get his name registered in the Village and Taluk accounts during the year 1976 as was done in the year 2006, much later. Hence, his request cannot be considered. The petitioner has not approached any of the subordinate of the second respondent as stated by the petitioner. In this case the award was passed as per award No.6/98-99, dated 12.03.1999. Since, Tmt.Velakkal, the registered landowner of S.F.No.296/1, Kuniamuthur Village had refused to receive the notice under section 4(2) of the Act, it was considered that she has no objection in the acquisition proposed and Draft Notification under Section 4(1) of Tamil Nadu Land Acquisition Act 31/78 was published in Coimbatore District Gazette (Extraordinary) No.11, dated 18.07.1998 at page 1 and 2. As the registered landowners had not produced documentary evidence to prove their share in the lands under acquisition, the amount of compensation payable could not be apportioned to the landowners. As such, reference under section 10 and 11 of the Tamil Nadu Land Acquisition Act 31/78 was made to the Principal Subordinate Judge, Coimbatore, as per this officer Lr.No.1391/97-A, dated 24.07.2001 and compensation amount of Rs.9,85,052/- (Rupees Nine Lakh Eighty Five Thousand and Fifty two only) was deposited in the above Court on 21.11.2001 and C.M.A.No.97/99 is pending in the Court of the Subordinate Judge, Coimbatore. The 1st respondent has no objection to file a petition to implead himself in the above CMA.No.97/99 of the Subordinate Court, Coimbatore to get the enhanced compensation.

10. The respondent has submitted that for the reasons stated above the notification published in Coimbatore District Gazette (Extraordinary) No.11, dated 18.07.1998 issued under Section 4(1) of the Tamil Nadu Acquisition of lands for Harijan

Welfare Schemes Act 1978 (Tamil Nadu Act 31/78) relates to the land in S.F.No.296/1 measuring 0.62.5 Hectares in Kuniamuthur Village, Coimbatore South Taluk, Coimbatore District is correct and genuine.

11. The highly competent counsel Mr.A.S.Vijayaraghavan, appearing for the petitioner submits that the petitioner had purchased the subject matter of the lands in the year of 1976 under registered sale deeds. Under the circumstances, in the month of October 2007, the respondents herein had inspected subject lands for acquiring the same in order to provide house sites to the poor Adi Dravidar people. The petitioner was informed that the land acquisition proceedings had been initiated in the year of 1997. The land Acquisition Officer had not issued any notices to the petitioner regarding acquisition proceedings. The learned counsel further submits that the 2nd respondent had issued notice to the 3rd parties pertaining to the lands comprised in S.F.No.296/1 of Kuniamuthur Village, the learned counsel further submits that the petitioner is cultivating the said lands as of now and the patta proceedings is standing in the name of the petitioner. The petitioner had not been aware that entire land acquisition proceedings, as such the notification had been issued under section 4(1) of the Tamil Nadu Acquisition Lands for Harijan Welfare Schemes Act 1978 which is illegal and irregular.

12. The learned Additional Government Pleader Mr.M.S.Ramesh, appearing for the respondent submit the 4(1) notification had been published in the year of 1998 for acquiring the subject lands for the purpose of providing house sites to the Adi Dravidar People who are residing in and around the said village. As per the Village accounts the lands stands in the names of Mrs.Ranganayakiammal and Tmt.Velakkal. The said Ranganayagiammal had submitted her objections before the 2nd respondent, the same was overruled by the District Collector after due considerations, the same was dismissed on the ground that there is no alternative site available to fullfil the purpose. The compensation amount had been deposited before the Subordinate Court, Coimbatore. Under these circumstances, the above writ petition is not maintainable, further the Village Administrative Officer had certified that the subject matter of the lands were kept waste for the last several years. Hence, the learned counsel entreats the Court to dismiss the above writ petition.

13. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on either side and on perusing the typed set of papers, it is seen that the land acquisition proceedings had been initiated in the year of 1998 and the same was completed in the year 1999. Further, the compensation amount had been deposited before Subordinate Court,

Coimbatore. Further, the same proceedings/common notification had been challenged by one of the landowners in W.P.No.17198 of 1998, the same was dismissed by this Court. Therefore, the writ petition is not maintainable, since it is the same original cause of action. Therefore, the above writ petition is dismissed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

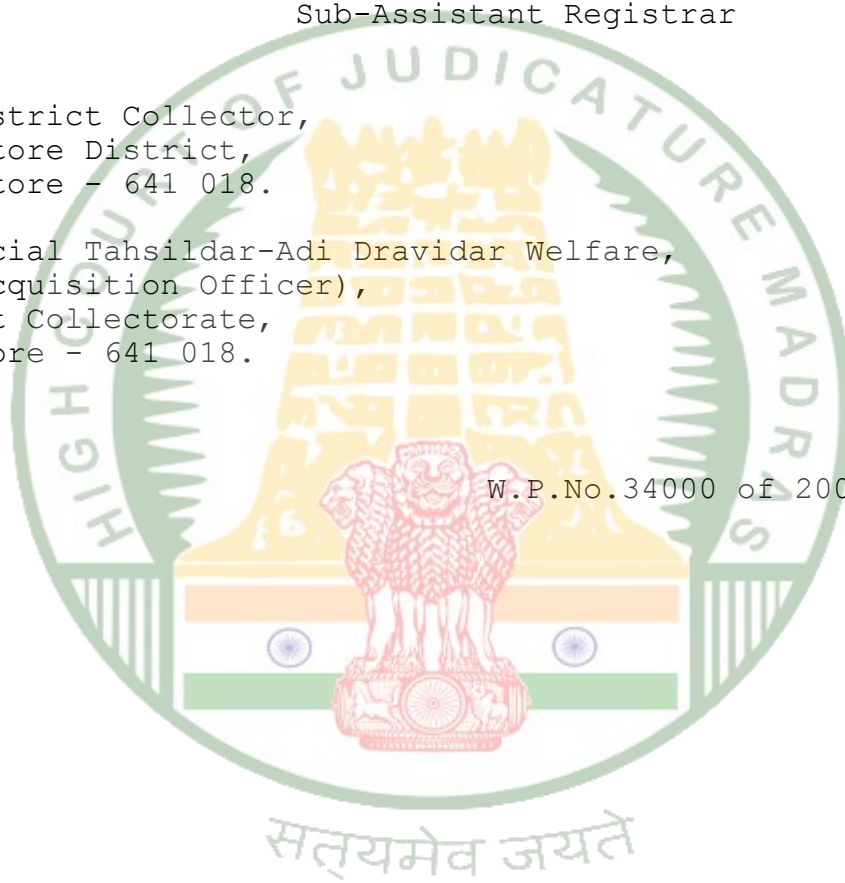
To

1. The District Collector,
Coimbatore District,
Coimbatore - 641 018.

2.The Special Tahsildar-Adi Dravidar Welfare,
(Land Acquisition Officer),
District Collectorate,
Coimbatore - 641 018.

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W.P.No.34000 of 2007



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