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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.13270 of 2004

1. Alraja Gounder (Died)
2. Dhananjayan
3. Vasantha
4. Revathi
5. Pushpa
6. Subbulakshmi
7. Jeevitha
8. P.Devika

... Petitioners

(Petitioners 2 to 8 are substituted as L.Rs.
of the deceased 1st Petitioner
as per order of this court dated 28.07.2017 in
W.M.P.No.21067/2017 in W.P.No.13270/2004)
vs.

1. The District Collector,
Villupuram District,
Villupuram.
2. The Special Tahsildar (A.D.W),
Tindivanam.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records of the 1st respondent in Villupuram District Gazette, dated 04.02.2004 and quash the same.

For Petitioners : Mr.R.Krishnan
for Mr.A.Sivaji

For Respondents : Mr.A.Rajaperumal,
Additional Government Pleader

O R D E R

This Writ Petition is filed seeking to quash the proceedings of the 1st respondent, vide Villupuram District Gazette, dated 04.02.2004.

2. During the pendency of this Writ Petition, the sole petitioner, viz. Alraja Gounder died and hence, his legal heirs have been substituted as petitioners 2 to 8.



3. It is stated that the respondents herein proposed to acquire the lands of the deceased 1st petitioner in S.No.15/2 for providing house-sites to Adi Dravidars, alleged to be living at Valapattanpalayam Village, under Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 31 of 1978 (in short 'the Act'). Though the deceased 1st petitioner appeared before the 2nd respondent and requested him to inspect the said land and consider his request to drop the acquisition proceedings on account of its unsuitability, the 1st respondent proceeded further with the proposal by rejecting the deceased 1st petitioner's objections, vide proceedings dated 29.01.2004, signed on 09.02.2004. Further, Notice in Form III was issued to the deceased 1st petitioner to appear for an enquiry on 10.03.2004. The deceased 1st petitioner appeared for the said enquiry and objected to the acquisition.

4. Thereafter, on 12.04.2004, the deceased 1st petitioner received a notice dated 06.04.2004 from the 2nd respondent to appear before him on 15.04.2004. Due to the sudden demise of his second son, viz. Pannaga Jayan, the deceased 1st petitioner could not appear before the 2nd respondent on the said date. However, the 1st respondent issued the Notification under Section 4(1) of the Act, which was published in the District Gazette, dated 04.02.2004.

5. Learned counsel for the petitioners contended that though the proceedings of the 1st respondent bears the date as 29.01.2004, it was ante-dated, i.e. prior to 04.02.2004 being the date of issuance of Section 4(1) Notification and the said proceedings dated 29.01.2004 was signed on 09.02.2004 and therefore, it will establish that the impugned notification was issued prior to 09.02.2004. According to him, without considering the Report sent by the 2nd respondent under Section 4(3)(b) of the Act, the 1st respondent cannot validly issue the impugned Notification under Section 4(1) of the Act. It is his further contention that without taking note of any of the objections made by the deceased 1st petitioner, respondents have mechanically proceeded further with the acquisition.

6. In support of his case, learned counsel for the petitioners has relied on a First Bench decision of this Court in the case of the District Collector, North Arcot Ambedkar District, Vellore vs. Manickam, (2005 (2) L.W. 199), wherein, it is held as under:

"8. In the present case, it appears that the order of the District Collector was passed



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in a mechanical manner without proper application of mind by merely filling up a cyclostyled form. We cannot approve of such kind of orders. It may be that the Special Tahsildar, who was authorised by the District Collector, considered the objections of the land owners, but in our opinion the District Collector must also consider those objections and apply his own mind to those objections, as has been held in the Wednesbury case (see quotation above). Though we agree with the learned Special Government Pleader that if opportunity of hearing has been given by the person authorised by the District Collector under Section 4(2) of the Act (in this case the Special Tahsildar) it is not necessary for the District Collector to give a second opportunity of hearing, yet in our opinion the District Collector must certainly apply his own mind to the objections made by the land owner to the acquisition as they affect his very valuable rights. The Collector need not write an elaborate order like a judgment of a Court of Law while rejecting the objections of the land owner, but he must at least in brief mention the reasons why he is rejecting the objections so that the land owner may have the satisfaction that his objections have been considered, and this Court also may be satisfied that the District Collector had applied his mind to such objections."

7. Learned counsel for the petitioners has also placed reliance on a decision in the case of Fathima Beevi vs. Government of Tamil Nadu rendered in W.A.Nos.370 and 516 of 2009, wherein, a Division Bench of this Court, by judgment dated 20.09.2017, had set aside the impugned proceedings of the 2nd respondent therein, in the Notification published in the Government Gazette dated 09.01.2002, and allowed the Writ Appeals. Relevant portion of the said judgment is extracted hereunder:

"7. A perusal of the files produced before this Court would indicate that the third respondent has sent a communication dated 09.11.2001 as to the need and necessity to acquire the lands in question and in terms of the above said provisions, it has been submitted to the second respondent. The order of the second respondent in terms of Section 4(3) (b) of the



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said Act available at Page No.749 in File No.A1/1055/92 - Volume II would indicate that it is in cyclostyled format and the relevant columns have been filled up by typing it and the second respondent has subscribed his signature.

8. The primordial question that arises for consideration is whether the order of the second respondent passed in cyclostyle format would satisfy Section 4(3)(b) of the Tamil Nadu Act 31/1978? The decisions relied on by the learned counsel appearing of the appellant lay down the proposition that the order of the District Collector in the cyclostyle format do not satisfy the requirement as envisaged under Section 4(3)(b) of the Tamil Nadu Act 31/1978.

9. In The District Collector, North Arcot Ambedkar District, Vellore and another v. Manickam [2005-2.L.W.199], similar issue arose for consideration and it is relevant to extract para 8 of the said decision:

"8. In the present case, it appears that the order of the District Collector was passed in a mechanical manner without proper application of mind by merely filling up a cyclostyled form. We cannot approve of such such kind of orders. It may be that the Special Tahsildar, who was authorized by the District Collector, considered the objections of the land owners, but in our opinion the District Collector must also consider those objections and apply his own mind to those objections, as has been held in the Wednesbury case (see quotation above). Though we agree with the learned Special Government Pleader that if opportunity of hearing has been given by the person authorised by the District Collector under Section 4(3) of the Act (in this case the Special Tahsildar) it is not necessary for the District Collector to give a second opportunity of hearing, yet in our opinion the District Collector must certainly apply his own mind to the objections made by the land owner to the acquisition as they affect his very valuable rights. The Collector need not write an elaborate order like a



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judgment of a Court of law while rejecting the objections of the land owner, but he must at least in brief mention the reasons why he is rejecting the objections so that the land owner may have the satisfaction that his objections have been considered and this Court also may be satisfied that the District Collector had applied his mind to such objections."

10. This Court, keeping in mind the ratio laid down in the above cited decision and after going through the order of the second respondent dated 24.12.2001 passed under Section 4(3) (b) of the Tamil Nadu Act 31/1978, is of the view that the mandate cast upon the second respondent in terms of the above said provision have not been complied with.

11. It is to be remembered at this juncture that meager land holdings are acquired under the provisions of the Tamil Nadu Act 31/1978 as well as under the provisions of similar Statutes and since the act of acquisition of lands deprive the land owners their meager land holdings and also in the light of the protection guaranteed under Article 300-A of the Constitution of India, the concerned authority has to scrupulously follow and comply the provisions of the said Statutes. In the considered opinion of the Court, filling up of blanks in the relevant columns in the cyclostyled formats, hardly satisfy Section 4(3) (b) of the Tamil Nadu Act 31/1978 and hence, on the sole ground the impugned order dismissing the writ petition as well as the original impugned order, which were the subject matter of challenge in the writ petitions, warrant interference."

8. Learned Special Government Pleader appearing for the respondents produced the records and contended that the 1st respondent/District Collector, on being satisfied with the requirements, has suggested the Government to acquire the land and that the terminology used, cannot be a ground to interfere with the proceedings. He further submitted that the signature of the District Collector appears not to have been made on 09.02.2004 and if the entire signature is seen as a whole, it is the way in which the District Collector used to sign.



9. Heard the learned counsel on either side and perused the material documents available on record.

10. Though this Court dictated the order in the Open Court dismissing this Writ Petition on 19.12.2017, before signing, this Court felt it appropriate to scrutinize the original records as regards the signature of the 1st Respondent/District Collector. Thereafter, this Court listed this matter 'for clarification' on 02.03.2018 and called for the entire original records and the proceedings of the District Collector, viz. Dr.K.Gopal, pertaining to different dates, to scrutinize his signature. As per the directions of this Court, the learned Additional Government Pleader produced three different proceedings of the said District Collector, which are as follows:

1. Proceedings the District Collector, Villupuram, Dr.K.Gopal, I.A.S., R.C.No.D/56728/2003, dated 08.12.2003, regarding Employees Health Fund Scheme.

2. Ref. Letter of Collector, Dr.K.Gopal, I.A.S., to the Special Commissioner and Commissioner of Revenue Department, Chepauk, dated 29.10.2003.

3. Proceedings of Collector, Dr.K.Gopal, dated 30.01.2004, regarding the relieving of Additional Personal Assistant.

11. On a perusal of the original records and the above proceedings, it is clear that the proceedings dated 29.01.2004 of the first respondent/District Collector is issued prior to the date of Section 4(1) Notification, which is dated 04.02.2004 and the said proceedings dated 29.01.2004 was signed only on 09.02.2004. Thus, the contention of the learned Special Government Pleader that the proceedings of the District Collector was not made on 09.02.2004, is rejected, as the said District Collector is in the habit of mentioning the date below his signature, as could be evident from the above Proceedings.

12. In this regard, it is worth referring to the decision in the case of Kushalbai Ratanbhai Rohit and others vs. State of Gujarat reported in (2014) 9 SCC 124, wherein, the Apex Court, as regards recalling judgment before signature, has held as under:

10. In Sangam Lal v. Rent Control and Eviction Officer [AIR 1966 All 221], while dealing with the rent control matter, the Court came to the conclusion that until a judgment is



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signed and sealed after delivering in court, it is not a judgment and it can be changed or altered at any time before it is signed and sealed.

11. This Court has also dealt with the issue in Surendra Singh v. State of U.P. [Surendra Singh v. State of U.P., AIR 1954 SC 194 : 1954 Cri LJ 475], observing as under: (AIR pp. 196-97, para 12)

"12. Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of 'locus paenitentiae' and indeed last minute alterations often do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallise into a full-fledged judgment and become operative. It follows that the Judge who 'delivers' the judgment, or causes it to be delivered by a Brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery.

But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a



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question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a Brother Judge who also heard the case. This may be merely for his information, or for consideration and criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light dawn upon him before the delivery of judgment."

12. Thus, from the above, it is evident that a Judge's responsibility is very heavy, particularly, in a case where a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture. Therefore, one cannot assume, that the Judge would not have changed his mind before the judgment became final."

13. In view of the said decision of the Apex Court, it is clear that until a judgment is signed and sealed after delivering in Court, it is not a judgment and it can be changed or altered at any time before it is signed and sealed.

14. Coming to the merits of the case on hand, it is seen that the Report sent by the 2nd respondent under Section 4(3)(b) has not been considered by the 1st respondent/District Collector before issuing the impugned notification under Section 4(1). Above all, necessary objections of the deceased 1st Petitioner have not been taken into account and the fact that he was eking out his livelihood only with the income derived from the land in question, has not at all been considered before acquisition.

15. Be that as it may, the authorities submitted the Report of the acquisition proceedings, without even inspecting the land as requested by the deceased 1st petitioner. Moreover, before issuing Section 4(1) Notification on 04.02.2004, the 1st respondent/District Collector failed to afford an opportunity of hearing to the deceased 1st petitioner and further did not



provide necessary copies of the relevant documents pertaining to acquisition.

16. Hence, this Court feels it appropriate to interfere with the proceedings of the 1st Respondent/District Collector vide Villupuram District Gazette, dated 04.02.2004 and accordingly, the same stands quashed. The 1st Respondent/District Collector, shall consider the case of the Petitioners afresh, after affording them an opportunity of hearing and pass appropriate orders on merits and in accordance with law.

This Writ Petition is allowed with the above direction. No costs. Consequently, connected W.P.M.P.No.15534 of 2004 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The District Collector,
Villupuram District, Villupuram.
2. The Special Tahsildar (A.D.W),
Tindivanam.

+1cc to Mr.A.Sivaji, Advocate sr.no.45099

Order in
W.P.No.13270 of 2004

sv(co)
nr 25/07/2018