

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.11.2017

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THE HONOURABLE Mr. JUSTICE **K.K.SASIDHARAN**
AND
THE HONOURABLE Mr. JUSTICE **P.VELMURUGAN**

**W.A.No.26 of 2015 &
M.P.No.1 of 2015**

1.N.Raju Padayachi
2.R.Maniammal

.. Appellants

Vs.

1.The District Collector,
Perambalur District,
Perambalur.

2.The Special Tahsildar,
(Land Acquisition),
Adi Dravidar Welfare,
Perambalur District.

3.Ramasamy

.. Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 10.11.2014 made in W.P.No.15647 of 2012, on the file of this Court.

For Appellants : Mr.G.Ethirajulu

For Respondents : Mrs.A.Srijayanthi
Special Government Pleader for R1 and R2

No appearance for R3

J U D G M E N T**[Judgment of the Court was made by P.VELMURUGAN, J.]**

The writ appeal is arising out of the judgment dated 10.11.2014 made in W.P.No.15647 of 2012.

2. It would be appropriate to notice that the aforementioned Writ Petition has been preferred by the writ petitioners aggrieved by the order passed by the second respondent made in Na.Ka.A-544/2004, dated 08.06.2012, issued under section 4(2) of the Tamil Nadu Land Acquisition for Harijan Welfare Scheme Act by the second respondent and quash the same and consequently forbear the respondents from acquiring the agricultural lands comprised in S.Nos.39/1, 48/1A, 39/3, 48/1E, 40/2, 40/3, 48/1C situated at Nannai East Village, Kunnam Taluk, Perambalur District owned by the petitioners.

3. Facts culled out in brief necessary for the disposal of the writ appeal are as follows:-

3.1. It is the case of the appellants / petitioners that they are the owners of agricultural lands comprised in New Survey Nos.39/1, 48/10, 39/3, 48/1E, 40/2, 40/3 and 48/1c situated at Nannai East Village, Kunnam Taluk, Perambalur District. The second respondent, viz., the Special Tahsildar (Land Acquisition), Adi-Dravida Welfare Department, Perambalur District issued a notification under Section 4(2) of the Tamil Nadu Land Acquisition for Harijan Welfare Scheme Act to acquire the said land for putting up a pathway to a burial ground on

29.09.2004, but no notice was served on the petitioners. Therefore, the petitioners have filed Writ petition Nos.3104 and 3105 of 2005, on the file of this Court. This Court, after verification of records, allowed the writ petitions by its common order dated 18.11.2009. However, this Court directed the respondents to issue a fresh enquiry notice to the petitioners within a period of two weeks from the date of receipt of the above said copy of the common order and complete the enquiry within a period of two weeks from thereon. The petitioners state that the said order has become final and no appeal being filed against the said common orders.

3.2. The appellants / petitioners would submit that though the order copy was made ready on 26.11.2009 and delivered the same on 27.11.2009, the respondents should have issued notice of hearing to the petitioners on or before 11.12.2009 and completed the enquiry on or before 25.12.2009, but, the respondents issued notice only on 12.03.2009 after a delay of nearly four months and directed the petitioners to attend an enquiry to be held on 15.03.2010. However, the petitioners attended the enquiry on that day, but no enquiry was conducted by the respondents, since the first respondent had other work on that day with the second respondent. The petitioners have waited and finally directed to leave the office with an assurance that fresh date of enquiry will be communicated to them. But, no such notice was issued to the petitioners thereafter. In view of the above fact, the petitioners were constrained to issue a legal notice dated 06.04.2010 narrating the entire facts and also requested the authorities not to proceed with the acquisition proceedings further.

3.3. The appellants / petitioners further submit that they have also issued another legal notice dated 25.07.2011, to the first respondent narrating the entire facts, but there was no response or action on the part of the first

respondent. Subsequently, the petitioners herein, on the instruction of the Village Administrative Office, Nannai Village appeared before him on 03.09.2011 and evidencing the same, they have also filed a representation before him, but nothing had happened on that day. However, the officials are constantly interfering with the petitioners possession and enjoyment of the property and also caused threat to them to have a personal negotiation and also making an attempt to create some law and order problem in the village, whenever a death occurred in the village. Thus, the petitioners are kept under constant peril. The only intention of the authority is to take possession of the land forcibly with the assistance of some vested interest. The petitioners further stated that the original notification under Section 4(2) of the Act was no longer holding good because of the fact that the respondents 1 and 2 have not complied with the order passed by this Court dated 18.11.2009 and the respondents cannot proceed further under the said notification dated 27.09.2004, even though an opportunity was given by this Court. The Villagers are using an old existing burial ground for the past eight years without any objection and there is no need for any acquisition proceedings at all.

3.4. The petitioners further submit that they have also issued a legal notice dated 17.05.2012 to the respondents and the same was also acknowledged by the respondents but after a delay of nearly eight years, issued a notice dated 08.06.2012, purported to be under Rule 3(1) called upon the petitioners to submit their explanation. There was no need to acquire the property that too agricultural lands of the petitioners to form a pathway. The harijans in the locality are using the old burial ground. The respondents have not made out any *prima facie* case for initiating the acquisition proceedings. The second respondent had not ever stated that burial ground is meant for harijan people of Nannai Village. The mandatory direction given by this Court was not

complied with and the same having raised to a fresh cause of action to the petitioners to file a fresh writ petition challenging the notification issued under Section 4(2) of the Act. Hence, the petitioners have filed the writ petition.

4. After considering the materials placed before the Writ Court, the learned Single Judge dismissed the Writ Petition.

5. Aggrieved against the order of the learned Single Judge, the appellants / petitioners have filed the present Writ Appeal.

6. The learned counsel for the appellants would submit that the learned Single Judge ought to have dealt with the points raised and argued in the writ petition independently and assigned reasons for not accepting the legal submission made by the appellants but simply dismissed the Writ Petition under paragraph 24(i) and (ii) of the order dated 10.11.2014 made in W.P.No.15647 of 2012. He would further submit that the learned Single Judge dismissed the Writ Petition by holding that adjacent landowners who are belongs to same village and considering the Adi Dravidars people style of living and their normal procedure for removing the dead bodies to the burial ground the formatting pathway is an essential necessity and only because of the same, the others have given consent for acquiring the said lands. The said finding rendered by the learned Single judge is beyond the pleadings and there cannot be any style in

taking the corpus to the burial ground. He would further submit that the learned Single Judge has failed to consider that the respondents should have completed the acquisition proceedings within four weeks as per the order of this Court, however, inspite of receipt of the copy of the order and subsequent number of reminders from the petitioners, the respondents have not obeyed the orders of this Court for more than 2½ years, but issued a fresh notification without considering the fact that no necessity for laying a new road in agricultural field exists after six years. Hence, the learned counsel prays for allowing this appeal.

7. Heard Mr.G.Ethirajulu, learned counsel appearing for the appellants and Mrs.A.Srijayanthi, learned Special Government Pleader appearing for respondents 1 and 2 and perused the materials placed on record.

8. The Special Tahsildar, Land Acquisition, issued a notification under Section 4(2) of the Tamil Nadu Land Acquisition for Harijan Welfare Scheme Act to acquire the petitioners and others land for putting up a pathway to the burial ground, on 29.09.2004, but according to the petitioners, no notice was served. Hence, they have filed Writ Petition in W.P.Nos.3104 and 3105 of 2005 and this Court, by an order dated 18.11.2009, allowed the Writ Petitions and the respondents were directed to issue fresh notice to the petitioners within a period of two weeks from the date of receipt of the above said copy of the order and

complete the enquiry within a period of two weeks from therein. Though in the order passed by this Court dated 18.11.2009, the respondents were directed to complete the enquiry on or before 25.12.2009, they issued a notice only on 12.03.2010, after a delay of nearly four months and directed the petitioners to attend an enquiry to be held on 15.03.2010, however, on that day no enquiry was conducted and thereafter, notification dated 08.06.2012 was issued by the respondents for acquiring the lands of the petitioners and others for the purpose of laying a pathway to the burial ground for the Adi Dravidar people of Nanni Village. The said Writ Petition was challenged before this Court and this Court, by an order dated 10.11.2014, dismissed the Writ Petition.

9. The main contention of the learned counsel for the appellants is that the learned Single Judge ought to have dealt with the points raised and argued in the writ petition independently and assigned reasons for not accepting the legal submission made by the appellants but simply dismissed the Writ Petition under paragraph 24(i) and (ii) of the order dated 10.11.2014 made in W.P.No.15647 of 2012, without discussing the rival contentions of the parties, particularly the contention raised by the appellants in grounds raised against the impugned order in the Writ Petition. At this juncture, it is relevant to quote the last paragraph of the order passed by the learned Single Judge:-

"24. (i) From the above discussions, this Court is of the view that the adjacent land owners of the petitioners who are belong to

the same village and considering the Adi-dravida people style of living and their normal procedure for removing the dead bodies to the burial ground the forming pathway is an essential necessity, hence they gave consent for acquiring the said lands.

(ii) For removing dead bodies from the Adi-dravida residence to the burial ground without disturbing all sections of people is of paramount importance. Therefore, the 2nd respondent herein after studying the entire situation of the village has settled for the above said arrangement. Therefore, in order to execute the purpose for laying the pathway to the burial ground for the Adi-dravida people, the petitioners land also is absolutely necessary.

(iii) Normally at the village the agricultural land guideline value and open market value is @ 1:5 ratio. Therefore, the 2nd respondent has to pay a fair compensation to the petitioners, who are also agriculturists and who should not go through severe difficulties. If the respondents 1 and 2 would pay adequate compensation, it will be a valuable incentive to purchase other lands for the petitioners who are agriculturists.

(iv) The proposal for the formation of laying a pathway to the burial ground had been initiated 10 years also, hence, it has to done at the earliest say within a period of three months after the expiry of the appeal period.

From the above, it is very crystal clear that the order passed by the learned Single Judge in Paragraph Nos.1 to 23 reveal the contentions in the affidavit,

counter affidavit and the arguments of the learned counsel for the appellants and respondents. The learned Single Judge has not assigned any independent reason or valid ground for dismissing the writ petition. Viewing from any angle, we are of the considered opinion, that the order passed by the learned Single Judge is not on merits and the same is liable to be set aside.

10. Further, when the Writ Appeal came up for hearing on 04.01.2016, this Court has observed as follows:-

"After the dismissal of the Writ Petition filed by the appellants herein, on 10 November 2014, the instant writ appeal is preferred. The writ appeal was listed for hearing on various dates. The matter could not proceed on account of the unpreparedness of the appellants to argue the matter. Even otherwise, no interim relief has been granted. Thus, the authorities / respondents 1 and 2 are at liberty to proceed with the direction passed by the learned Single Judge. Call after six weeks. "

Pursuant to the above direction issued by this Court, dated 04.01.2016, the second respondent has issued another proceedings in Na.Ka.A1/248/2013 dated Nil.02.2016 signed on 04.02.2016, and the same was put into challenge by the appellants, by way of filing another Writ Petition in W.P.No.5124 of 2016 and the same is pending.

11. On perusal of the order passed by the learned Single Judge, it is seen that the learned Single Judge has not assigned any valid reason for dismissing the Writ Petition. Therefore, this Court sets aside the order passed by the learned Single Judge in W.P.No.15647 of 2012, dated 10.11.2014 and the Writ Petition is remitted back for deciding the issue afresh in accordance with law. While deciding the matter, the subsequent notification challenged by the appellants in W.P.No.5124 of 2016 shall also be taken into consideration. The Registry is directed to tag the Writ Petition in W.P.No.15647 of 2012 along with W.P.No.5124 of 2016.

12. In the result, the Writ Appeal is allowed. The matter is remanded to the Writ Court for fresh consideration along with W.P.No.5124 of 2016. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

(K.K.S., J.) (P.V., J.)
01.11.2017

Speaking Order / Non-speaking Order

Index : Yes / No.
Internet : Yes / No.

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To

- 1.The District Collector,
Perambalur District,
Perambalur.
- 2.The Special Tahsildar,
(Land Acquisition),
Adi Dravidar Welfare,
Perambalur District.



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