

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2098 of 2014

M.Pradeep Kumar

... Petitioner

Vs.

1. State of Tamil Nadu,
rep. by the Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai 600 009.
 2. The District Collector,
Tiruvallur District,
Tiruvallur.
 3. The Special Tahsildar (ADW),
Ponneri Division (E),
Ambattur, Chennai.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records in the order bearing Pudhiya Theerpaanai No.1/2011-2012, Na.Ka.296/2000/A, dated 24.06.2011, passed by the 3rd respondent and quashing the same, and directing the 2nd respondent to publish a notice in the District Gazette under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 in respect of the lands of the petitioner viz. 3.57.0 hectares in S.No.181/2 of Pothur Village, Ambattur Taluk, Tiruvallur District.

For Petitioner : Mr.M.Radhakrishnan

For Respondents : Mr.Akhil Akbar Ali,
Government Advocate

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the order passed by the 3rd respondent vide Pudhiya Theerpaanai No.1/2011-2012, Na.Ka.296/2000/A, dated 24.06.2011

and for a direction to the 2nd respondent to publish a notice in the District Gazette under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 in respect of his lands to an extent of 3.57.0 hectares in S.No.181/2 of Pothur Village, Ambattur Taluk, Tiruvallur District.

2. According to the petitioner, his father Late Murali Manohar was the absolute owner of dry lands to an extent of 3.57.0 hectares (9.81 acres) in S.No.181/2 of Pothur Village, Ambattur Taluk, Tiruvallur District in Patta No.25. After the death of his father on 19.09.1991, the petitioner and his brother were in possession of the said property, as his only legal heirs.

3. It is the case of the petitioner that the said lands were acquired by the respondent/Government under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (in short 'the Act') and the petitioner was directed to appear for an enquiry on 28.02.2001. On the said date, the petitioner gave a representation to the 3rd respondent and requested time to file his objections. But, without granting him reasonable opportunity of being heard, an Award dated 28.02.2001 was passed by the 3rd respondent fixing the compensation for the lands acquired, at Rs.4,56,326/-. Challenging the said Award, the petitioner filed W.P.No.8918 of 2001 before this Court seeking a direction to respondents 2 and 3 therein to furnish a copy of the District Gazette in respect of acquisition of the said lands in Survey No.181/2 of Pothur Village, Ambattur Taluk, to him. By an order dated 03.07.2009 in the said Writ Petition, this Court set aside the Award dated 28.02.2001 and remitted the matter to the 3rd respondent with a direction to pass a fresh Award with regard to the compensation of the said acquired lands within a period of three months from the date of receipt of a copy of the order.

4. Pursuant thereto, the 3rd respondent recommended the whole process of acquisition by issuing a fresh notice dated 26.08.2009 under Section 4(2) of the Act read with Rule 3(i) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979 (in short 'Rules') directing the petitioner to show cause as to why his lands should not be acquired for the purpose of the Act. On receipt of the said notice, the petitioner sent a letter dated 25.09.2009 to the 3rd respondent requesting time for filing objections upto 20.10.2009. On 19.10.2009, the petitioner sent his written objections to the 3rd respondent. Thereafter, the petitioner received an order dated 27.06.2011 from the 3rd respondent, whereby, he was directed to receive a sum of Rs.4,56,326/- as compensation. Challenging the said

order, the petitioner filed W.P.No.13425 of 2013 and during the course of hearing of the said Writ Petition, on 24.06.2013, an order dated 24.06.2011 passed by the 3rd respondent as per the order dated 03.07.2009 made in W.P.No.8918 of 2001, was served on his counsel. Consequently, W.P.No.13425 of 2013 was withdrawn. Hence, having no other alternative, the petitioner is before this Court by way of the present Writ Petition.

5. Learned counsel for the petitioner contended that though this Court by an order dated 03.07.2009 in W.P.No.8918 of 2009 interfered with the Award dated 28.02.2001 passed by the 3rd respondent on the ground that no opportunity of hearing was given to the petitioner and remitted the matter to the 3rd respondent/Special Tahsildar to pass a fresh Award, the Special Tahsildar proceeded with the matter and issued a fresh notice dated 26.08.2009 under Section 4(2) of the Act read with Rule 3 (i) of the Rules, without following the subsequent procedure namely compliance of Section 4(1) of the Act.

6. On the other hand, learned Government Advocate submitted that there is no specific averment with regard to giving an opportunity of hearing to the petitioner and that Form No.3(I) was used for the purpose of appearance and the petitioner has appeared and produced all the material documents and only thereafter, a fresh Award was passed by the 3rd respondent on 24.06.2011. It is his contention that having suffered an adverse Award, questioning that there is procedural irregularity, more particularly, non-compliance of Section 4(1) of the Act could not entitle the petitioner to seek interference with the Award.

7. It is further submitted by the learned Government Advocate that the petitioner was aware that the High Court had directed the authorities concerned to proceed only from the stage where no opportunity was given. He added that the amount due to the petitioner has been deposited by means of a Revenue Deposit and Patta has been transferred in the name of the Government and contended that the petitioner would not be entitled to any relief muchless the claim sought in this Writ Petition.

8. It is true that this Court, by an order dated 03.07.2009 in W.P.No.8918 of 2001, interfered with the Award dated 28.02.2001 and directed the authorities concerned to proceed from the stage at which no opportunity was given. But the 3rd respondent, instead of proceeding from the stage as directed by this Court, for reasons best known to him, issued a fresh notice dated 26.08.2009 under Section 4(2) of the Act read with Rule 3(i) of the Rules and on his own, has given up the

entire acquisition proceedings done earlier. It is the act of the 3rd respondent that has got to be taken into account and having given a go-by to the earlier proceedings initiated from the stage of Rule 3(i) of the Rules and having issued a fresh notice dated 26.08.2009, the respondents cannot now contend that it is only a formal notice issued under Rule 3(i) of the Rules. That apart, the Revenue Deposit cannot be considered as a deposit and it has got to be deposited before the Reference Court. Since the fresh Award dated 24.06.2011 is illegal, the same has got to be interfered.

9. Accordingly, the Award dated 24.06.2011, passed by the 3rd respondent is set aside. However, it is open to the respondents to initiate fresh proceedings for acquisition, in which case, they satisfy with the conditions laid down under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The Writ Petition is allowed on the above terms. No costs. Consequently, connected M.P.No.1 of 2014 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Secretary to Government,
State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Secretariat,
Chennai 600 009.
2. The District Collector,
Tiruvallur District,
Tiruvallur.
3. The Special Tahsildar (ADW),
Ponneri Division (E),
Ambattur, Chennai.

+1cc to Mr.M.Radhakrishnan, Advocate sr.45684

W.P.No.2098 of 2014

GP(co)
ss(6/10/2017)