

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 24.11.20107

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. No.5359 of 2011 &
M.P.No.1 of 2011

Nagarathinam

... Petitioner

versus

1. State of Tamiul Nadu
Represented by Secretary to Government,
Social Welfare Department,
Fort St. George,
Chennai-9.

2. The District Collector,
Karur.

3. The Special Tahsildar,
Harijan Welfare, Karur.

4. The Tahsildar,
Karur.

Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus directing the respondents to de-notify the land measuring about 1 acre and 59 cents comprised in S.No.476/1 of North Velliyanai Village, Karur Taluk from the purview of acquisition proceedings and consequently direct the respondents to make necessary entries in the revenue records by transferring the lands in the name of the petitioner.

For Petitioner : Mr.P.Muthukumarasamy,
Senior Counsel for
Mr.K.Kuppusamy

For Respondents : Mr.S.Gunasekaran
Addl. Govt. Pleader

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Mandamus directing the respondents to de-notify the land measuring about 1 acre and 59 cents comprised in S.No.476/1 of North Velliyanai Village, Karur Taluk from the purview of acquisition proceedings and consequently direct the respondents to make necessary entries in the revenue records by transferring the lands in the name of the petitioner.

2. The petitioner is the owner of the property measuring 1.59 cents comprised in S.No.476/1 of North Velliyanai Village, Karur Taluk. In 1980, land acquisition proceedings were initiated under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Act 31 of 1978) (hereinafter referred to as 'the Act'). The lands were said to be acquired for the purpose of providing house sites for Harijans living in the neighbourhood. Challenging the acquisition proceedings, number of writ petitions came to be filed before this Court questioning validity of the Act. The petitioner herein had also filed a writ petition challenging the validity of the Act. The writ petitions were allowed by this Court and the Act was struck down. Thereafter, an appeal was preferred before the Hon'ble Supreme Court and the said appeal was allowed on 22.11.1994.

3. As regards, the writ petition filed by the petitioner was concerned in W.P.No.65487 of 1980, there was an interim order passed by this Court protecting his possession and due to long pendency of case from 1980 onwards, the possession has been enjoyed by the petitioner and the same was not taken over in terms of the Act and the lands have been under cultivation by the petitioner till date.

4. In spite of the factual possession as indicated above, the respondents proceeded with subdividing the lands and further action was initiated in passing an award in March 1981 and thereafter, the award amount has also been deposited in Sub Court, Karur. However, according to the petitioner, he was not put on notice about passing of the award and deposited the same before the Sub Court. Due to long pendency of the litigation over the acquisition proceedings, the respondents had initiated action to acquire certain neighbouring lands in 1997 and that acquisition was completed and the respondents divided the acquired lands into 125 housing plots and the same were allotted to the beneficiaries namely, Harijans for constructing houses. According to the petitioner, out of 146 plots, only about 50

beneficiaries had constructed the houses in the respective plots and the remaining part of the land was still vacant.

5.The case of the petitioner is that the original purpose of the acquisition was only to provide housing sites to Harijan families and since the said purpose having been fulfilled, the retention of other lands including the lands of the petitioner herein became unnecessary and the same cannot also be utilized for the purpose for which it was originally acquired.

6.In the above said circumstances, the petitioner had submitted a representation to the authorities concerned for return of the lands since the Government did not require them any further in view of the subsequent development. A detailed enquiry was conducted into the representation and it appears that the petitioner was also called for an enquiry and the Collector seemed to have observed that no notice was given to the petitioner before passing the award or depositing the amount into the Sub Court. It also appears that the Collector, who is the competent authority, after acquiring the lands for the welfare of the harijans and forwarded his recommendation to the Director, Adi Dravidar Welfare for passing appropriate orders towards release of lands to the owners of the property including the petitioner. However, no action has been taken on the recommendation of the Collector and despite passage of several years now, no decision has been taken by the Collector or any other competent authority for return of the land. Since according to the petitioner, the land is still in possession of the petitioner and has not been legally taken over by the Government and the same is under cultivation by the petitioner and also that the lands were admittedly not required for any other public purpose, the petitioner was entitled to re-claim the land. Therefore, he is before this Court seeking for a direction to the competent authority to re-notify the subject land from the purview of the acquisition proceedings and transfer the same in the name of the petitioner after making necessary entries in the revenue records.

8.Shri P.Muthukumarasamy, learned senior counsel appearing for the petitioner would reiterate the averments made in the affidavit filed in support of the writ petition. He would submit that under the Act, the District Collector was competent to acquire the lands and not even the Government. The said legal position has been clearly laid down in very many decisions passed of this Court including in a decision of the Full Bench of this Court in "R.Pari versus Special Tahsildar, Adi Dravidar Welfare" reported in 2002 (7) MLJ 706. The learned senior counsel would draw the attention of this Court to para-6 of the judgment, which is extracted below:

"6. The statutory provisions thus make it

clear that the District Collector is the authority to exercise the power of eminent domain. As per Section 4(1), it is required that the Collector should be satisfied that the land is required for the purpose of any Harijan Welfare Scheme. Notice is required to be published in the District Gazette regarding the decision of the Collector to acquire the land. However, before taking such action, under Section 4 (1), the District Collector or any officer authorized by the District Collector is required to call upon the owner or any other person, who, in the opinion of the District Collector or authorized officer may be interested to show cause why such land should not be acquired. Under Section 4(3) (a), after the case is shown, the District Collector, where notice has been issued by him, may pass such orders as he may deem fit. However, under Section 4(3) (b), where such notice is issued by the Authorized Officer, such officer is required to make a report to the District Collector containing his recommendations on the cause shown, for the decision of the District Collector and the District Collector may pass such orders as he may deem fit after considering such report."

9. According to the learned senior counsel, as per Section 4 of the Act, the District Collector alone is the competent authority and on his satisfaction, the land may be acquired towards Harijan Welfare Schemes. Section 4 (1) of the Act, is extracted below:

"4. (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."

A procedure is also prescribed under the various provisions of the Act and also the Rules framed thereunder. According to the learned senior counsel, the entire scheme of the Act and Rules would confer the entire power to the District Collector for determining the acquisition proceedings for the purpose of Harijan Welfare Scheme.

12. In view of the Collector enjoying the absolute power under the Act and Rules, on he being satisfied about the non-requirement of the lands for the purpose for which, they were

originally acquired as early in the year 1980, the Collector, viz., the second respondent himself can take a decision and can cause de-notification and return the lands to the petitioner after directing the revenue authorities to make necessary entries in the revenue records. The learned senior counsel would also draw the attention of this Court to the Tamil Nadu General Clauses Act, 1891, particularly, Clause 15 which reads as follows:

"15. Where an Act confers a power to make any rules or by-laws, or to issue notifications or orders, the power shall be construed as including a power exercisable in the like manner and subject to the like consent and conditions, if any, to rescind, revoke, amend or vary the rules, by laws, notifications or orders."

13. Therefore, he would submit that the Collector alone is competent to take decision in the matter and in view of his finding that the lands were not required any more for the purpose of Harijan Welfare scheme, there is no legal impediment on his part to de-notify the acquisition proceedings by consequential direction.

14. Upon notice, Mr.S.Gunasekaran, the learned Additional Government Pleader entered appearance for the respondents and filed a detailed counter. In the counter affidavit, the facts are not disputed as stated by the petitioner. However, the substance of the counter affidavit is that the matter has been referred to Government for passing appropriate orders and awaiting the final decision of the Government. The relevant averments as contained in paragraphs 6 and 7 of the counter affidavit are extracted below:

'6. As regards the averments made in para Nos.4 to 6 of the affidavit, it is submitted that it is true that since the writ petition against the acquisition of petitioner's land was pending for several years, the special Tahsildar (ADW), Kulithalai had acquired nearby lands measuring 7.84 acres in S.No.488/1 vide Award No.6/1996-97 and provided house sites to all 145 Aid Dravidar families. It is also true that the petitioner had submitted a representation to the District Collector, Karur on 18.09.2007 requesting to denotify the lands and the 2nd respondent has sent a proposal in his Na.Ka.L1.36546/2007, dated 15.12.2007 to the 1st respondent for seeking permission from the government to cancel the land acquired on 21.03.1981, under Section 48.B(1),

(2) & (3) of Central Act 1 of 1984, return the land to the original owner, i.e. the petitioner herein, reclassify the land as rayathiwari punjai, etc. and awaiting for reply.

7. As regards the averments made in para Nos.7 & 8 of the affidavit, it is submitted that the land was acquired under Act 31/1978 and Award No.5/81 was passed on 21.03.1981. Thereafter, the date of possession under the Act was declared as 09.04.1981 and the land was reclassified as Adi Dravider Colony. Though alternative arrangements were made to provide house site to the adi Dravider families and the land acquired from the petitioner is not required for the same purpose for which it was acquired, the decision on cancellation of such acquisition under an Act after gazette notification to be approved by the appropriate authorities and the government. Therefore, the 2nd respondent has sent a proposal for the same in his Na.Ka.L1.36546/2007, dated 15.12.2007 to the 1st respondent. The above proposal has been under process, subsequent communication between the respondents for want of clarification and further information has been in progress.

15. The Additional Government Pleader reiterated the averments as found in the counter affidavit. It is clear from the averments in the counter affidavit as extracted above that the respondents had acquired sufficient lands and provided housing sites to Harijans in the village and the petitioner's land was not required any more for fulfilling the objectives which were the basis of original acquisition in 1980. However, in the counter affidavit, it is stated that the Government is examining the issue and the proposals sent by the authority and no action has been taken so far. However, as rightly contended by the learned senior counsel for the petitioner that final call has to be taken only by the Collector as he alone is the competent to take decision in the matter either notifying or de-notifying for the purpose of Harijans Welfare scheme. In the circumstances, the Collector, namely, second respondent can himself take a decision particularly in this case when he was satisfied that the subject land was not required for the purpose which it was originally acquired in 1980 and he himself can pass orders by de-notifying the acquisition proceedings by not referring the matter to the Director of Adi Dravider Welfare. The Collector is the original competent authority having vested the duties under the Act and Rules, the Director of Adi Dravider

is not the authority empowered to take a decision in the matter under the Act or Rules and therefore, awaiting a decision from him is not called for in view of the scheme of the Act and Rules explained above.

16. Since the land of the petitioner is not required any more and the purpose for which it was originally acquired, having been served and fulfilled by acquiring other piece of the land and adequate house sites have already been allotted to the Harijans in the village and the possession of the subject land has remained with the petitioner since 1980 till date, there is no legal impediment or justification for retaining the land of the petitioner for indefinite period without utilizing the same for any public purpose. Therefore, this Court has no hesitation in allowing the writ petition and in holding that the Collector is the final authority to pass orders in the subject matter and there is no necessity to obtain any orders from the Government in this regard.

17. In the light of the above, the second respondent is directed to denotify the land measuring Ac.1.59 cents situated in S.No.476/1, North Velliyanai Village, Karur Taluk and transfer the same to the petitioner after giving necessary direction to the authorities to make corresponding entries in the revenue records on the such transfer. The said direction shall be complied with the by the second respondent within a period of three months from the date of receipt of a copy of this order.

18. With the above direction, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Social Welfare Department,
Fort St. George,
Chennai-9.

2. The District Collector,
Karur.

3. The Special Tahsildar,
Harijan Welfare, Karur.

4. The Tahsildar,
Karur.

+lcc to the Government Pleader, S.R.No.84217

W.P. No.5359 of 2011
& M.P.No.1 of 2011

RRK(13/02/2018)



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