

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

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

W.P. No.10714 of 2003
& WPMP No.13540 of 2003
and WMP No.4130 of 2016

Mogiliammal

Petitioner

vs.

1.The District Collector
Vellore District
Vellore.

2.The Special Tahsildar
ADW & Land Acquisition Officer
Gudiyatham.

Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the entire records in respect of the District Collector notification dated 20.03.2003 in C.K.10/4693/2003 and quash the notification issued by the District Collector under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 in respect of acquiring the petitioner's land in Survey Numbers 242/2B and 251/1 with an extent of 0.05.0, 0.01.0 hectare of Kallapadi Village, Gudiyatham Taluk.

For petitioner Mr.D.Rajagopal

For respondents Mr.S.Pattabiraman,
Government Advocate

ORDER

In this writ petition, the petitioner is challenging the acquisition of her land under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [hereinafter will be referred to as "the Act"] for the purpose of providing pathway to the burial ground of people belonging to Arunthathiyar community.

2. The factual matrix of the case is as under:

It is the case of the petitioner that she is the owner of

the land measuring around 2 acres 15 cents in S.Nos.242/2 and 251, Kallapadi Village, Gudiyatham Taluk, which according to her, is under cultivation by her. While so, the respondents are seeking to acquire 0.06.0 hectares (6 ares), which is equal to 14.82 cents, for providing pathway to the burial ground of Arunthathiyar community, challenging which, the present writ petition has been filed.

3. It may be necessary to set down the relevant dates for better appreciation of the petitioner's case.

- Notice dated 13.12.2002 in Form-I under Rule 3(1) was issued to the petitioner, calling upon her to appear for enquiry at 10.00 a.m. on 03.01.2003 and register her objection, if any.
- The petitioner gave a written objection dated 02.01.2003 to the Special Tahsildar, objecting to the acquisition on the ground that, apart from the land under acquisition, the petitioner does not have any other land and that there is an alternative route for the Arunthathiyars to carry dead bodies to the burial ground.
- Her objections were considered by the Special Tahsildar and rejected by his report dated 06.01.2003 that was submitted to the District Collector.
- The District Collector, by order dated 13.03.2003, considered the report/recommendation of the Special Tahsildar and accepted the same directing the publication of the notification under Section 4(1) of the Act in the District Gazette.
- Accordingly, the notification under Section 4(1) was published in the District Gazette on 20.03.2003, challenging which, the petitioner is before this Court.

4. While admitting this writ petition on 08.04.2003, this Court passed the following order:

"Interim injunction if the petitioner has not already been dispossessed. Notice returnable by three weeks. Private Notice is permitted."

5. The second respondent has filed a counter justifying the acquisition.

6. Today, Tmt.I.Jebamani, Special Tahsildar (ADW),

Gudiyatham Division, Vellore District is present and she produced the files.

7. Heard Mr.D.Rajagopal, learned counsel for the petitioner and Mr.S.Pattabiraman, learned Government Advocate appearing for the respondents and perused the records.

8. Mr.D.Rajagopal, learned counsel raised the following points:

[a] The Preamble to the notification dated 20.03.2003 issued under Section 4(1) of the Act reads as under:

"Whereas it appears to the Government of Tamil Nadu that the lands specified in the Schedule below and situated in Kallapadi Village, Guidyatham Taluk, Vellore District are needed for the purpose of Harijan Welfare Schemes in accordance with the provisions of sub-section (1) of section 4 of the Tamil Nadu Acquisition of lands for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act, 31 of 1978)"

(emphasis supplied)

Mr.Rajagopal submitted that this is in violation of Section 4(1) of the Act, since Section 4(1) contemplates the satisfaction of the District Collector and not that of the Government. In support of this contention, he placed strong reliance upon the Division Bench judgments of this Court in Jainabi v. The State of Tamil Nadu [2006 (5) CTC 163] and R.Rasappa Gounder v. The District Collector, Dindigul District and another [2008 Writ L.R.585] and the judgment of a learned Single Judge of this Court in M.Nagu and others v. The District Collector, Sivagangai District and another [2008 (2) CTC 468].

[b] The report/recommendation dated 06.01.2003 submitted by the Special Tahsildar to the Collector was not furnished to the petitioner.

[c] The petitioner was not given any further hearing by the District Collector.

[d] The District Collector has not passed any order under Section 4(3) (b) of the Act.

[e] On account of Section 105 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [for brevity "RFCTLARR Act"], the entire land acquisition proceedings has become non-est and therefore, it should be quashed.

9. Mr.S.Pattabiraman, learned Government Advocate refuted the contentions.

10. This Court gave its anxious consideration to the rival submissions.

11. A Full Bench of this Court in *Pari vs. Special Tahsildar, Adi Dravida Welfare* [2006 (4) CTC 609], has formulated the following procedure that has to be followed by the authorities before acquiring the land under RFCTLARR Act. It may be relevant to extract the relevant paragraphs as under:

"42.However, it is necessary to enter a small caveat. The observation made by the Division bench or the 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."

From the above, it is clear that the report/recommendation of the Special Tahsildar should be furnished to the land owner, but, just because it is not furnished, that, by itself, will not vitiate the acquisition proceedings and this Court should

examine the records and decide as to whether any prejudice has been caused to the land owner. Hence, this Court carefully perused the original file that was produced by Tmt.I.Jebamani, Special Tahsildar [ADW], Gudiyatham Division.

12. The learned Government Advocate filed a typed set of papers containing the report dated 06.01.2003 of the Special Tahsildar, the order dated 13.03.2003 passed by the District Collector and other connected records, copies of which, were also furnished to the learned counsel for the petitioner. On a careful reading of the records, it is seen that out of 2 acres 15 cents of land held by the petitioner, the authorities are acquiring only 14.82 cents to provide a pathway for the Arunthathiyars to reach their burial ground. In the Special Report dated 06.01.2003 submitted by the Tahsildar to the District Collector, the objections raised by the petitioner/land owner have been vividly considered.

13. The petitioner, in her objection letter dated 02.01.2003, has stated that, the land under acquisition is a 'punja land'; that she has raised wet crops and that there are alternative routes for the Arunthathiyars to reach their burial ground. In her representation, she has also stated that she has filed a writ petition and has obtained orders from this Court. The Tahsildar has noted all these objections and has stated that the Arunthathiyar colony is situated in S.No.279 and they have been using 0.25 cents of land belonging to the Government as their burial ground for a long time. From their colony located in S.No.279, they have to necessarily pass through lands in S.Nos.242/2B, 251/1 belonging to the petitioner and also through 252/2 belonging to another person. Initially, when they were passing through the aforesaid survey numbers, the land owners did not raise any objection, on account of which, they were using that as their pathway for quite sometime. Since last one year, the land owners are not only objecting, but are also obstructing the pathway, on account of which, frequent quarrels have arisen. On account of this, it has become necessary for acquiring a certain portion of the land to provide pathway for the members of the Arunthathiyar community to reach their burial ground.

14. As regards the objection of the petitioner that she has planted wet crops, the Tahsildar has noted that it is not true and that the petitioner has planted only Bengal gram and Toor Dhal. He has also noted that there are no coconut trees in the land under acquisition, as contended by the petitioner. He has noted that the coconut saplings were only six months old.

15. As regards the contention of the petitioner that she has

filed a writ petition, the Tahsildar has noted that her petition in W.P.No.37212 of 2002 has been dismissed by this Court on 29.10.2002. After recording the aforesaid reasons, the Special Tahsildar has negatived the objections of the petitioner and has sent his report/recommendation dated 06.01.2003 to the District Collector.

16. The District Collector has considered the objections raised by the petitioner and has over-ruled the same and only thereafter, the notification under Section 4(1) of the Act has been directed to be published in the District Gazette.

17. In this case, the District Collector has passed a separate order dated 13.03.2003 and has not merely endorsed the report/recommendation of the Special Tahsildar. It is true that in the impugned Gazette notification dated 20.03.2003, it is stated as if the acquisition is being done on the satisfaction of the Government. But, on a scrutiny of the relevant files, it is limpid that the Government has had no role in this case. The files clearly show that the District Collector has exercised his powers under Section 4(3)(b) of the Act by passing the order dated 13.03.2003 and only thereafter, Section 4(1) notification has been issued on 20.03.2003.

18. The learned Government Advocate brought to the notice of this Court an unreported judgment of a learned Single Judge of this Court in W.P.No.15454 of 1999 dated 03.12.2008, wherein, an identical ground was raised. In the said judgment, the learned Single Judge has considered not only the Full Bench judgment in Pari's case (supra) , but also other Division Bench judgments and has negatived the plea in the following words:

"18. The Form II prescribed is a mechanical reproduction of the Form used under the Central Act 1 of 1894. That is why the Full Bench cautioned the Courts to go by substance and not by Form while deciding the validity of the acquisition. It is high time the State Government modifies the Form prescribed in tune with the spirit of the T.N.Act 31 of 1978."

In other words, mere reference to the word "Government" in the notification, by itself, will not vitiate the acquisition proceedings, if it is shown to the satisfaction of this Court by production of original files that the District Collector has independently applied his mind on the report/recommendation of the Tahsildar. As stated above, in this case, the District Collector has applied his mind and has take a decision under

Section 4(3) (b) of the Act by his order dated 13.03.2003.

19. In Pari's case (supra), the Full Bench has clearly stated that unless prejudice is shown to have been caused to the petitioner/ land owner due to the failure of the authorities to furnish the report/recommendation of the Tahsildar, the acquisition cannot be quashed. In this case, on a reading of the Special Tahsildar's report/recommendation dated 06.01.2003, it is seen that the Special Tahsildar has considered each of the objections raised by the petitioner and has given reasons for negating the same. As stated above, the entire land of the petitioner is not under acquisition, but, only 0.06.0 hectares [14.82 cents] to provide pathway to the burial ground has been acquired.

20. This Court also perused the sketch that forms parts of the original file produced by Tmt.I.Jebamani [ADW], Gudiyatham Division. The sketch shows that easy access to the burial ground can only be through the lands under acquisition. Under such circumstances, this Court is of the view that no serious prejudice has been caused to the petitioner on account of the failure of the authorities to furnish a copy of the report/recommendation dated 06.01.2003 by the Special Tahsildar.

21. As regards Section 105 of the RFCTLARR Act, it reads as follows:

"105. (1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

(2) Subject to sub-section (2) of section 106 the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

(3) The Central 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 Fourth 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.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification 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 both the Houses of Parliament."

The Section very clearly states that the provisions of this Act will not apply to the enactments specified in Fourth Schedule of the Act. Admittedly, the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act does not find place in the Fourth Schedule and a fortiori, the provisions of this Act will apply to the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act. However, I am not able to persuade myself to extend the application of RFCTLARR Act to the present acquisition, because, the acquisition was of the year 2003 and this Court granted stay on 08.04.2003, on account of which, the State was not able to proceed further. The maxim Actus curiae neminem gravabit [The act of the court harms no one] should be made applicable and on account of the stay granted by this Court, the State should not be put to prejudice.

In the result, this petition is devoid of merits and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

sd/

Assistant Registrar

/true copy/

Sub Assistant Registrar

gms

To

1.The District Collector
Vellore District
Vellore.

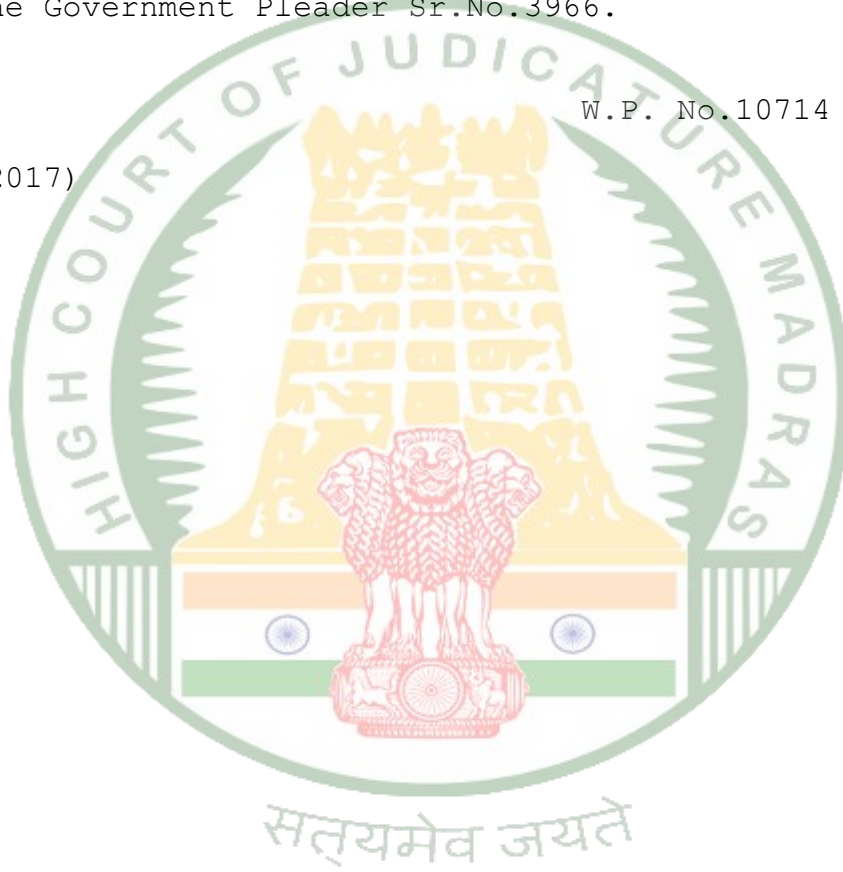
2.The Special Tahsildar
ADW & Land Acquisition Officer
Gudiyatham.

+1cc to Mr.D.Rajagopal, Advocate SR.No.4203

+1cc to the Government Pleader Sr.No.3966.

KSJ(CO)
GN(09/02/2017)

W.P. No.10714 of 2003



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