

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.10.2017

Coram

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

W.A.Nos.939 & 940 of 2017 &
C.M.P.Nos.13024, 13025 & 13026 of 2017

C.Krishnan

... Appellant in
W.A.No.939 of 2017/Petitioner
in WP.No.8144 of 2003

Thangamal (died)
Kandasamy (died)
K.Palanisamy

... Appellant in
W.A.No.940 of 2017/Petitioner
W.P.No.8807 of 2003

Vs.

1.The District Collector,
Salem District,
Salem 636 001.

2.The Special Tahsildar,
(Adi Dravidar Welfare),
Omalar Taluk,
Salem District.

... Respondents in
both Writ Appeals/
Respondents in both Writ
Petitions.

Prayer in both Appeals: Writ Appeals filed under Section 15 of Letters Patent Appeal to set-aside the order dated 06.02.2017 made in W.P.Nos.8144 & 8807 of 2003, on the file of this Court.

Prayer in W.P.No.8144 of 2003:-Has been filed under Article 226 of the constitution of India, praying for a Writ of certiorari to call for the records of the first respondent in his proceedings in ROC.No.53421/01 (D-2) dated 18.07.2002 published in the salem District Gazette (Extraordinary) dated 17.07.2002 as amended in the Order ROC.No.53421/2001/ (D-12) dated 05.02.2003 published in Salem District Gazette (Extraordinary) dated 10.02.2003 and quash the said notifications in so far as

the land of the petitioner measuring 1.00 acre in S.No.78/8, mallikundam Village, Mettur Talukas concerned.

Prayer in W.P.No.8807 of 2003:- Has been filed under Article 226 of the constitution of India praying for a Writ of certiorari to call for the records of the first respondent in his proceedings in ROC.No.53421 of 2001 (D-12) dated 18.07.2002 published in the Salem District Gazette (Extraordinary) dated 17.07.2002 as amended in the Order ROC.No.53421/2001 (D-12) dated 05.02.2003 published in Salem District Gazette (Extraordinary) dated 10.02.2003 and quash the said notifications in so far as the land of the petitioner measuring 50 cents in S.No.78/8, 10 cents in S.No.78 of 2010 and 32 cents in S.No.333/3B in Mallikundam Village, Mettur Taluk, Salem District is concerned.

For Appellant in
both Writ Appeals : Mr.P.Jagadeesan

For Respondents in
both Writ Appeals : Mr.A.Zakkir Hussain
Government Advocate

C O M M O N O R D E R

[Order of the Court was made by P.VELMURUGAN, J.]

These writ appeals are arising out of the common judgment dated 06.02.2017 made in W.P.Nos.8144 & 8807 of 2003 and the petitioners in both the writ petitions have filed these writ appeals.

2. It would be appropriate to notice that the aforementioned Writ Petitions have been preferred by the writ petitioners aggrieved by the orders passed by the District Collector, vide proceedings in ROC No.53421/2001 (D-12) dated 18.7.2002 published in the Salem District Gazette (Extraordinary) dated 17.7.2002 as amended in the order ROC No.53421/2001 (D-12) dated 5.2.2003 published in Salem District Gazette (Extraordinary) dated 10.2.2003.

3. Mr.C.Krishnan, who is the petitioner in W.P.No.8144 of 2003, is the appellant in W.A.No.939 of 2017. Mr.K.Palanisamy, who is one of the petitioners in W.P.No.8807 of 2003, is the appellant in W.A.No.940 of 2017. At the time of filing of the Writ Appeal, the petitioners in W.P.No.8807 of 2003 viz., Thangammal and Kandasamy died and hence their son viz., K.Palanisamy has alone come with the Writ Appeal No.940 of 2017.

4. Facts culled out in brief for the disposal of these writ appeals are as follows:-

For the purpose of providing house sites to the members of Arunthathiar community, the revenue authorities initiated proceedings under the Harijan Welfare Act for acquiring lands admeasuring to an extent of 1.00 acre in S.No.78/8, Mallikundam Village, Mettur Taluk and admeasuring to an extent 50 cents in S.No.78/8, 10 cents in S.No.78/10 and 32 cents in S.No.333/3B in Mallikundam Village, Mettur Taluk, respectively. Insofar as the petitioner in W.P.No.8144 of 2003 is concerned, he is having 1.00 acre in S.No.78/8, Mallikundam Village, Mettur Taluk and insofar as the petitioner in W.P.No.8807 of 2003, he is having 50 cents in S.No.78/8, 10 cents in S.No.78/10 and 32 cents in S.No.333/3B in Mallikundam Village, Mettur Taluk, Salem District. A Notice dated 3.10.2001 in Form No.I of Rule 3(1) of the Rules was served by the Special Tahsildar on Thangammal and Kandasamy (petitioners 1 and 2 in W.P.No.8807 of 20103) fixing the date of enquiry as 23.10.2001 at 11.00 a.m. in the office of the Village Administrative Officer, Mallikundam Village, Mettur Taluk. The said Thangammal and Kandasamy did not personally appear for the enquiry on 23.10.2001, but, whereas, they had sent their objections through registered post to the Special Tahsildar. In their objections, they had stated that the property has been partitioned among their family members and that each one of them is holding a very small piece of land and therefore, they had requested the authorities to drop the acquisition proceedings. At this juncture, it may be necessary to state that Thangammal had sold 1 acre and 20 cents (0.60.0 Hectares) of land in Survey No.78/8 to one C.Krishnan (petitioner in W.P.No.8144 of 2003) by a sale deed dated 9.11.1987 registered as document No.844/1987 on the file of the Sub Registrar, Mecheri, Mettur Taluk. However, since the purchaser C.Krishnan did not take any steps for mutation of revenue records, his name was not included in the revenue records and therefore, the enquiry notice was not served on him, but was served only on the original owner viz., Thangammal. The Special Tahsildar, considered the objections raised by Thangammal and Kandasamy and their son Palanisamy and sent a report / recommendation dated 24.12.2001 to the District Collector, rejecting the said objections. The District Collector, by order dated 15.7.2002, accepted the report / recommendation of the Special Tahsildar and directed the publication of notification under Section 4(1) of the Harijan Welfare Act in the District Gazette, Salem. The said notification was published in the District Gazette on 17.7.2002, challenging which, writ petitions have been filed.

5. The learned Single Judge, insofar as the report of the Special Tahsildar is concerned and considering the Full Bench Judgment of this Court in R.Pari Vs. Special Tahsildar, and

another reported in [(2007) 2 MLJ 706], observed in paragraph No.8 as follows:-

"8.

..... The Court should call for the files and see whether the Special Tahsildar has considered the objections raised by the land owner in proper perspective. This Court perused the original files produced by Mr.P.Thangavel, Special Tahsildar, Adi Dravidar Welfare, Omalur Taluk, today. A copy of the report / recommendation dated 24.10.2001 and a copy of the order passed by the District Collector dated 15.7.2002 under Section 4(1) of the Harijan Welfare Act were furnished to the learned counsel appearing for the petitioners. On a reading of the report / recommendation dated 24.12.2001 of the Special Tahsildar, it is clear that Thangammal and Kandasamy did not appear in person before the Special Tahsildar for enquiry. They had only sent typed representations objecting to the acquisition proceedings, on the ground that they are small farmers. The Special Tahsildar has noted their objections and has found that they are not small farmers since they own 11.21 acres of patta land in Mallikundam Village and they are rich pattadhars. He has also noted that there is no other open space available in and around the existing Harijan Colony and therefore, the acquisition of the lands of the petitioners is essential. Therefore, this Court is satisfied that in the report / recommendation dated 24.12.2001 submitted by the Special Tahsildar, he has elaborately considered the objections raised by the land owners and has negatived them."

6. The learned Single Judge, insofar as the proceedings of the District Collector is concerned, had gone through the entire records rejected the submission of the writ petitioners and observed in paragraph No.12 as follows:-

"12. Since this Court has found that the order dated 15.7.2002 passed by the District Collector under Section 4(1) of the Harijan Welfare Act is not inconsonance with the law laid down by the decision of the Full Bench of this Court in Pari's case, this Court has no other alternative, but to set aside the order dated 15.7.2002 and consequent notification dated 17.7.2002 published in the District Gazette. The District Collector is directed to apply his mind on the report / recommendation dated 24.12.2001 submitted by the Special Tahsildar and pass fresh

orders in accordance with law. Since this Court is remanding the matter back to the District Collector, Salem, this Court is of the view that interest of justice would be served if C.Krishnan (petitioner in W.P.No.8144 of 2003) alone is given an opportunity to submit his objections to the District Collector within a period of four weeks from the date of receipt of a copy of this order, provided, he makes copy application within three days from today (6.2.2017). Since a copy of the report / recommendation dated 24.12.2001 of the Special Tahsildar has been furnished to the learned counsel appearing for the petitioners, no fresh copies need be served on the said C.Krishnan or on the other petitioners. The District Collector is directed to pass fresh orders on the report / recommendation dated 24.12.2001 passed by the Special Tahsildar within four months from the date of receipt of a copy of this order. With the above directions, both the writ petitions are allowed. No costs."

7. Though the Writ Petitions are allowed, the writ petitioners aggrieved by the following observation made by the learned Single Judge viz., 'Since this Court is remanding the matter back to the District Collector, Salem, this Court is of the view that interest of justice would be served if C.Krishnan (petitioner in W.P.No.8144 of 2003) alone is given an opportunity to submit his objections to the District Collector' have filed these writ appeals.

8. The learned counsel for the appellants would submit that when the notice was served to the Thangammal and Kandasamy, they did not appear before the Tahsildar, Salem and they sent a representation that they are small farmers and therefore their lands cannot be acquired. The Special Tahsildar has noted their objections and found that they are not small farmers, since they own 11.21 acres of patta land in Mallikundam Village and they are rich pattadhars and their representation was rejected and made a recommendation to the District Collector, who in turn considered the recommendation made by the Special Tahsildar based on the report filed by the Tahsildar and notified the Proceedings in ROC No.53421/2001 (D-12) dated 18.7.2002 published in the Salem District Gazette (Extraordinary) dated 17.7.2002 as amended in the order ROC No.53421/2001 (D-12) dated 5.2.2003 published in Salem District Gazette (Extraordinary) dated 10.2.2003. The learned counsel for the appellants would further contend that once the learned single Judge having observed that the order of the District Collector is without application of mind and quashed the proceedings, he ought not to have restricted to give opportunity

only to C.S.Krishnan, petitioner in W.P.No.8144 of 2003 and ordered for fresh enquiry. The said contention is not acceptable for the reason that the Special Tahsildar has given opportunity to Thangammal and Kandasamy, the original owners of the properties and admittedly, C.Krishnan has not changed the patta in his name and revenue records continues in the names of Thangammal and Kandasamy. However, the respondents have not filed any appeal against the order of the learned Single Judge.

9. Heard Mr.P.Jagadeesan, learned counsel appearing for the appellant in both Appeals and Mr.A.Zakkir Hussain, learned Government Advocate appearing for the respondents in both Appeals and perused the materials placed on record.

10. The main contention of the learned counsel for the appellants is that the learned Single Judge having found that the order, dated 15.07.2002, passed by the District Collector under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, is not in consonance with the law laid down by the Hon'ble Full Bench of this Court, in the decision rendered in the case of R.Pari Vs. Special Tahsildar, and another reported in [(2007) 2 MLJ 706], and having found that the order of the District Collector is without application of mind and quashed the proceedings, he ought not to have restricted to give opportunity only to C.S.Krishnan (petitioner in W.P.No.8144 of 2003) and should have given opportunity to the petitioners in W.P.No.8807 of 2003 also. We find much force in the contention of the learned counsel for the appellants. Once the learned Single Judge has found that the order passed by the District Collector is without application of mind and granted relief to the petitioner in W.P.No.8144 of 2003, he should have given similar opportunity to the petitioners in W.P.No.8807 of 2003 also.

11. Therefore, we are of the considered view that the order passed by the learned Single Judge insofar as granting the relief to Mr.C.S.Krishnan, petitioner in W.P.No.8144 of 2003 alone is unsustainable and we find that similar relief has to be granted to the petitioners in W.P.No.8807 of 2003 also.

12. In the result, the Writ Appeals are partly allowed and the order of the learned Single Judge insofar declining the relief to the petitioners in W.P.No.8807 of 2003 is set-aside and the matter is remanded to the District Collector, Salem, who shall apply his mind on the report / recommendation dated 24.12.2001 submitted by the Special Tahsildar and after providing opportunity to the appellant in both the Writ Appeals, pass fresh orders in accordance with law, within a period of four months from the date of receipt of a copy of this order.

Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(II)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Salem District,
Salem 636 001.
2. The Special Tahsildar,
(Adi Dravidar Welfare),
Omalur Taluk,
Salem District.

+1cc to the Government Pleader Sr. 71697
+1cc to M/S.P.Jagadeesan, Advocate Sr.71724
+1cc to M/S.P. Jagadeesan, Advocate Sr. 71723

W.A.Nos.939 & 940 of 2017 &
C.M.P.Nos.13024, 13025 & 13026 of 2017

SKV(CO)
VR(02/11/2017)

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