

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2017

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

W.P.Nos.8144 and 8807 of 2003

C.Krishnan

... Petitioner in
W.P.No.8144/2003

1.Thangammal
2.Kandasamy
3.K.Palanisamy

... Petitioners in
W.P.No.8807/2003

Vs.

1. The District Collector,
Salem District,
Salem-1.
2. The Special Tahsildar,
(Adi Dravidar Welfare),
Omalar Taluk,
Salem District.

... Respondents in
both the writ petitions

Writ petition 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.53421/2001 (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 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 Taluk, is concerned.

Writ petition 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.53421/2001 (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 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.78/10 and 32 cents in S.No.333/3B in Mallikundam Village, Mettur Taluk, Salem District is concerned.

For Petitioners : Mr.P.Jagadeesan,
in both the petitions.

For Respondents : Mr.V.Jayaprakash Narayanan
Spl. Govt. Pleader,

COMMON ORDER

These writ petitions have been filed challenging the acquisition of lands by the respondents under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) (hereinafter referred to as the Harijan Welfare Act).

2. 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 measuring to an extent of 1.00 acre in S.No.78/8, Mallikundam Village, Mettur Taluk and measuring 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. In these two writ petitions, we are concerned only with the following lands:-

Sl. No.	Survey number	Description	Total extent Hectares	Land proposed for acquisition Hectares	Patta No.	Name of registered holder / present owner and persons interested
1	78/8	Dry	0.99.5	0.60.0	604	Thangammal W/o. Kandasamy
2	78/10	Dry	0.24.5	0.04.0	604	Thangammal W/o. Kandasamy
3	--	--	--	--	--	--
4	333/3B	Dry	0.13.0	0.13.0	159	Kandasamy, S/o.Marappa Gounder

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 by 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, these writ petitions have been filed.

3. I have heard Mr.P.Jagadeesan, learned counsel appearing for the petitioners in both the writ petitions and Mr.V.Jayaprakash Narayanan, learned Special Government Pleader, appearing for the respondents.

4. Today, Mr.P.Thangavel, Special Tahsildar, Adi Dravidar Welfare, Omalur Taluk, is present before this Court and produced the files for the perusal of this Court.

5. Mr.P.Jagadeesan, learned counsel appearing for the petitioners contended that the said C.Krishnan (petitioner in W.P.No.8144 of 2003) had purchased 1 acre of land in S.No.78/8 from Thangammal as early as in the year 1987 and that the acquisition proceedings were initiated only in the year 2001 and therefore, the respondents should have given notice of enquiry to C.Krishnan.

6. Per contra, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader submitted that the revenue records do not disclose the name of C.Krishnan and the pattadhar in respect of Survey No.78/8 was shown as Thangammal in the revenue records and therefore, the authorities issued enquiry notice only to Thangammal. He has also contended that the authorities can act only by the revenue records and not by the records of the Sub Registrar.

7. There appears to be some force in the contention of Mr.V.Jayaprakash Narayanan, learned Special Government Pleader inasmuch as it is well settled that the interested person means, persons who are interested in the land and whose names figure in the revenue records. Admittedly, C.Krishnan had not taken any steps to obtain patta for the 1 acre of land that he had purchased from Thangammal and therefore, his name was not reflected in the revenue records. Under such circumstances, non-service of enquiry notice on C.Krishnan cannot be said to be fatal.

8. Mr.P.Jagadeesan, learned counsel appearing for the petitioners strongly placed reliance on the decision of the Full Bench of this Court in the case of R.Pari v. Special Tahsildar, Adi Dravidar Welfare, Pasumpon Muthuramalinga Thevar District and Another reported in (2007) 2 MLJ 706 and contended that the Special Tahsildar should have furnished a copy of the report / recommendation dated 24.12.2001 to the land owner so as to enable him to give a representation to the District Collector. On this ground, he assailed the acquisition proceedings. It may be relevant to extract paras 42 and 43 of the said judgment and the same are extracted hereunder:-

"42. However, it is necessary to enter a small caveat. The observation made by the Division Bench or the single Judge regarding requirement to indicate reason while passing the order has to be understood in the context of non-application of mind. Even though in a given case the order which is communicated to the landowner does not indicate any reason why the objection has been rejected, if the application of mind is reflected in the file even by way of notings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the landowner / objector does not contain any detailed reasons. The requirement is that the materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and not passing of a formal reasoned order as is required in judicial or quasi-judicial proceedings. The function obviously being administrative in nature, it is futile to expect furnishing of detailed reasons in the order which is communicated to the person. It is necessary to enter such caveat lest it may be construed that in every case, where the order of rejection communicated to the landowner does not contain the reasons, the proceedings stands vitiated. Ultimately, the Court is required to find out in each case whether there has been application of mind. Therefore, the brief reasons,

which are contemplated, can be given either in the file in the shape of notings, endorsements, etc., or even can be reflected in the order. But, mere non-reflection of reasons in the order communicated or in the notice published in the Gazette, would not be sufficient to hold that there has been non-application of mind and the question as to whether there has been application of mind or non-application is required to be considered on the basis of the return filed and the relevant file to be produced before the Court.

43. In view of the aforesaid discussion, our conclusions are as follows:-

The owner should be furnished with a copy of the report / recommendation of the Authorised Officer. Thereafter, he should be given two weeks' time to make further representation, if any, before the District Collector. It is not necessary for the District Collector to give a further personal hearing or make any further enquiry. However, mere non-furnishing of the report would not have the ipso facto effect of vitiating the proceedings and the question of prejudice to the landowner is required to be considered in each case depending upon the facts and circumstances. The District Collector is expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons, the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report / recommendation made by the Authorised Officer".

In the above said decision, the Full Bench of this Court has stated that a copy of the report / recommendation of the Special Tahsildar should be furnished to the land owner and the land owner should be given an opportunity to give a representation to the District Collector. The Full Bench has also stated that the District Collector should pass an order under Section 4(1) of the Harijan Welfare Act on the report / recommendation of the Special Tahsildar. However, the Full Bench has also stated that in every case, where the report /

recommendation was not furnished to the land owner, the acquisition proceedings will not stand vitiated on that ground alone. 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 negated them.

9. Now, coming to the next limb of Mr.P.Jagadeesan's submission that the District Collector has not applied his mind before passing the order dated 15.7.2002 under Section 4(1) of the Harijan Welfare Act, this Court perused the files and found that the District Collector has signed in the cyclostyle order, which reads as follows:-

“ ORDER:-

The Collector, Salem accepts the recommendation of the Special Tahsildar (ADW), Omalur for the acquisition of 1.03.5 Hre of land in S.No.78/8, A2, Mallikundam Village, H/o Verahanur, Mettur Taluk in Salem.

2. The Draft Notification under Section 4(1) of the Tamil Nadu Acquisition of land for Harijan Welfare Scheme Act 1978 (Tamil Nadu Act 31 of 1978) submitted by the Special Tahsildar (ADW) in his letter 2nd cited is approved and will be published in an extraordinary issue of the Salem District Gazette.

3. The Government Branch Press, Salem is requested to publish the enclosed notification in an extraordinary issue of the District Gazette of Salem

District.

4. The entire cost of acquisition will be borne by the Government from the funds allotted for Salem District under the acquisition of lands for providing House site to Arundhathiars of Mallikundam Village in Mettur Taluk.

5. The Special Tahsildar (ADW) Omalur is authorized to perform the functions of the land acquisition prescribed under Section 7, 10, 11, 12 and 14 of the Tamilnadu Act 31 of 1978."

The underlined portions have been written by hand and the rest of the portions are cyclostyle format. That apart, there is no material to show that the District Collector has applied his mind on the report / recommendation dated 24.12.2001 of the Special Tahsildar. On this ground, the notification under Section 4(1) of the Harijan Welfare Act requires to be set aside.

10. Mr.P.Jagadeesan, learned counsel appearing for the petitioners contended that the notification under Section 4(1) of the Harijan Welfare Act was published in the Salem District Gazette on 17.7.2002 and on a perusal of the same, it proceeds as if the District Collector has passed an order on 18.7.2002. Based on this discrepancy, Mr.P.Jagadeesan, learned counsel appearing for the petitioners contended that the entire acquisition proceedings require to be quashed.

11. Mr.S.Ramachandran, the Land Acquisition Officer and the Special Tahsildar (ADW), Omalur, has filed a counter affidavit in W.P.No.8144 of 2003, wherein, in para 9, he has stated as follows:-

"9. It is submitted that it is not correct to say that the first respondent i.e., Collector, Salem had approved the notification under Section 4(1) of the Act on 18.7.2002. The Collector, Salem has approved the draft notification under Section 4(1) of the Act vide his order No.53421/2001 (D12) dt. 15.7.2002. The date shown in the 4(1) notification is only a printing mistake in Salem District Gazette. The said notification was published in the Salem District Gazette on 17.7.2002. Hence there is no illegal and also there is no non-application of mind."

From the above, it is seen that instead of 15.7.2002, it has been wrongly stated as 18.7.2002. On a perusal of the District

Collector's order, which has been extracted above, it is clear that the same has been passed on 15.7.2002 and not on 18.7.2002 as contended by Mr.P.Jagadeesan, learned counsel appearing for the petitioners. Therefore, this argument of Mr.P.Jagadeesan, learned counsel appearing for the petitioner stands rejected.

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.

s/d-

Assistant Registrar (CS-III)

//True Copy//

Sub-Assistant Registrar

To

1. The District Collector,
Salem District,
Salem-1.

WEB COPY

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

+1 CC to Mr. P. Jagadeesan, Advocate sr 7264

W.P.Nos.8144 and
8807 of 2003

PK(CO)
sp/17/2



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