

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.11646 of 2004

S.Rajkumar

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai-600 009.
2. The Collector of Vellore District, Vellore, Vellore District.
3. The Land Acquisition Officer and
Special Tahsildar (ADW),
Wallajapet, Vellore District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondents herein comprised in the impugned notification issued by the second respondent under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act (Act 31 of 1978) and published in Vellore District Gazette, Extraordinary issue No.25, dated 11.09.2001 and to quash the same insofar as it related to the petitioner's lands in S.No.436 measuring an extent of 0.90.0 hectares situate in 91 Anandalai Village, Wallajahpet Taluk, Vellore District.

For Petitioner : Mr.V.R.Kamalanathan for Mr.G.Narasimhulu

For Respondents: Mr.S.Diwakar, Spl.G.P.

ORDER

The petitioner has come forward with above writ petition praying for issuance of a Writ of Certiorari to call for the records of the respondents herein comprised in the impugned notification issued by the second respondent under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act (Act 31 of 1978) and published in Vellore District Gazette, Extraordinary issue No.25, dated 11.09.2001 and to

quash the same insofar as it related to the petitioner's lands in S.No.436 measuring an extent of 0.90.0 hectares situate in 91 Anandalai Village, Wallajahpet Taluk, Vellore District.

2. It is the case of the petitioner that he is an agriculturist by avocation and his family owns an extent of 9 acres in S.Nos.436 and 437, 438 etc. situated in Anandalai Village, Walaja Taluk. He has got four school going children and that the Government has sought to acquire the land, which has not only the electrical connection, but also motor pump set, apart from the fact that the pipelines are running through S.No.436. It is further stated that if the land(s) is acquired and no ingress or egress is provided to the other land, the land (s) would become barren, since water from the pumpset has to pass through S.No.436. It is further submitted that the award notice enquiry in Form No.3 was objected to in detail and that the respondents are trying to make a mockery of the beneficial welfare Legislation of the said Act. It is further submitted that there is no justification for the Collector to acquire the land(s) belonging to the Scheduled Caste person and the Government has sought to acquire the land(s) belonging to Scheduled Caste for the purpose of Harijan Welfare Scheme. It is also stated that the petitioner has raised paddy and Ragi crops in the land(s) in S.No.436 and it is ripe for harvesting and that there is total non-application of mind on the part of the respondents without knowing that the land(s) is agricultural land(s) and the paddy fields are there, and the action of the respondents in trying to acquire the land(s) under the said Act 31 of 1978 is in utter violation of the principles of natural justice. It is further stated by the petitioner that though the petitioner was heard in the award enquiry, the copy of the report of the third respondent that has been furnished to the second respondent, has not been given to the petitioner and that had it been produced, he would have ensured that the acquisition itself is bad in law. It is the further case of the petitioner, by reiterating that irrigation of the water is drawn from the Wells/bore-wells through the motor pumpset and it passes through S.No.436 and that there are Government Orders prohibiting acquisition of such types of land(s) and the Government is trying to acquire the paddy fields for construction of house(s) under Harijan Welfare Scheme for Harijan people.

3. The respondents have filed counter affidavit stating that it is true that the land(s) belong to the petitioner, but however, at the instance of the houseless Adi Dravidar of Ambedkar Nagar of Walajah, some of the land(s) belonging to the petitioner as specified in paragraph 2 of the counter, are decided to be acquired under Tamil Nadu Act 31 of 1978 and that as no lands were found suitable and no poramboke lands were

available in that place, the land(s) mentioned in the said paragraph 2 have been identified and decided to be acquired for the benefits of Harijans. The following are the details of the lands that were selected at the instance of houseless Adi Dravidars of Ambedkar Nagar of Walajah in Nandalai Village, Walajah Taluk, Vellore District, as specified in paragraph 2 of the counter:

Sl. No.	S.F.No.	Extent	Patta No.	Name of the owner
1	427/1A	0.72.0	902	Padmavathy Ammal and 7 others
2	436	0.90.0	348	1. Rajkumar, s/o Shankar 2. Neelakantan, s/o Manickam

4. It is further stated in the counter that the writ petitioner appeared for the enquiry and that he has stated that he has no other land except S.No.436 and he cannot have ingress or egress to his property if the major portion of the land is acquired. But in the enquiry, it was revealed that nearly 9 acres of land(s) in Patta No.348 of the same village belongs to the petitioner and that he was waiting for a chance to dispose of these properties as house-sites. The Government has decided to acquire 1/5 of the land(s) belonging to the petitioner and that the objections have been considered and over-ruled and the proposal was submitted to the District Collector, who has accepted the report of the third respondent.

5. It is also stated in the counter affidavit that the petitioner received notice in Form No.3 and he was asked to appear on 29.03.2004 to put forth his objections. Copies of the Notification under Section 4(1) and other particulars have been widely published in the village by affixing at conspicuous places and also by beat of tom-tom. The petitioner objected and has not produced any required particulars of his ownership. His objections were routine one. Before the enquiry under Rule 5(i) of the Rules framed under the said Act, the acquired lands were inspected for fixation of the value and that the lands similar to the one in the vicinity had been identified and the consideration amount of Rs.45,000/- per acre was adopted as value of the acquisition fields. Award was passed and amount of Rs.1,44,885/- that included 15% solatium was fixed for 0.90.0 hectares (2.22 cents) in S.No.436. Since the petitioner did not come forward to produce the particulars of ownership at the time of enquiry under Rule 5(i), the amount had been remitted into the Sub-Court, Ranipet in terms of Section 10(2) of the said Act. The contention of the petitioner that he is a Harijan and that he is a small farmer cannot be accepted. It is stated that

for several years, he has left the land barren and is awaiting for an opportunity to sell the land as house-sites. There are 75 houseless families in Ambedkar Nagar and they have been pressing the Government authorities for provision of house-sites.

6. It is reiterated in the counter that the petitioner appeared for the enquiry conducted on 06.01.2001 on receipt of Form-1 notice and that after careful consideration of the objections of the petitioner and the report of the third respondent, the second respondent has decided to over-rule the objections of the petitioner and passed orders on 28.08.2001. It is the stand of the respondents in the counter that the procedures envisaged in the Rules were scrupulously followed. Further, only 1/5 of the petitioner's holdings are acquired leaving behind about 7 acres of lands. It is the further averment of the respondents that there was no Well or pumpset in S.No.436 nor was there any pipeline as alleged by the petitioner at the time of inspection by the Land Acquisition Officer on 17.05.2001. The value of the lands had been fixed by taking into account the value of the land in the surrounding area and that as there was objection by the petitioner, the amount had been remitted into Court.

7. It has been stated in paragraph 13 of the counter that the report submitted by the third respondent to the second respondent, was purely administrative in nature and hence, the petitioner is not entitled to a copy of the same. The decision of the District Collector is published in Form-2 in the Gazette, which clearly stated that the objections have been considered and over-ruled. There is no cultivation for five years and that the petitioner was duly informed at all stages, about the enquiry and the enquiry was conducted in open before the public. It is stated further in the counter that the petitioner has got several lands left even after acquisition. The contention of the petitioner is totally imaginary and far-fetched and the Writ Petition has got to be dismissed.

8. In reply, the learned counsel for the petitioner, while reiterating the contentions, has relied upon a judgment of the Full Bench of this Court reported in 2006 (4) CTC 609 (Pari.R. Vs. The Special Tahsildar, Adi Dravidar Welfare, Devakottai), which deal with the acquisition of land and it was held by the Full Bench that the District Collector has got to satisfy himself before the land is acquired. The Full Bench has concluded as follows in paragraph 43:

"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."

9. Learned counsel for the petitioner further relied on a decision of a learned single Judge of this Court, in the decision reported in 2010 (4) CTC 598 (Theerthagiri Vs. The District Collector, Dharmapuri District), in which, while following the judgment of the Full Bench stated supra, the learned Judge has considered as to whether the judgment of the Full Bench of this Court is either prospective or retrospective and in paragraphs 13 and 15, it has been categorically observed by the learned single Judge that the judgment of the Full Bench is retrospective. The said paragraphs 13 and 15 cited supra, are extracted hereunder:

"13. A close reading of the above judgments would make one to understand that the power of overruling is vested only with the Hon'ble Supreme Court, but the High Courts in exercise of their jurisdiction under Article 226 of the Constitution of India, may grant a limited relief in exercise of their

equity jurisdiction without applying the Doctrine of Prospective Overruling. It is also understandable from the above judgments that an interpretation made in respect of an existing law cannot be made applicable only prospectively. In R.Pari's case, the Full Bench of this Court has only interpreted Section 4(3)(b) of the Act and, therefore, such interpretation shall have retrospective effect from the day one of the coming into force of the Act. Had it been the real intention of the Full Bench, which decided R.Pari's case, to make the procedure laid down in the said case only prospective, surely, in its equity jurisdiction, the Full Bench would have in express terms limited the relief to the parties to the said lis or in respect of the Land Acquisition proceedings under the Act, which would commence in future. But, the Full Bench has not done so. This means that the Full Bench has intended to make the interpretation applicable retrospectively from the date of coming into force of the said Act.

...

15. Now, turning to the facts of the instant case, there is no dispute in this case that the report of the 2nd Respondent-Special Tahsildar was not furnished to the petitioner. As stated in R.Pari's case, this has surely caused prejudice to the petitioner. Applying the law laid down in R.Pari's case, I have no hesitation to hold that the impugned Notification issued under Section 4(1) of the Act is liable to be quashed."

10. Thus, it is the categorical submission of the learned counsel for the petitioner that the petitioner is being prejudiced for not furnishing the report of the Land Acquisition Officer. The said judgment of the Full Bench, had also been reiterated by a Division Bench (Madurai Bench) of this Court in the judgment reported in MANU/TN/1981/2008 (R.Rasappa Gounder Vs. The District Collector and the Special Tahsildar, Adi Dravidar Welfare Branch). Moreover, the learned single Judge, in the said decision reported in 2010 (4) CTC 598 (cited supra) has referred to in paragraph 15 that though it was not disputed therein that the report of the Special Tahsildar was not furnished to the petitioner therein, following the said Full Bench decision, the learned single Judge in that decision observed that non-furnishing of the said report has caused prejudice to the petitioner.

11. In view of the decisions extracted supra, I am of the view that in this case, non-furnishing of a copy of the report of the Land Acquisition Officer, does not, ipso-facto vitiates the acquisition proceedings, as it is not a must to be given to

the petitioner, and that the District Collector will have to apply his mind and take a final call.

12. Moreover, there is total non-application of mind on the part of the second respondent/District Collector while issuing the proceedings dated 28.08.2001, while over-ruling the objections of the land owner. It is a cyclo-styled/stereo-typed format of passing order, and there is no need for the second respondent to pass such kind of order and the second respondent-Collector has got to independently apply his mind before issuing the said order dated 28.08.2001 and coming to a conclusion while considering the objections of the land owner. In this case, except for the words like the place of the property, extent of the property, dates, etc., there is nothing to state that there is any application of mind and by the said stereo-typed order dated 28.08.2001, the second respondent-Collector has mechanically signed the order and it is nothing but signing on dotted lines in the format. This view of mine is supported by a decision of a Division Bench of this Court reported in 2005 (3) MLJ 123 (The District Collector, Vellore Vs. Manickam), as relied on by the learned counsel for the petitioner, wherein, the Division Bench observed that unless a brief mention of the objections and the reasons why they are being rejected are mentioned in the order of the Collector, there is no option but to hold that the Collector has not applied his mind to such objections, and has acted arbitrarily and the Division Bench relied on the judgment of the Supreme Court reported in AIR 1978 SC 597 = 1978 (2) SCJ 312 (Maneka Gandhi Vs. Union of India), wherein the Apex Court observed that arbitrariness violates Article 14 of the Constitution of India. To the above proposition is another judgment of this Court reported in 2001 (1) MLJ 328 (Thirugnanasambandam Vs. The Government of Tamil Nadu), wherein also, this Court held that the order passed therein is cyclo-styled form by filling up the names of the villages and the particulars of the lands, and this Court held that in any event, it cannot be said that the orders passed are after considering the report of the officer so authorised or by applying his mind with reference to the objections raised by the land owners/petitioners therein.

13. Hence, for the foregoing reasons, the Writ Petition is allowed. No costs.

14. Before parting with the case, this Court is of the view that the Government while acquiring the lands need to be very careful and should not give room for defects, as that will defeat the purpose of acquisition. The Government should also think of amending the provisions of the Act and Rules to simplify the procedure in such a way that when the land is acquired for public purpose, technicalities should not come in

the way for acquiring the land. At the most, the person can be entitled to alternative site, if not compensation, as every citizen must have a roof over his head.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

CS

To

1. The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Fort St.George, Chennai-600 009.
- 2.The Collector,
Vellore District.
3. The Land Acquisition Officer and
Special Tahsildar (ADW),
Wallajapet, Vellore District.

+1cc to Mr.V.R.Kamalanathan, Advocate SR.No.83879
+1cc to Government Pleader SR.No.84346

W.P.No.11646 of 2004

VGII(CO)
GN(11/12/2017)

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