

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2017

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.16401 of 2007

Karuppaiah

... Petitioner

Vs

1.The District Collector,
Salem District,
Salem.

2.The Special Tahsildar,
Attur Taluk,
Salem District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the first respondent made in ROC.355/06, dated 18.07.2006 and quash the same.

For Petitioner : Mr.R.Asaithambi
For Respondents : Mr.S.Gunasekaran
Additional Government Pleader

O R D E R

Heard Mr.R.Asaithambi, learned counsel for the petitioner and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a writ of Certiorari, to call for the records of the first respondent made in ROC.355/06, dated 18.07.2006 and quash the same."

3. The case of the petitioner is as follows:-

The petitioner had purchased an agricultural land from one Mr.Solaimuthu and Mr.Periyasamy, through a registered sale deed dated 15.03.2006, at Kavarpennai Village, Gangavalli Post and Taluk, Salem District. The extent of the property and the description of the same is given in the schedule of property along with the additional affidavit dated 27.11.2017, filed by the petitioner herein, which is taken on file.

4. According to the petitioner, after the purchase of the land by him, the land was subjected to acquisition proceedings under Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. According to him, no notice was issued to him under Section 4(2) of the Act. Even the previous vendors of the petitioner was not served with any notice in respect of the said acquisition proceedings. On coming to know of the acquisition proceedings, the petitioner seem to have submitted a representation on 11.08.2006. However, inspite of the representation, no enquiry was conducted nor the petitioner was called upon to attend the enquiry.

5. Thereafter, the first respondent published a notification under Section 4(1) of the said Act. Even the said notice was also not served on the petitioner. The petitioner's land was to be acquired for the purpose of a pathway to a burial ground to a section of the village people. The petitioner states that he belongs to Adi dravidar community and there are about 600 families living in the village. According to the petitioner, there is a waste Natham Porompoke land located adjacent to the petitioner's land on the northern side and the pathway to the burial ground can be aligned through the said land without disturbing the possession of the petitioner's land.

6. The learned counsel for the petitioner would submit that the entire acquisition proceeding is vitiated by non-adherence to the mandatory procedure contemplated in the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. According to him, the District Collector is empowered to be satisfied for the purpose of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes. The Section 4 of the Act is extracted below:-

"4.Publication of preliminary notification and powers of officers of there upon:-

(1) Whenever it appears to the appropriate Government that land in any locality [is needed or] is likely to be needed for any public purpose [or for a company] , a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which atleast one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such

Government in this behalf, and for his servants and workmen:-

to enter upon and survey and take levels of any land in such locality ;

to dig or bore in the sub-soil ;

to do all other acts necessary to ascertain whether the land is adapted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches' and,

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so."

7. According to the learned counsel for the petitioner, the notice is required to be served not only on the owner but also any other person interested in the land and show cause notice has to be issued and report has to be submitted, after getting objections from the owner or the person interested in the land. The learned counsel would submit that no such procedure has been followed in the present case. Therefore, the acquisition proceedings has to be necessarily interfered with. The learned counsel in support of his contention would submit that it is a Collector who has to be satisfied about the purpose for which the land is acquired under the Act, not any other authority.

8. The learned counsel for the petitioner would rely on the decision of this Court, in the case of M.Nagu and others Vs. The District Collector and another, reported 2008 (2) CTC 468, in which the learned Judge of this Court has held that the competent authority who issued notification, is the District Collector and he must be satisfied that lands which are required for the purpose of the Harijan Welfare Schemes. In this case, the impugned notification shows that conclusion to acquire land was arrived at by State Government and not District Collector as required under law. Following earlier decision passed by this Court, the learned Single Judge had quashed the notification as such.

9. The learned counsel for the petitioner would also rely on another order passed by the Hon'ble Division Bench of this

Court, in the case of Secretary to Government, Adi Dravidar and Tribal Welfare Department, Chennai and others Vs. P.Dhanabakkiam, reported in (2009) 1 MLJ 569, in which, the notification issued under Section 4 (1) of the Act, was quashed, since it does not indicate the satisfaction of the District Collector who alone is the competent authority under the Act. Another decision relied on by the learned counsel, in the case of St.Paul's Seminary College Society, Chennai-56 Vs. The Collector, Tiruvallur and another, reported in 2003 Writ L.R. 502, wherein, the learned Judge of this Court has held that the order of Collector passed on a printed format which disclosed the non-application of mind and the learned Judge held that the officials are expected to discharge their duties in a proper manner and not to reduce the requirements under the law into empty formalities. On such finding, the impugned notification came to be quashed by the learned Judge.

10. The learned counsel for the petitioner would also rely on the decision, in the case Sri Pillappa and others Vs. State of Tamil Nadu, Chennai and others, reported in (2004) 4 MLJ 247, the learned Judge of this Court has held that the statutory duty was cast on Collector to call upon land owner to show cause, since, that was not done, the notification held to be defective and illegal and the same was quashed. Yet another decision relied on by the learned counsel, in the case of Chinthamani and 2 others Vs. The Special Tahsildar for Land Acquisition and another, reported in 2000 (II) CTC 21, wherein, another learned Single Judge of this Court held that inspite of having knowledge of the interest of co-owner in the land, not issuing notice under Section 5(A) for enquiry vitiated the acquisition proceedings. Of course, this decision was rendered in the light of Land Acquisition Act, 1894, under Section 4(1) and 5(A). nevertheless, the principle adopted by this Court squarely applies to the facts and circumstances of the case.

11. Lastly, the learned counsel for the petitioner would rely on the decision, in the case of Thirumathi Pushpa Bai Bainsingh Vs. District Collector and others, reported in 1998 (I) CTC 281, wherein, the Hon'ble Division Bench of this Court has held that an opportunity of hearing must be given to the party concerned, while acquiring the land under the said Act. In all, the learned counsel would submit that the present acquisition proceedings without following the procedure as contemplated in the Act, particularly, Section 4, is also contrary to the established legal principles as aforesaid. The entire acquisition proceedings has to be declared as illegal and defective.

12. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a

detailed counter affidavit.

13. Although in the counter affidavit, it is stated that the authorities had followed the procedure contemplated in the Act, but, the counter affidavit lacks specific details as to when the notices were given to the owner/petitioner herein and whether any proper enquiry was conducted in terms of the Act. In the absence of any details regarding the same, this Court is left with no option except to accept the case of the petitioner in toto. Moreover, in the light of the various decisions relied on by the learned counsel for the petitioner, which legal principles initiated through the said decisions, have to be applied in the present case also and in which, even this Court has no hesitation except to hold that the entire acquisition proceedings is vitiated on the ground that the procedure contemplated in the Act has not been followed and also legal principles enunciated by this Court in the aforesaid decisions have not been followed.

14. In the light of the above said conclusion, the impugned order in ROC.355/06, dated 18.07.2006, is set aside. It is always open to the authorities concerned to initiate acquisition proceedings afresh, if they so advised.

15. With the above observation, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar (Co)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Salem District, Salem.

2.The Special Tahsildar,
Attur Taluk, Salem District.

+1cc to the Government Pleader, S.R.No. 87704

W.P.No.16401 of 2007

rk (CO)
TR(22/01/2018)