

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.01.2017

DELIVERED ON: 17.02.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

W.P. Nos.8181 & 8182 of 2003

R. Rangarajan Petitioner in WP No.8181 of 2003

Sakunthala Rangarajan Petitioner in WP No.8182 of 2003

vs.

1 The District Collector
Thiruvellore District
Thiruvellore

2 The Special Tahsildar
Adi Dravidar Welfare
Tiruttani 631 209
Thiruvellore District

Respondents in both the WPs

W.P. No.8181 of 2003:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration declaring that the notification under the Tamil Nadu Acquisition of Lands for Adi Dravidar Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) vide impugned gazette publication dated 19.08.2002 amended by an errata dated 01.11.2002 published in Form - II in the Thiruvellore District Gazette insofar as the same relates to the petitioner's land in Survey Nos.150/3 and 150/5 in No.26, Ponpadi Village, Tiruttani Taluk, Thiruvellore District, measuring 121.03 cents, as lapsed.

(Prayer amended as per order dated 31.01.2017 in WMP No.797 of 2017)

Prayer in W.P. No.8182 of 2003:

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of declaration declaring that the notification under the Tamil Nadu Acquisition of Lands for Adi Dravidar Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) vide impugned gazette publication dated 19.08.2002 amended by an errata dated 01.11.2002 published in Form - II in the

Thiruvellore District Gazette insofar as the same relates to the petitioner's land in Survey Nos.150/2A, 150/2B, 150/2C, 150/2D, 150/2E, 150/6/, 150/7, 150/9, 150/10, 151/1, 151/2, 151/3 and 151/4 in No.26, Ponpadi Village, Tiruttani Taluk, Thiruvellore District, measuring 121.03 cents, as lapsed.

(Prayer amended as per order dated 31.01.2017 in WMP No.799 of 2017)

For petitioner Mr. S. Thanka Sivan
in both the WPs

For R1 in Mr. Jayaprakash Narayanan
both the WPs Special Government Pleader

For R2 in Mr. P. Karthikeyan
both the WPs Government Advocate

COMMON ORDER

These writ petitions have been filed seeking a writ of declaration declaring that the notification under the Tamil Nadu Acquisition of Lands for Adi Dravidar Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) vide impugned gazette publication dated 19.08.2002 amended by an errata dated 01.11.2002 published in Form - II in the Thiruvellore District Gazette, insofar as the same relates to the petitioner's lands in Ponpadi Village, Tiruttani Taluk, Thiruvellore District, as lapsed.

2 Rangarajan (petitioner in WP No.8181 of 2003) is the husband of Sakunthala Rangarajan (petitioner in WP No.8182 of 2003). The couple own a large extent of land in S. Nos.150/3, 150/5, 150/2A, 150/2B, etc. in Ponpadi Village, Thiruvellore District, out of which, by the impugned proceedings, the Government sought to acquire 6.13 acres of land for the purpose of providing housesites to the members of the Adi Dravidar community under the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978 (for brevity "the Harijan Welfare Schemes Act"). Challenging these acquisition proceedings, these writ petitions have been filed.

3 A few dates and events that are relevant for deciding these writ petitions are catalogued hereunder:

a) Notice under Form I Rule 3(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Rules, 1979 read with Section 4(2) of the Harijan Welfare Schemes Act, was served on the petitioners, fixing the date of enquiry as 18.08.2000 and calling upon them to state their objections, if any.

b) The petitioners filed W.P. No.19664 of 2000 which was dismissed by this Court on 23.07.2000 as premature.

c) By a fresh notice dated 13.08.2001, the petitioners were called once again for enquiry on 03.09.2001.

d) On 03.09.2001, the petitioners submitted their objections stating that the lands under acquisition are classified as wet lands and there are other poramboke lands which can be allotted to the members of the Adi Dravida community.

e) The Special Tahsildar sent a report/recommendation dated 23.10.2001 to the District Collector rejecting the objections raised by the petitioners.

f) The District Collector passed orders under Section 4(1) of the Harijan Welfare Schemes Act on 07.08.2002 accepting the report/recommendation dated 23.10.2001 submitted by the Special Tahsildar.

g) A notification under Section 4(1) of the Harijan Welfare Schemes Act was published in the Tiruvallur District gazette on 19.08.2002 and subsequently, on 01.11.2002, an errata notification was issued to correct the boundaries of the land under acquisition, challenging which, the present writ petitions are filed.

4 The respondents have filed counter affidavit justifying the acquisition proceedings .

5 During the pendency of these writ petitions, the petitioners filed W.M.P. Nos.798 and 800 of 2017 for raising additional grounds and W.M.P. Nos.797 and 799 of 2017 for amendment of the existing prayer in the writ petitions. The said W.M.Ps. were allowed by this Court on 31.01.2017, however, making it clear that allowing the said W.M.Ps. shall be without prejudice to the case of the respondents.

6 Heard Mr. Thanka Sivan, learned counsel for the petitioners, Mr. V. Jayaprakash Narayanan, learned Special Government Pleader appearing for the first respondent and Mr.P.Karthikeyan, learned Government Advocate appearing for the second respondent.

7 The learned counsel for the petitioners raised the following points:

a) The lands under acquisition are classified as wet lands and therefore, they cannot be acquired for the purpose of

providing house sites to the members of the Adi Dravida community.

b) There are alternative poramboke lands (the details of which were furnished across the Bar), which should have been chosen by the Government.

c) In terms of the law laid down by the Full Bench of this Court in R. Pari vs. Special Tahsildar, Adi Dravidar Welfare, Pasumpon Muthuramalinga Thevar District and another [(2007) 2 MLJ 706], it was incumbent upon the respondents to have furnished a copy of the report/recommendation dated 23.10.2001 submitted by the Special Tahsildar to the District Collector, so as to enable the petitioners to submit a further representation to the District Collector.

d) Failure to furnish the report/recommendation dated 23.10.2001 vitiates the acquisition proceedings, in the light of the law laid down by the Full Bench in R. Pari (supra).

e) The coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for brevity "the new Central Act") has resulted in the implied repeal of the Harijan Welfare Schemes Act.

f) The gazette notification proceeds on the footing that the same has been issued by the Government under Section 4(1) of the Harijan Welfare Schemes Act and not by the District Collector and therefore, in the light of the Division Bench judgment of this Court in Secretary to Government, Adi Dravidar and Tribal Welfare Department, Fort St. George, Chennai - 9 and 2 Others vs. P. Dhanabakkiam [2009 1 LW 608], the same stands vitiated.

g) The passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu) Amendment Act, 2014, by the State of Tamil Nadu has made the entire acquisition proceedings otiose, especially in the light of the fact that the State Government has not complied with the condition laid down in the newly added Section 105-A(3) of the new Central Act by placing the notification under sub-section (2) before the Legislative Assembly.

8 The learned Government Advocate appearing for the respondents refuted the contentions raised by the learned counsel for the petitioners.

9 For better appreciation of the petitioners' contention with regard to non service of report/recommendation dated 23.10.2001 by the Special Tahsildar, it may be necessary to extract the relevant portions from the judgment of the Full Bench in R. Pari (supra) and the same read thus:

"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 land owner 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 land owner/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 land owner does not contain the reasons, the proceeding 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 land owner 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."

(emphasis supplied)

10 From a reading of the above, it is clear that though the Full Bench in R. Pari (supra), has held that a copy of the report/recommendation of the Special Tahsildar should be furnished to the land owner, yet, the non furnishing of the same would not ipso facto vitiate the acquisition proceedings and the Court, in individual cases, should call for the file and examine the same and find out if there has been application of mind by the authorities.

11 Therefore, this Court called for the file from the respondents. Mrs. R. Kiruba Usha, Special Tahsildar, appeared before this Court and submitted the file. All the necessary documents, including the copy of the report/recommendation dated 23.10.2001 submitted by the Special Tahsildar and the order dated 07.08.2002 passed by the District Collector under Section 4(1) of the Harijan Welfare Schemes Act, were furnished to the learned counsel for the petitioners across the Bar.

12 On a careful perusal of the file, it is seen that the Revenue authorities had conducted a spot enquiry in order to identify the lands for the purpose of acquisition under the Harijan Welfare Schemes Act. The records show that the Revenue authorities were aware that they should first look out for Government poramboke dry lands. The report shows that though dry poramboke lands were available in and around the area in question, they were all found to be in separate clusters and therefore, the authorities were of the opinion that it would not be feasible to issue pattas to the members of the Adi Dravida

community at those places. The authorities required 2.59.5 hectares of land for providing housesites to about 149 families in Ponpadi Harijan Colony. The records also show that the Revenue authorities had taken into consideration the fact that the acquisition and distribution of patta should not lead to communal disharmony amongst the members of the dominant Naidu community and the Adi Dravidars. Further, the Village Administrative Officer appears to have given a statement that if the lands belonging to the members of Naidu community who are residing in the area are acquired, it may lead to frequent communal clashes and law and order problems. Factoring all these aspects, the Revenue authorities had chosen the lands under acquisition belonging to the petitioners, as it was found that the petitioners were neither residing in the village nor were they cultivating the lands.

13 The report/recommendation dated 23.10.2001 given by the Special Tahsildar shows that the objections raised by the petitioners have been noted seriatim and the same have been considered extensively. The Special Tahsildar has noted that, though the lands under acquisition are wet lands, yet, the petitioners have not planted any wet crop, but, have only planted eucalyptus trees. He has stated that this clearly shows that the petitioners have not been cultivating the lands for over a period of time and they had only planted some eucalyptus trees. From this, the Special Tahsildar has inferred that the petitioners have not put the land into use for raising food crops which are normally raised in wet lands. He has further noted that the petitioners had purchased the lands not for raising food crops, but, for business purpose, as the lands are located very near the Chennai-Thirupathi Highway. He has also noted that the petitioners are not residents of Ponpadi Village and they are residents of Chennai. The Special Tahsildar has further agreed with the view of the Village Administrative Officer that if the lands belonging to the members of the Naidu community living in the village are distributed to the members of the Adi Dravida community, there is every likelihood of law and order problems arising frequently. He has further noted that no dry poramboke lands in a single cluster in and around the area to cater to the needs of 147 families, is available and that they are all scattered around the area, which will not be suitable for acquisition and consequential allotment to the intended beneficiaries.

14 Based on the report/recommendation dated 23.10.2001 submitted by the Special Tahsildar, the District Collector has independently applied his mind and has passed the order dated 07.08.2002 under Section 4(1) of the Harijan Welfare Schemes Act. Further, the District Collector has recorded the objections raised by the petitioners and the view expressed by the Special

Tahsildar on the petitioners' objections and has concluded as follows:

"Thus, it is clear that the lands have been kept vacant for years together and this proposed acquisition will no way affect their family. In the circumstances, recommendations of Special Tahsildar (ADW), Tiruttani are accepted and it is directed that the objections of the land owners to the proposed acquisition be over ruled and the proceeded further."

15 Of course, the gazette notification proceeds on the footing as if the order under Section 4(1) of the Harijan Welfare Schemes Act has been passed by the Government. But, that by itself, cannot vitiate the acquisition proceedings, because, the file indubitably shows that the order dated 07.08.2002 under Section 4(1) of the Harijan Welfare Schemes Act has been passed by the District Collector and not by the Government.

16 After applying the law laid down by the Full Bench of this Court in R.Pari (supra), this Court, on a careful perusal of the Government files, is of the considered view that in the facts and circumstances of the present case, the non furnishing of the report/recommendation dated 23.10.2001 of the Special Tahsildar, will not vitiate the acquisition proceedings. Similarly, it is evident from the file that the District Collector has independently applied his mind and has passed the order under Section 4(1) of the Harijan Welfare Schemes Act on 07.08.2002 and the same does not suffer from any infirmity.

17 Coming to the submissions of the learned counsel for the petitioners relating to the new Central Act passed by the Parliament, this Court is of the view that the provisions of the said Act do not affect the acquisition proceedings by the State Government under the Harijan Welfare Schemes Act. Section 114 of the new Central Act has repealed the Land Acquisition Act, 1894 (for brevity "the Land Acquisition Act"). But, Section 103 of the new Central Act states that "the provisions of this Act shall be in addition to and not in derogation of any other law for the time being in force." (emphasis supplied).

18 The learned counsel for the petitioners relied upon Sections 2, 25 and 105 of the new Central Act and submitted that these provisions have effectively nullified the Harijan Welfare Schemes Act.

19 When the Harijan Welfare Schemes Act was passed by the State Legislature in 1978, the Land Acquisition Act (Central Act 1 of 1894) was in force. Therefore, the Harijan Welfare Schemes Act was sent for approval of the President of India and only

after obtaining approval, it became law. The Madras High Court declared the Harijan Welfare Schemes Act as unconstitutional and on appeal by the State, the Supreme Court, in *State of Tamil Nadu & others vs. Ananthi Ammal and others*, [(1995) 1 SCC 519], reversed the verdict of the Madras High Court and declared the Harijan Welfare Schemes Act as constitutional, except sub-section (1) of the Section 11, which was held to be valid only to the extent it provides for payment of compensation in lumpsum. In other words, the payment of compensation in instalments provided for in Section 11(1) of the the Harijan Welfare Schemes Act was held to be violative of Article 14 of the Constitution of India.

20 Section 2 of the new Central Act empowers both the State Government and the Central Government to acquire lands under the Act which was the position even under the repealed Land Acquisition Act. Section 2(e) of the new Central Act reads as under:

"2(e) "appropriate Government" means:

(i) in relation to acquisition of land situated within the territory of, a State, the State Government;

(ii) in relation to acquisition of land situated within a Union territory (except Puducherry), the Central Government;

(iii) in relation to acquisition of land situated within the Union territory of Puducherry, the Government of union Territory of Puducherry;

(iv) in relation to acquisition of land for public purpose in more than one state, the Central Government, in consultation with the concerned State Governments or Union territories;

and

(v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government

Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;

21 A reading of the above shows that for the purpose of providing housing, the State Government can initiate acquisition proceedings under the new Central Act. This, by itself, cannot lead to the inference that the existing Harijan Welfare Schemes Act has been impliedly repealed, because, even during the currency of the repealed Land Acquisition Act, where, the State Government had the power to acquire the lands for housing, the Harijan Welfare Schemes Act was passed by the State Legislature, the Constitutional validity of which was upheld by the Supreme Court. This position has not been altered in any way by the new Central Act.

22 Section 105 of the new Central Act states that the provisions of the new Central Act will not apply to the land acquired under the enactments specified in the IV Schedule. In the IV Schedule to the new Central Act, 13 Central enactments have been listed. This means that the new Central Act will not apply to acquisitions under the 13 enactments listed in the IV Schedule. This will not mean that the new Central Act will automatically apply to the Harijan Welfare Schemes Act, because, the Harijan Welfare Schemes Act has been passed by the State Legislature and not by the Parliament and that it had also received the assent of the President then. The new Central Act seeks to broadly achieve three dominant purposes, viz., (i) acquisition, (ii) compensation and (iii) rehabilitation. There is no repugnancy between the new Central Act and the Harijan Welfare Schemes Act with regard to the acquisition procedure. Since there is repugnancy in the field of compensation and rehabilitation, the State Legislature passed the Tamil Nadu Act 1 of 2015 to bring the compensation and rehabilitation components in the Harijan Welfare Schemes Act on par with the new Central Act by including Section 105-A and Schedule V to the new Central Act. The Tamil Nadu Act 1 of 2015 has received the Presidential assent and therefore, that defect is also cured.

23 At this juncture, it may be relevant to extract the statement of objects and reasons behind Tamil Nadu Act 1 of 2015:

"In order to continue acquisition of land under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978), the Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997 (Tamil Nadu Act 10 of 1999) and the Tamil Nadu Highways Act, 2001 (Tamil Nadu Act 34 of 2002), after the date of commencement of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act 30 of 2013) and to apply the provisions of the Central Act 30 of 2013 for determination of compensation to the

cases of land acquisition under the said Tamil Nadu Acts, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 (LA Bill No.5 of 2014) was passed by the Legislative Assembly on 20.02.2014 and reserved by the Governor for the consideration of the President.

2 The Government have now decided to apply the provisions of Central Act 30 of 2013 relating to rehabilitation and resettlement also to the cases of land acquisition under the said Tamil Nadu Acts, in addition to compensation. Accordingly, the Government have taken a policy decision to withdraw the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Tamil Nadu Amendment) Bill, 2014 (L.A. Bill No.5 of 2014) and to introduce a fresh amendment Bill, incorporating certain changes, on the lines of the provisions of Section 105 of the Central Act 30 of 2013.

3. The Bill authorises the State Government to issue a Notification to apply the provisions of Central Act 30 of 2013 relating to determination of compensation, rehabilitation and resettlement to the cases of land acquisition under the above said Tamil Nadu Acts.

4. The Bill seeks to give effect to the above decision."

24 Section 105-A that has been inserted by the State Amendment in the new Central Act reads as follows:

"105-A Provisions of this Act not to apply to certain Tamil Nadu Acts or to apply with certain modifications:

(1) Subject to sub-section (2), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fifth Schedule.

(2) The State Government shall, by Notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act, relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the

enactments specified in the Fifth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the Notification as the case may be.

(3) A copy of the Notification proposed to be issued under sub-section (2) shall be laid in draft before the Legislative Assembly of the State of Tamil Nadu and if the Legislative Assembly agrees in disapproving the issue of the Notification or the Legislative Assembly agrees in making any modifications in the Notification, the Notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by the Legislative Assembly."

25 The learned counsel for the petitioners contended that Section 10(2) and Section 11(2) of the Harijan Welfare Schemes Act refers to the Land Acquisition Act and with the repeal of the Land Acquisition Act, the provisions relating to distribution of compensation would become unworkable.

26 This contention is misconceived, for, under the provisions of Section 8(1) of the General Clauses Act, 1897, references to a repealed Central Act or Regulation that has been subsequently re-enacted must be construed with reference to the Act so re-enacted. In the considered opinion of this Court, the Tamil Nadu Act 1 of 2015 was introduced only to update the provisions of the Harijan Welfare Schemes Act relating to payment of compensation in tune with the provisions of the new Central Act which provides for the payment of generous compensation to land losers. Only qua payment of compensation and rehabilitation, there appears to have been some differences and those differences have also been bridged by the Tamil Nadu Act 1 of 2015 with the inclusion of Section 105-A and the V Schedule in the new Central Act.

27 As regards the contention of the learned counsel for the petitioners that the notification has not been placed before the Legislative Assembly as required under Section 105-A(3) of the new Central Act, this Court is of the considered view that in the case at hand, that stage has not reached at all, because, after the acquisition notification under Section 4(1) of the Harijan Welfare Schemes Act, the petitioners have filed the present writ petitions and have obtained absolute stay of all further proceedings on 02.09.2003, pursuant to which, the State was not even able to proceed with the award enquiry. Normally, interim orders will be granted only for protecting possession,

whereas, in the present case, this Court has granted absolute order of stay, thereby tying the hands of the respondents from proceeding any further.

In view of the foregoing discussion, these writ petitions are liable to be dismissed as being devoid of merits and are accordingly dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad
To

- 1 The District Collector
Thiruvellore District
Thiruvellore
- 2 The Special Tahsildar
Adi Dravidar Welfare
Tiruttani 631 209
Thiruvellore District

+1cc to M/s.S.Thankasivan, Advocate SR.10870

W.P. Nos.8181 & 8182 of 2003

RSK(CO)
EU 02/03/17

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