

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

And

THE HON'BLE MR.JUSTICE N.SESHASAYEE

W.A.Nos.370 and 516 of 2009
and M.P.No.1 of 2009

Fathima Beevi

..

Appellant in both W.As.

vs.

1.Government of Tamil Nadu,
Rep. by its Secretary to Government,
Adi Dravidar Welfare & Land Acquisition
Department, Chennai-600 009.

2.The District Collector
of Kanyakumari at Nagercoil.

3.The Special Tahsildar,
(Adi Dravidar Welfare) and
Land Acquisition Officer,
Padmanabhapuram, Thuckalay,
Kanyakumari District.

..

Respondents in both W.As.

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 17.12.2008 made in W.P.Nos.13268 and 13269 of 2002.

For Appellants : Mr.A.Sivaji
in both W.As.

For Respondents : Mr.A.N.Thambidurai
Special Govt. Pleader

COMMON JUDGMENT

(Judgment of the Court was made by **M.SATHYANARAYANAN, J.**)

The writ petitioner is the appellant and he made a challenge to the proceedings initiated under the provisions of The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [Tamil Nadu Act 31 of 1978] under notification dated 24.12.2001, published in the Government Gazette dated 09.01.2002 as well as the award dated 18.03.2002, by filing W.P.Nos.13269 and 13268 of 2002 respectively and both the writ petitions, after contest, came to be dismissed, vide common order dated 17.12.2008 and aggrieved by the same, the writ petitioner has filed these Writ Appeals.

2. Facts leading to the filing of these Writ Appeals, briefly narrated, are as follows:

2.1. Lands admeasuring to an extent of 0.10.0 hectares in R.S.No.189/1B of Vilavancode Village in Vilavancode Taluk of Kanniyakumari Distrcit was acquired under the provisions of the Land Acquisition Act, 1894 [Central Act 1 of 1894] and

it was challenged and the proceedings were quashed with liberty to proceed under the provisions of the Tamil Nadu Act 31/1978 and the appellant/writ petitioner, after purchasing the lands comprised in R.S.No.1891/, had subdivided the same into house plots and also put up a small house in a portion admeasuring 25 cents of land.

2.2. The respondents thought fit to acquire lands for the purpose of putting up hostel for Adi Dravidar students and therefore, possession was taken to acquire the said lands under the Tamil Nadu Act 31/1978 and by following due procedure, a sum of Rs.43,131/- has been awarded and it has been deposited on the file of the Sub-Court, Kuzhithurai and possession of the lands, according to the respondents, was also taken on 03.04.2002.

2.3. The petitioner, made a challenge to the said proceedings by filing W.P.Nos.13268 and 13269 of 2002 contending among other things that the petitioner had already parted 10 cents of land to the Harijans, who are landless and the third respondent had mechanically passed orders dated 09.11.2001 and the mandate case upon the respondents under Section 5 of the Tamil Nadu Act 31/1978 have also not been complied with. The respondents had filed a counter affidavit refuting the allegations and took a stand that only after following the due process

of law in letter and spirit, the acquisition proceedings were initiated and possession was also taken and therefore, the claim of the writ petitioner is wholly unsustainable.

2.4. The learned Judge, after taking note of the materials placed, found that the objections raised by the petitioner has been considered in proper perspective and the prescribed authority, namely the Special Tahsildar (Adi Dravidar Welfare) and Land Acquisition Officer, has rightly reached the conclusion to acquire the lands and therefore, it cannot be faulted with and citing the said reasons, had dismissed the writ petitions and hence, these Writ Appeals.

3. The learned counsel appearing for the appellant/writ petitioner would submit that under Section 4(3)(b) of the Tamil Nadu Act 31/1978, the District Collector has to consider the report submitted by the authorized officer containing his recommendations and pass orders as he may deem fit and proper and in the case on hand, the second respondent/District Collector has failed to perform the duty/mandate cast upon him and therefore, the entire proceedings are vitiated and taking into consideration passage of time, prays for quashment of the proceedings without granting liberty to the respondents to proceed afresh. The learned counsel

appearing for the appellant/writ petitioner, in support of his submissions, placed reliance upon the following decisions:

- (i) Order dated 16.02.2007 made in W.P.No.9605 of 1998 [R.Ramakrishnan v. State of Tamil Nadu, Rep. by Secretary to Government, Adi Dravidar Welfare Department, Chennai-600 009 and 2 others]**
- (ii) G.Ramakrishna Naidu (deceased) and 2 Others v. The District Collector, North Arcot Ambedkar District, Vellore and another [2001 (3) CTC 649]**
- (iii) The District Collector, North Arcot Ambedkar District, Vellore and another v. Manickam [2005-2-L.W.199]**
- (iv) Order dated 03.04.2008 made in W.P.No.4854 of 1998 [A.Muthukumaraswamy Chettiar v. The Collector of Villupuram District, Villupuram and another]**
- (v) Govinda Pillai v. The Special Tahsildar, Adi Dravidar Welfare [(2007) 2 MLJ 753].**

4. *Per contra*, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that admittedly the petitioner did not raise any objection for acquisition either at the time of filing the writ petitioner or at the time of arguments and without getting the leave of this Court, the said ground cannot be raised and further submitted that the respondents 2 and 3, after

scrupulously following the procedure contemplated under the said Act, had acquired the lands and at this distant point of time, the acquisition proceedings need not be disturbed or set at nought and prays for dismissal of these Writ Appeals.

5. This Court has considered the rival submissions and also perused the entire materials placed before it.

6. It is relevant to extract Section 4 of the Tamil Nadu Act 31 of 1978:

“4. Power to acquire land:

(1) Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1), the District Collector or any officer authorized by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.

(3) (a) The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown;

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorized shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report the District Collector may pass such orders as he may deem fit.”

As per Section 4(3)(b) of the above said Act, where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section(2), the officer so authorized shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector and after considering such report, the District Collector may pass such orders as he may deem fit.

7. A perusal of the files produced before this Court would indicate that the third respondent has sent a communication dated 09.11.2001 as to the need and necessity to acquire the lands in question and in terms of the above said provisions, it has been submitted to the second respondent. The order of the second respondent in terms of Section 4(3)(b) of the said Act available at Page No.749 in File

No.A1/1055/92 - Volume II would indicate that it is in cyclostyled format and the relevant columns have been filled up by typing it and the second respondent has subscribed his signature.

8. The primordial question arises for consideration is whether the order of the second respondent passed in cyclostyle format would satisfy Section 4(3)(b) of the Tamil Nadu Act 31/1978? The decisions relied on by the learned counsel appearing of the appellant lay down the proposition that the order of the District Collector in the cyclostyle format do not satisfy the requirement as envisaged under Section 4(3)(b) of the Tamil Nadu Act 31/1978.

9. In *The District Collector, North Arcot Ambedkar District, Vellore and another v. Manickam [2005-2.L.W.199]*, similar issue arose for consideration and it is relevant to extract para 8 of the said decision:

“8. In the present case, it appears that the order of the District Collector was passed in a mechanical manner without proper application of mind by merely filling up a cyclostyled form. We cannot approve of such such kind of orders. It may be that the Special Tahsildar, who was authorized by the District Collector, considered the objections of the land owners, but in our opinion the District Collector must also consider those objections and apply his own mind to those objection, as has been held in the Wednesbury case (see quotation above). Though we agree with the learned Special Government Pleader that if opportunity of hearing has been given by the person authorised by the District Collector under

Section 4(3) of the Act (in this case the Special Tahsildar) it is not necessary for the District Collector to give a second opportunity of hearing, yet in our opinion the District Collector must certainly apply his own mind to the objections made by the land owner to the acquisition as they affect his very valuable rights. The Collector need not write an elaborate order like a judgment of a Court of law while rejecting the objections of the land owner, but he must at least in brief mention the reasons why he is rejecting the objections so that the land owner may have the satisfaction that his objections have been considered and this Court also may be satisfied that the District Collector had applied his mind to such objections.”

10. This Court, keeping in mind the ratio laid down in the above cited decision and after going through the order of the second respondent dated 24.12.2001 passed under Section 4(3)(b) of the Tamil Nadu Act 31/1978, is of the view that the mandate cast upon the second respondent in terms of the above said provision have not been complied with.

11. It is to be remembered at this juncture that meager land holdings are acquired under the provisions of the Tamil Nadu Act 31/1978 as well as under the provisions of similar Statutes and since the act of acquisition of lands deprive the land owners their meager land holdings and also in the light of the protection guaranteed under Article 300-A of the Constitution of India, the concerned authority has to scrupulously follow and comply the provisions of the said Statutes.

In the considered opinion of the Court, filling up of blanks in the relevant columns

in the cyclostyled formats, hardly satisfy Section 4(3)(b) of the Tamil Nadu Act 31/1978 and hence, on the sole ground the impugned order dismissing the writ petition as well as the original impugned order, which were the subject matter of challenge in the writ petitions, warrant interference.

12. At this juncture, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents would submit that if the land acquisition proceedings initiated under the Tamil Nadu Act 31/1978 are quashed on technical grounds, liberty may be granted to the respondents to proceed afresh. It is to be noted at this juncture that the appellant/writ petitioner had the benefit of the interim orders pendency of the writ petitions as well in these writ appeals and the acquisition proceedings came to be initiated as early as in the year 2001 and in the light of passage of time, this Court is not inclined to grant liberty to the respondents to proceed afresh. सत्यमेव जयते

13. In the result, these Writ Appeals are allowed, setting aside the common order dated 17.12.2008 made in W.P.Nos.13268 and 13269 of 2002 and as a consequence, the impugned proceedings of the second respondent in Notification No.J3/87487/01 dated 24.12.2001, published in the Government Gazette dated 09.01.2002 as well as the Award No.3/2001-2002/A1/1055-92 dated 18.03.2002

passed by the third respondent are set aside. No costs. Consequently, connected miscellaneous petition is closed.

[M.S.N., J.] [N.S.S., J.]
20.09.2017

Index : Yes / No

Internet : Yes / No

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To

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Government of Tamil Nadu,
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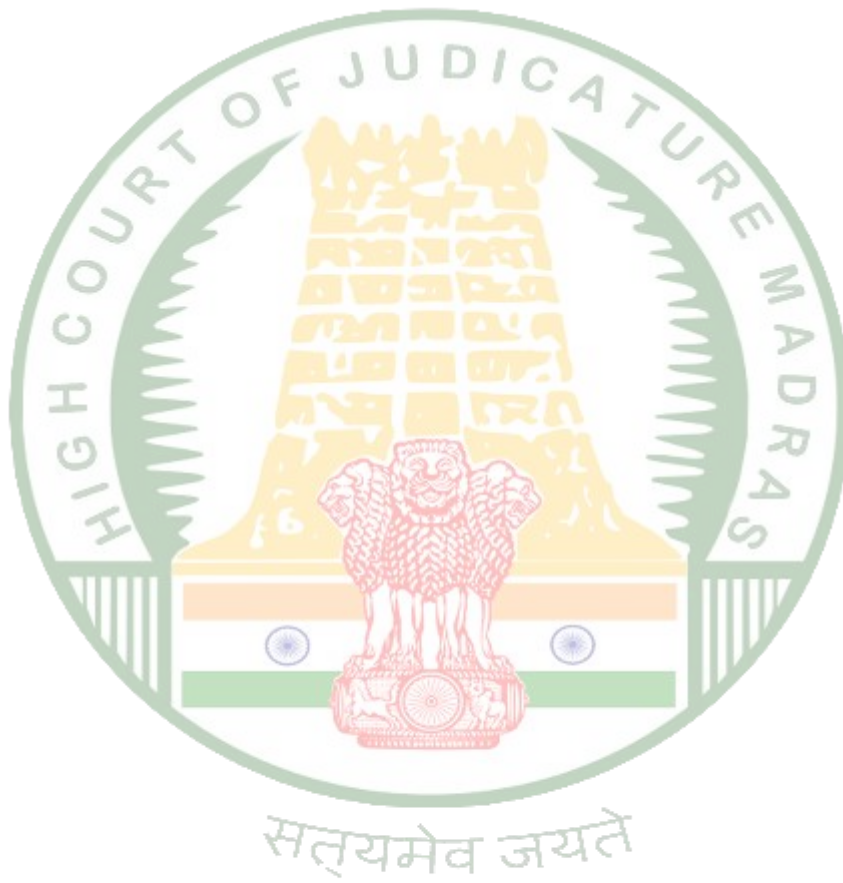
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