

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05.01.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Writ Petition Nos.4995 to 4997 of 2001

Balakrishnan ..Petitioner
(in WP.No.4995 of 2001)
G.Murugesan ..Petitioner
(in WP.No.4996 of 2001)
Bhoopathy ..Petitioner
(in WP.No.4997 of 2001)

-Versus-

1. The District Collector
Perambalur District,
Perambalur.
2. The Special Tahsildar
(Adi Dravidar Welfare)
Ariyalur. ... Respondents
(in WP Nos.4995 to 4997 of 2001)

Writ Petition No.4995 of 2001 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent published in Perambalur District Gazette Special No.5 Page 2 dated 06.03.2000 and to quash the same in so far as the petitioner's land measuring 13 cents in S.No.93/8A and 18 cents in S.No.93/9 of Vanathirayanpattinam Village, Udayarpalayam Taluk, Perambalur District and also directing the Respondents to drop the proposed acquisition of the said lands for the purpose of distributing the same as house site pattas to Adi Dravidas of Vanathirayanpattinam Village, Perambalur District.

Writ Petition No.4996 of 2001 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent published in Perambalur District Gazette Special No.5 Page 2 dated 06.03.2000 and to quash the same in so far as the petitioner's land measuring 17 cents in S.No.93/10; 45 cents in S.No.93/12; 27 cents in S.No.93/14 and the joint patta in S.No.93/13-A of Vanathirayanpattinam Village, Udayarpalayam Taluk, Perambalur District and also direct the Respondents to

drop the proposed acquisition of the said lands for the purpose of distributing the same as house site pattas to Adi Dravidas of Vanathirayanpattinam Village, Perambalur District.

Writ Petition No.4997 of 2001 filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent published in Perambalur District Gazette Special No.5 Page 2 dated 06.03.2000 and to quash the same in so far as the petitioner's land measuring 22.5 cents in S.No.93/7 and 5 cents in S.No.93/8-B of Vanathirayanpattinam Village, Udayarpalayam Taluk, Perambalur District and also directing the Respondents to drop the proposed acquisition of the lands for the purpose of distributing the same as house site pattas to Adi Dravidas of Vanathirayanpattinam Village, Perambalur District.

For Petitioners : Mr.R.N.Amarnath
(in WP Nos.4995 to 4997 of 2001)

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader
(in WP Nos.4995 to 4997 of 2001)

COMMON ORDER

These writ petitions have been filed to call for the records of the first respondent published in Perambalur District Gazette Special No.5 Page 2 dated 06.03.2000 and to quash the same insofar as the petitioner's land measuring (1) 13 cents in S.No.93/8A and 18 cents in S.No.93/9; (2) 17 cents in S.No.93/10; 45 cents in S.No.93/12; 27 cents in S.No.93/14 and the joint patta in S.No.93/13-A; and (3) 22.5 cents in S.No.93/7 and 5 cents in S.No.93/8-B of Vanathirayanpattinam Village, Udayarpalayam Taluk, Perambalur District and also directing the respondents to drop the proposed acquisition of the said lands for the purpose of distributing the same as house site pattas to Adi Dravidas of Vanathirayanpattinam Village, Perambalur District.

2. Heard the learned counsel appearing for the petitioners and the learned Special Government Pleader (Writ) appearing for the respondents.

3. These three writ petitions arise under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (for brevity "the Act") for providing lands for Adi Dravidar people. The Special Tahsildar initiated action under Section 4(2) of the Act and issued notice dated 07.10.1999 to the petitioners, who are the land owners, in Form No.1 under Rule 3(1) of the Tamil

Nadu Acquisition of Land for Harijan Welfare Schemes Rules, calling upon them to attend the enquiry on 28.10.1999 at 10.00 a.m. and give their objections, if any. Pursuant to the notice, all the three petitioners appeared before the Special Tahsildar and submitted their written objections dated 28.11.1999. The Special Tahsildar rejected their objections and sent a report dated 23.12.1999 to the District Collector for further proceedings. The District Collector has issued the impugned notification dated 06.03.2000 under Section 4(1) of the Act acquiring lands of the petitioners, challenging which, the petitioners are before this Court.

4. The learned counsel appearing for the petitioners placed strong reliance upon a Full Bench Judgment of this Court in R.Pari -vs- The Special Tahsildar, Adi Dravidar Welfare, Divakottai (Pasumpon Muthuramalinga Thevar District) and another [(2006) 4 CTC 609] the relevant portion of which reads as follows :

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

5. On the strength of this judgement, the learned counsel appearing for the petitioners contended that after conducting enquiry, the Special Tahsildar did not supply a copy of his communication / report to the petitioners, nor were the petitioners informed as to the fate of their objections.

6. Per contra, the learned Special Government Pleader refuted the allegations.

7. In order to satisfy whether the authorities had

complied with the mandates of the law laid down by the Full Bench of this Court in R.Pari (supra), this Court called upon the authorities to produce the original files for perusal.

8. The learned Special Government Pleader also contended that the award in this case was passed on 01.03.2001 and the compensation amount also was fixed and intimated to the petitioners, in spite of which, they had not collected the compensation and therefore, the Government has kept it as revenue deposits. Hence this writ petition is not maintainable.

9. Mr.C.Kamaraju, Special Revenue Inspector, Adi Dravidar Welfare Office and Mr.V.Velmurugan, Special Tahsildar, Adi Dravidar Welfare (I/c), Udayarpalayam, Ariyalur District are present and they produced the original files for the perusal of this Court.

10. On a perusal of the original files, it is seen that the Special Tahsildar had acted as the authorized officer and had initiated proceedings under Section 4(2) of the Act. He has issued the notice dated 07.10.1999 to the petitioners calling upon them to give their objections, if any. The files also disclose that all the three petitioners appeared before the Special Tahsildar and gave individual representation in writing objecting to the acquisition. In their representation, they had clearly stated that they do not have any other land and further, they have contended that there are other lands belonging to the Government which can be allotted to Adi Dravidar. The Special Tahsildar, by his communication dated 23.12.1999 addressed to the District Collector, has rejected the objections of the petitioners.

11. Admittedly, the petitioners were not served with the report dated 23.12.1999 of the Special Tahsildar / Authorized Officer rejecting their objections. Though, in the Full Bench Judgment (supra), it is held that the land owners should be furnished a copy of the report / recommendation of the authorized officer, so that they can give further representation within two weeks to the District Collector, yet, the Full Bench has stated "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".

12. Therefore, this Court carefully perused the recommendation dated 23.12.1999 given by the Special Tahsildar to the Collector. In the recommendation dated 23.12.1999, the Special Tahsildar has made the following noting in respect of each of the petitioners.

- 1) Bhoopathi, the petitioner in WP No.4997 of 2001

: It is merely stated that he is a big farmer and apart from the land under acquisition he has 2.05.5 hectares of land and therefore his objection stands rejected.

2) Balakrishnan, the petitioner in WP.No.4995 of 2001 : The Special Tahsildar has stated that he is a big farmer and therefore his objections stand rejected.

3) Murugesan, the petitioner in WP.No.4996 of 2001 : The Special Tahsildar has stated that he is a big farmer and apart from the land under acquisition he has 6.44.5 hectares of lands.

13. From the above, it can be seen that as regards Bhoopathi and Murugesan, the Special Tahsildar has recorded that they are big farmers and that they had some other lands. The report does not say, how the Special Tahsildar came to the conclusion that Bhoopathi and Murugesan are owners of 2.05.5 hectares and 6.44.5 hectares of land respectively. The order does not even say in which survey number those lands are located. Had a copy of the report been given to Bhoopathi and Murugesan, they would have had an opportunity to show to the Collector the true ownership of the said lands. Had the Special Tahsildar mentioned the documents based on which, he had come to the aforesaid conclusion, then, there can be some justification. Therefore, this Court finds that serious prejudice has been caused to Bhoopathi and Murugesan on the failure of the Special Tahsildar to furnish his report to them.

14. As regards Balakrishnan, the Special Tahsildar has merely stated that he is a big farmer without anything more. Here also there is no basis for the Special Tahsildar to come to the conclusion that Balakrishnan is a big farmer. Hence, this Court comes to the finding that all the three petitioners were seriously prejudiced on account of the failure of the District Collector to furnish a copy of the report of the Special Tahsildar to the petitioners.

In the result, these writ petitions are allowed and the impugned notifications are hereby quashed. However, liberty is given to the authorities to proceed a fresh, if necessity to acquire, still subsists. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

mk

To

1. The District Collector
Perambalur District,
Perambalur.

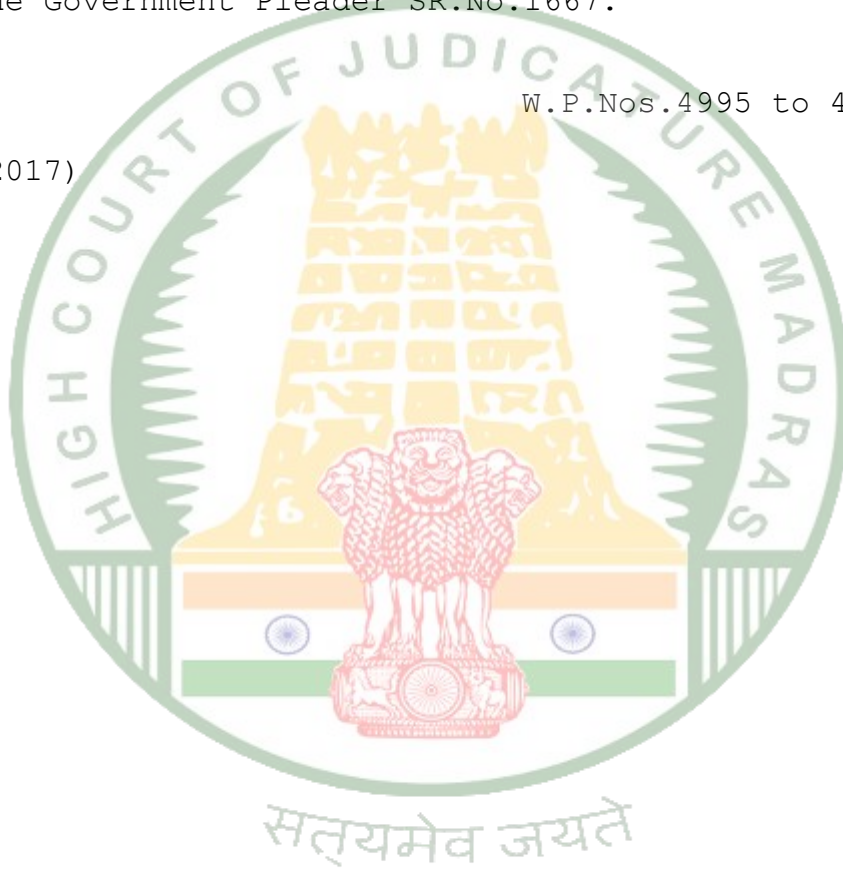
2. The Special Tahsildar
(Adi Dravidar Welfare)
Ariyalur.

+1cc to Mr.R.N.Amarnath, Advocate SR.No.999

+2cc to the Government Pleader SR.No.1667.

W.P.Nos.4995 to 4997 of 2001

SS (CO)
GN(30/01/2017)



WEB COPY