

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.12109 of 2004

and

W.M.P.No.14160 of 2004 and W.V.M.P.No.2238 of 2004

R.Kunjammal

.. Petitioner

Vs.

1. District Collector,
Thanjavur District,
Thanjavur.

2. The Special Tahsildar (ADW),
Pattukkottai,
Thanjavur 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, pertaining to Section 4(1) Notification under Tamil Nadu Act 31/1978 passed by the first respondent in Na.Ka.No.6804/2004/M1, dated 19.02.2004, as published in Thanjavur District Gazettee, dated 21.02.2004 and quash the same.

For Petitioner : Mr.L.Vediappan for M/s.S.Mani

For Respondents : Mr.R.Venkatesh, Government Advocate

ORDER

The petitioner has come forward with this Writ Petition praying for issuance of a Writ of Certiorari, to call for the records, pertaining to Section 4(1) Notification under Tamil Nadu Act 31/1978 passed by the first respondent in Na.Ka.No.6804/2004/M1, dated 19.02.2004, as published in Thanjavur District Gazettee, dated 21.02.2004 and quash the same.

2. The petitioner submitted that she is the owner of the land of an extent of 0.02.0 hectare in Survey No.47/1A1 and 0.02.5 hectare in S.No.47/1B2A, totalling 0.04.5 hectare in Aavikkottai Village and the lands are stated to be fertile lands. The petitioner's lands were sought to be acquired for providing house-sites to Adi Dravidar Community. The Government

issued notice under the Tamil Nadu Act 31 of 1978 in Form 3(1) on 25.03.2001, for which, the petitioner sent objections, after considering which, the respondents dropped the land acquisition proceedings. Thereafter, the landless Adi Dravidar people have been provided with house-sites by the respondents in S.No.35/2A1 and the pathway has also been provided for their houses and also for burial ground. Subsequently, the respondents again decided to acquire the lands and issued notice to the petitioner on 31.12.2003 in Form-I Notice, for which, again the petitioner submitted her objections on 19.01.2004 and that the lands have been provided to Adi Dravidar Community. Without considering the objections of the petitioner, the first respondent issued Notification under Section 4(1) of the said Act on 19.02.2004, which was published in the District Gazette on 21.02.2004. The present Writ Petition is filed challenging the subsequent land acquisition proceedings on the ground that the Collector has not applied his mind while passing the order, which is contrary to law and there is also violation of Section 4(3)(b) of the said Act. It is further submitted by the petitioner that initially, the proposal for acquisition of the petitioner's lands was made as early as in 2001, which was thereafter dropped and thereafter another proceedings have been initiated, which resulted in acquisition of the lands of the petitioner, apart from others' lands. It is further averred by the petitioner that she is in possession of the lands and she may be dispossessed at any point of time. It is further submitted by the petitioner that the impugned Notification under Section 4(1) of the said Act, dated 19.02.2004, has got to be quashed, which has also been published in the Thanjavur District Gazette on 21.02.2004.

3. The respondents have filed counter affidavit stating that the lands were required for providing house-sites to Adi Dravidar people/harijan welfare and proposal for land acquisition to provide house-sites to them, was made in 2001 in Avikkottai Village. The land owners have objected to the land acquisition proceedings on the ground that already, a colony existed and the land owner in R.S.No.57/2 did not object even though he/she had been affected. But however, the proposal initiated was dropped earlier. A fresh Notification was issued thereafter and that there is no pathway to the burial ground either from the colony or the near-by Adi Dravidar Street. Again the Government decided to acquire the lands for Adi Dravidar/Harijan Welfare and the Notification was issued on 31.12.2003 and after considering the objections of the petitioner, on 19.02.2004, the request of the petitioner was rejected by issuing Notification under Section 4(1) of the said Act. The proposal had been accepted and the same has also been published in page 9 of the Thanjavur District Gazette on 21.02.2004. The Tamil Nadu Act 31 of 1978 provides for provision of pathway to Adi Dravidar Colony, and also the pathway to burial ground. According to the respondents, the earlier proposal was not withdrawn. It was only deferred and detailed

enquiry had been conducted after calling for the objections and after considering the facts of the case, the Collector ordered publication of the Notification in terms of Section 4(2) of the said Act. The Government Notification under Section 4(2) is only to visualise the intention of the Government and not the land holders. After publication of Section 4(2) Notification in the Gazette, the next course of action was to issue notices in Form-3 under Rule 5(i) and 23(1) of the Rules framed under the said Act. Without any violation, the norms have been followed and the approval for publication in the Gazette was made on 19.02.2004. According to the respondents, the petitioner has approached this Court after the final award was passed on 18.03.2004. Out of five land holders, four have accepted the compensation and since only the petitioner objected and did not accept the compensation, the same was deposited into the competent Civil Court on 15.04.2004.

4. Heard both sides and perused the materials available on record.

5. The facts with regard to the acquisition proceedings mentioned supra, are not in dispute. The only ground of attack in the present Writ Petition is that since the petitioner has not been dispossessed of the property, the Government cannot acquire the land of the petitioner, as the purpose for which the lands have been acquired, had defeated and the period of five years from the date of issuance of Section 4(1) Notification, is already over and award had been duly passed. Since the petitioner is in possession of the property, it has now to be considered as to whether the relief sought for by the petitioner has to be granted or not.

6. As the respondents have deposited the amount of compensation of the petitioner in the competent Civil Court and as the petitioner did not receive the compensation, the dispossession of the petitioner is not on the act of the Government, but on the act of the petitioner herself, who has approached this Court and stalled the acquisition proceedings, more particularly, after passing of the award and that the award has also been deposited in respect of the petitioner before the competent Civil Court. If the respondents have slept over the matter and did not acquire the land(s) within the particular period of time as prescribed under the provisions of the said Act, then the contentions of the petitioner could be accepted. When the Government machinery has been handcuffed by virtue of the interim order of this Court passed in this Writ Petition, taking shelter under the garb of interim order by contending that the Government has not yet taken the possession of the land (s), is not justified on the part of the petitioner. But for the interim order, the respondents would have dispossessed the petitioner.

7. Hence, I find that there is no substance in the contention of the petitioner that the impugned Notification under Section 4(1) has got to be quashed. Accordingly, the Writ

Petition is dismissed. It is open for the petitioner to withdraw the amount of compensation lying in the competent Civil Court together with accrued interest thereon. No costs. W.P.M.P. and W.V.M.P. are closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

CS

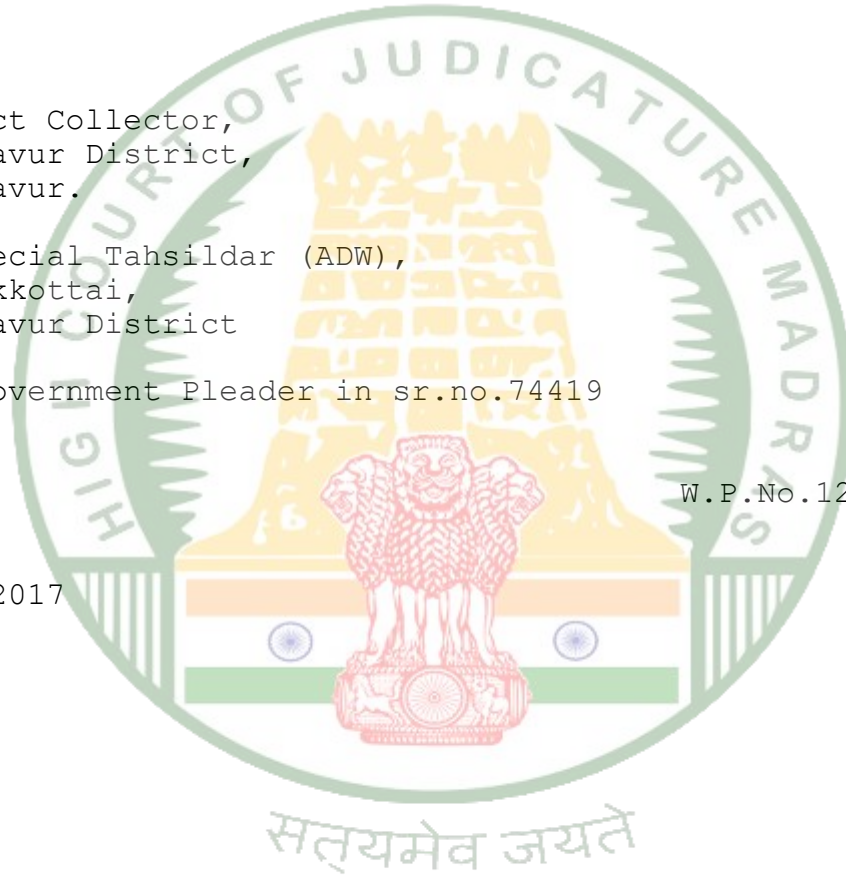
To

1. District Collector,
Thanjavur District,
Thanjavur.
2. The Special Tahsildar (ADW),
Pattukkottai,
Thanjavur District

+1cc to Government Pleader in sr.no.74419

W.P.No.12109 of 2004

BR(CO)
NR 13/11/2017



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