

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.No.159 of 2016
and
C.M.P. No.2279 of 2016

1. The District Collector,
Vellore District,
Vellore
 2. The Special Tahsildar,
Adi Dravidar Welfare,
Walajapet,
Vellore District
- ... Appellants

Vs.

1. A.Mohamed Shengal Basha
 2. A.Mohamed Umar Basha
 3. A.Mohamed Siddick Basha
- ... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent Appeal against the Order of this Court dated 27.06.2014 made in W.P. No. 16094 of 2003.

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, to call for the records relating to the impugned notification issued by the first Respondent dated 05.02.2000 and dated 01.02.2003 published in Vellore District Gazette, quash the same and consequently forbear the respondents from acquiring the lands of the Petitioners comprised in Survey No.331/1A3 Ammoor Village, Wallajah Taluk, Vellore District.

For Appellants : Mrs.A.SriJayanthi
Special Government Pleader

For Respondents : Mr.K.V.Ramesh

J U D G M E N T

[Judgment of the Court was Delivered By M.VENUGOPAL, J.]

The Appellants / Respondents have preferred the instant Writ Appeal as against the Order dated 27.06.2014 in W.P.No.16094 of 2003 passed by the Learned Single Judge.

2. The Learned Single Judge while passing the Impugned Order on 27.06.2014 in W.P.No.16094 of 2003 (filed by the Respondents/Petitioners) at Paragraph No.13 had observed the following:- ...

"13. When the petitioners have raised serious objections against acquisition proceedings, the materials or the grounds for rejection should be stated in the order or it should find place in the file. If the aggrieved person questions the non existence of the conditions or the materials required for the exercise of the power, the Courts have to examine the same and it is for the authorities to satisfy the Court, the grounds on the basis of which, the notification is issued. In this case, the authority concerned, acted strictly in accordance with law, but failed to convince that there has been an application of mind on the part of the District Collector and the objections were dealt with objectively to arrive at subjective satisfaction and sufficient reasons were recorded in arriving at such conclusion by the District Collector. On the contrary, the materials made available herein would only prove that there are no materials or grounds available for rejecting the petitioner's objections. In that event, the conclusion arrived at by the District Collector suffers from non-application of mind and stands vitiated by arbitrariness and against mandate and not in accordance with the Schemes of the Act, as such, the acquisition proceedings are necessarily held to be vitiated and stand quashed."

and resultantly allowed the Writ Petition as prayed for, without costs.

3. According to the Learned Special Government Pleader for the Appellants, the Order of the Learned Single Judge in allowing the Writ Petition is clearly unsustainable both in Law or on facts and circumstances of the present case.

4. The Learned Special Government Pleader for the Appellants urges before this Court that the Learned Single Judge should have considered that the lands comprised in Survey No.331/1A3 of Ammoor Village, Wallajah Taluk, Vellore District was acquired for providing burial ground to Arundhathis of Allikulam Hamlet of Ammoor Village.

5. It is represented on behalf of the Appellants that the Learned Single Judge ought to have considered the fact that after inspection by the Officials, notice under Rule 3(1) of Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 1978 was issued to the land owners to appear for enquiry and the owner appeared for enquiry and filed objections, but, he was not able to produce any records to show that he has planned to start a factory.

6. The Learned Counsel for the Appellants proceeds to take a stand that a report was submitted to the First Appellant/District Collector (First Respondent) to overrule the objections and to cause publication of the Notifications under Section 4(1) of the Act in Form II in the District Gazette.

7. The plea of the Appellants is that the Learned Single Judge should have noted the fact that the First Appellant/District Collector had accepted the recommendations of the Special Tahsildar (LA), Walajah and published the Notification in the District Gazette No.2 dated 05.02.2000 in his proceedings K11/87866/99 and since the Notification was not printed at Page No.5 of the said Gazette Publication, an Erratta Notification was sought to be published and accordingly the Notification was published in the District Gazette issued in No.4 dated 01.02.2003.

8. The Learned Special Government Pleader for the Appellants strenuously contends that the Learned Single Judge had failed to appreciate a very vital fact that the "Award was passed on 27.03.2003 and necessary changes in the village accounts were effected and the land was handed over to the Executive Officer, Town Panchayat, Ammoor and that now the lands are vested with the Town Panchayat and as such, it cannot be returned back to the Respondents / Writ Petitioners.

9. Per contra, it is the contention of the Learned Counsel for the Respondents / Petitioners that the Impugned Notifications issued by the 1st Appellant/1st Respondent under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act, 31 of 1978 are illegal and violative of Principles of Natural Justice. Furthermore, the Respondents were not provided with an opportunity of hearing before passing the Order under Section 4(1) of the Act.

10. It is the plea of the Respondents that even though opportunity was given by the 2nd Appellant/2nd Respondent by issuing Notice under Rule 3(1) and that the Petitioners submitted their written submissions yet, the 1st Appellant/1st Respondent issued the Notifications under Section 4(1) of the Act without hearing the Petitioners in-person and the Erratta

Notification was issued after the lapse of three years from the original notification.

11. The Learned Counsel for the Respondents submits that even the Elected Board of the Ammoor Town Panchayat have resolved to oppose the acquisition proceedings initiated by the Appellants/Respondents on the ground that the establishment of new burial ground at the proposed site would cause irreparable loss, inconvenience and hardship to the General Public because of the reason that proposed place is not suitable for establishing the burial ground.

12. The learned counsel for the respondents brings it to the notice of this Court that there was an inordinate delay in issuing Section 4(1) Notification, inasmuch as the Notice under Rule 3(1) was issued on 24.06.1999 and the objections were submitted on 05.07.1999 by the 2nd Appellant/ 2nd Respondent but the notification was issued only on 05.02.2000 and the erratum was issued on 01.02.2003 and the delay in question was not explained.

13. On behalf of the Respondents, it is represented before this Court that the Appellants had failed to take into consideration that there are alternative lands, a burial ground, is existing within Ammoor Village, where the proposed land is situated and as such there is no necessity for establishing a burial ground, as such, the Impugned Notifications are not warranted.

14. Lastly, it is the version of the Respondents/Petitioners that the Appellants/ Respondents failed to provide a copy of the report submitted by the 2nd Appellant / 2nd Respondent to the 1st Appellant/ 1st Respondent before issuing the Impugned Notification and therefore, the entire acquisition proceedings are vitiated.

15. In the present case, the Respondents/Petitioners had assailed the acquisition proceedings mainly on the basis (a) The Impugned Section 4(1) Notification dated 05.02.2000 was in violation of the statutory Rules and also against the Principles of Natural Justice and therefore, without jurisdiction. (b) The 'Erratum Notification', was issued after a lapse of three years from the date of issuance of Section 4 (1) Notification was without notice under Section 4(2) of the Act and without hearing them in-person. (c) The prospective site was not suitable for burial ground.

16. Admittedly, in the case on hand before this Court, Form I Notice was issued under Rule 3(1) by the 2nd Appellant/2nd Respondent calling for objections if any, to show cause why the schedule mentioned land ought not to be acquired. There is no dispute as to the fact that the

Respondents/Petitioners (land owner) had submitted their objections and the said objections were overruled. As a matter of fact, a Notification under Section 4(1) in Form II was issued on 05.02.2000 and as per Section 4(2) of the Act, an enquiry was conducted by the 2nd Appellant / Special Tahsildar as authorised by the 1st Appellant/District Collector.

17. In this connection, this Court aptly points out that the denial of the right to a 'person interested' is in negation of fair and just procedure offending Article 14 of the Constitution as per decision of Hon'ble Supreme Court M/s Neyveli Lignite Corporation Limited V. Special Tahsildar (Land Acquisition), Neyveli and Others reported in AIR 1995 Supreme Court Page 1004 at Special Page 1009. Also that there must be continuity of action in publishing Section 4(1) of Notification in the Gazettee, newspapers and public notice of substance at convenient places in the locality. However, if there is a long / an inordinate delay, certainly, a Court of Law can interfere, in the considered opinion of this Court.

18. Indeed, Section 4(1) Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act, 1978 empowers the District Collector, if he is satisfied that it is necessary to acquire some land for the purpose of Harijan Welfare Scheme, to acquire that land by publishing in the District Gazette a notice to the effect that he has decided to acquire it in pursuance of Section 4. Sub-section (2) of Section 4 enables the District Collector or any officer authorised by him in this behalf to call upon the owner or any other person who, in the opinion of the District Collector of the Officer so authorised is interested in such land to show cause why it should not be acquired. Where the District Collector has called upon the owner or other person to show cause under Sub-Section (2), Clause (a) of Sub Section (3) requires him to pass orders on the cause so shown. Moreover, where an officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), clause (b) of Section (3) requires that Officer to report to the District Collector his recommendations on the cause so shown and the District Collector is required to pass such orders as he may deem fit after considering the report. In reality Section 4(2) of the Act, as such, obliges the acquiring authority to serve notice upon the land-owner and other persons interested in the land to show cause why it should not be acquired. By reason of sub-section (3) of Section 4, but, such cause has to be taken into account and orders passed in respect thereof. Subsequently, that the acquiring authority is to arrive at a satisfaction that it is necessary to acquire the land.

19. At this juncture this Court very significantly points out that on 06.07.2010 a detailed representation was submitted by the State Executive Member of Arundhathi People's Party, Ammoor, Vellore District to the 2nd Appellant/ 2nd Respondent stating that the proposed acquisition for burial ground is situated nearly 1.5 Kms on the western side and it was very difficult for them to approach the said proposed lands and hence sought for an alternative land in order to sustain the existence of crucial relationship between them and the Adidravidar people residing in the said village. Moreover, on 28.07.2010 the Ammoor Town Panchayat passed a Resolution No.15 to the effect that a suggestion was to be given to the Tahsildar, Vellore (2nd Appellant/ 2nd Respondent) to drop the proposal forming a burial ground for Arunthathiyar villagers in the subject land and to consider for providing the same in an alternative place in view of the opinion and welfare of the public residing in that area.

20. Continuing further, it comes to be known that the 2nd Appellant / 2nd Respondent (Special Tahsildar, ADW, Walajah, Vellore District) after crossing an enquiry in the village had sent his opinion to the 1st Appellant/ District Collector to consider for providing an alternative place so as to avoid any law and order situation that would arise, if the proposed acquisition was implemented. As a matter of fact, the 1st Appellant/ District Collector based on the opinion furnished by the 2nd Appellant/ 2nd Respondent had directed the 2nd Appellant/ 2nd Respondent to take action on the representation of Arunthathi People's Village, Ammoor and submit a report. It is to be noted that on 11.10.2012, the Ammoor Town Panchayat passed a Resolution No.28 to the effect that a decision was to be given to the 1st Appellant/ District Collector and the 2nd Appellant/ Tahsildar, Vellore to drop the proposal of forming a burial ground for Arunthathi villagers in the subject land and to consider for providing the same in an alternative place in view of the opinion and welfare of the public residing in that area.

21. In the above upshot and on a careful consideration of respective contentions and this Court bearing in mind an essential fact that in the present case there are no valid grounds available for turning down the request of the Respondents/Petitioners and added further, in the instant case, the objections were not dealt with in an objective manner by the 1st Appellant / District Collector and viewed in that perspective the earlier Notification under Section 4(1) of the Act was passed without proper application of mind and the same is not quite in tune with the spirit of the Schemes of the Act. Suffice it for this Court to point out that the acquisition proceedings initiated in the instant case are not valid and legal and the same was rightly quashed by the

Learned Single Judge while allowing the Writ Petition. Consequently, the Writ Appeal fails.

In the result, the Writ Appeal is dismissed leaving the parties to bear their own costs. The Order dated 27.06.2014 in W.P.No.16094 of 2003 passed by the Learned Single Judge is affirmed by this Court for the reasons ascribed in this Appeal. Resultantly the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ssd

To

1. The District Collector,
Vellore District @
Vellore
2. The Special Tahsildar,
Adi Dravidar Welfare,
Walajapet,
Vellore District

+2cc's to Mr.K.V.Ramesh, Advocate, S.R.No.10422
+1cc to the Government Pleader, S.R.No.10417

W.A.No.159 of 2016
and
C.M.P. No.2279 of 2016

AD(CO)
CA(02/03/2016)

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