

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.3356 of 2003
and W.P.M.P.No.4207 of 2003

K.Ramalingam

Petitioner

Vs.

1.The Collector of Cuddalore District
Cuddalore.

2.The Special Tahsildar
Land Acquisition
(Adi Dravida Welfare)
Cuddalore.
Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records and quash the notification W2/32509/2001 dated 02.12.2002 published in the Cuddalore District Gazette dated 11.12.2002 acquiring the lands bearing S.Nos.26/2A Hec.0.27.0, 26/3 Hec.0.35.Q and 26/5B Hec.0.16.5 in Kesavanarayanapuram village, Cuddalore Taluk, Cuddalore District.

For petitioner Mr.R.Gururaj

For respondents Mr.V.Ayyadurai,
Additional Advocate General
assisted by
Mr.S.Pattabiraman
Government Advocate

ORDER

This writ petition has been filed seeking a writ of certiorari calling for the records and quash the notification W2/32509/2001 dated 02.12.2002 published in the Cuddalore District Gazette dated 11.12.2002 acquiring the lands bearing S.Nos.26/2A Hec.0.27.0, 26/3 Hec.0.35.Q and 26/5B Hec.0.16.5 in Kesavanarayanapuram Village, Cuddalore Taluk, Cuddalore District.

2 The factual matrix of the case reads thus:

[a] The petitioner is the owner of 78.5 ares (1 acre and 94 cents) in R.S. No.26/2A, 26/3 and 26/5B in Kesavanarayanapuram Village, Kurunjipadi Taluk, Cuddalore District. The District Collector, Cuddalore, decided to acquire the said land under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (for brevity "the Act") for the purpose of providing house pattas for the members of the Adi Dravida community.

[b] Pursuant to the said decision, notice was issued to the petitioner calling upon his objections, if any. Pursuant to the said notice, the petitioner, through his advocate Mr. Gururaj, sent a representation dated 17.09.2001 to the District Collector and Special Tahsildar (Land Acquisition). It was followed by a further representation dated 24.09.2001 through Mr. Gururaj, advocate, in which, it was contended that the alleged beneficiaries under the scheme are women belonging to Adi Dravida community and that they are not landless as their husbands are holding lands.

[c] On 28.09.2001, the petitioner himself appeared before the Special Tahsildar and his statement was recorded. In that statement, he had stated that he is not objecting for his land being acquired, but, he must be given compensation of Rs.2 lakhs. He had also submitted a copy of the representation given through his advocate Mr. Gururaj in the oral enquiry, to the Special Tahsildar.

[d] The Special Tahsildar sent a report dated 09.10.2001 to the District Collector, rejecting the plea taken by the petitioner. Pursuant to that, the District Collector issued the impugned notification dated 11.12.2002 in the District Gazette, Cuddalore under Section 4(1) of the Act acquiring the land of the petitioner, challenging which, the petitioner is before this Court.

3 Heard Mr. Gururaj, learned counsel for the petitioner and Mr. Ayyadhurai, learned Additional Advocate General appearing for the respondents, assisted by Mr. S. Pattabiraman, learned Government Advocate.

4 Mr. Gururaj, learned counsel for the petitioner placed strong reliance upon a judgment of the Full Bench of this Court in *Pari vs. Special Tahsildar, Adi Dravida Welfare* [2006 (4) CTC 609] and a Division Bench judgment of this Court in *Rasappa vs. District Collector* [2008 (7) MLJ 314] and made the following submissions:

[a] the land in question has a borewell with electricity connection and it is a prime agricultural land;

[b] the Special Tahsildar did not pass any order on the objections raised by the petitioner;

[c] assuming that the Special Tahsildar had passed order rejecting the objections, a copy of the same should have been furnished to the petitioner as laid down by the Full Bench in Pari's case (supra);

[d] the District Collector has not passed any order under Section 4(3)(b) of the Act on the report submitted by the Special Tahsildar and no order was communicated to the petitioner;

[e] Section 4(1) notification dated 11.12.2002 proceeds as if the Government is satisfied with the necessity for acquiring land and not the District Collector.

5. The learned Additional Advocate General refuted the allegations.

6. Ms. S. Sumathi, Special Revenue Inspector (ADW), Cuddalore is present and she produced the acquisition file for the perusal of this Court.

7. This Court perused the file including the report/recommendation dated 09.10.2001 submitted by the Special Tahsildar (ADW) to the District Collector, Cuddalore and the photocopies of the relevant pages of the file were also furnished to Mr. Gururaj, learned counsel for the petitioner.

8. On a perusal of the files, it is seen that the representation dated 17.09.2001 does not find place therein and only two representations dated 23.09.2001 and 24.09.2001 sent by the petitioner through his advocate Mr. Gururaj are available.

9. On a reading of the report/recommendation dated 09.10.2001 of the Special Tahsildar, it is seen that the Special Tahsildar has carefully considered the objections raised by the petitioner and has rejected the same. In that file, the statement of the petitioner given to the Special Tahsildar during the enquiry on 28.09.2001 is also available. The Special Tahsildar has considered the contentions raised in the representation sent through Mr. Gururaj that the husbands of the beneficiaries are holding lands and has rejected the same. He has noted that way back in the year 1987, members of the Adi Dravida community belonging to the village were allotted plots

and that the present group of beneficiaries are women who have got married and are out of their parental home and therefore, they are eligible for assignment. The Special Tahsildar has further noted that the petitioners have got lands in T.Palayam Village. Thus, recording all these reasons, the Special Tahsildar has rejected these objections raised by the petitioner.

10. It is true that a copy of the report dated 09.10.2001 of the Special Tahsildar was not served on the petitioner. In *Pari's case* (supra), the Full Bench has held that a copy of the report/recommendation should be furnished to the land owner, so that the land owner has an opportunity to give a further representation to the District Collector within two weeks. However, in paragraph no.43 of the judgment, the Full Bench has held as follows:

"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."

11. From a reading of the above, it is clear that even if the report/recommendation of the Special Tahsildar are not

furnished to the petitioner, yet, this Court should see if any prejudice has been caused to the petitioner by non-furnishing of the report.

12. However, the District Collector has not passed any order on the report/recommendation dated 09.10.2001 given by the Special Tahsildar, as required under Section 4(3)(b) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 , which reads as follows:

"Section 4(3)(b) :- Where any officer authorised by the District Collector has called upon the owner or other person to show cause under Sub-section (2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report, the District Collector may pass such orders as he may deem fit."

13. In Paris' case (supra), the Full Bench of this Court has also insisted that an order should be passed by the District Collector and that the same should be communicated to the land owner. In this case, no such order has been passed by the District Collector and consequently, nothing has been communicated to the petitioner.

14. The learned Additional Advocate General attempted to justify the action of the District Collector by placing reliance upon the communication dated 06.12.2002 addressed by the District Collector to the Works Manager, Government Branch Press, Vriddhachalam, requesting him to publish the notification in the Gazette.

15. In the considered opinion of this Court, this communication by the District Collector to the Government Printing Press, can, by no stretch of imagination, be considered as an order passed by the District Collector in terms of Section 4(3)(b) of the Act. That apart, the impugned notification dated 11.12.2002 issued by the District Collector under Section 4(1) of the Act speaks about the satisfaction of the Government and not the satisfaction of the District Collector about the need to acquire the petitioner's land under the Act.

16. In Rasappa's case (supra), a similar point was raised and the Division Bench, at paragraph no.6, has held as under:

"6. A perusal of the aforesaid provision makes it amply clear that it is the District Collector who is required to take an appropriate decision in the matter. The

relevant portion of the notification, which has already been extracted, indicates as if the satisfaction was that of the Tamil Nadu State Government. There is no indication in such notification that the District Collector was satisfied regarding the requirement to acquire the land. Under the Act, power has been statutorily conferred on the Collector to consider the requirement for the acquisition. But, in the present case, notification issued by the Collector indicates as if the satisfaction was that of the State Government. Thus, it is obvious that notification suffers from the vice of non-application of mind."

17. One can justify the impugned notification by contending that the form used for notification issued under the Land Acquisition Act, 1894 has been mechanically used for the notification under the present Act and therefore, that, by itself, will not vitiate the acquisition proceedings, if it is shown that the District Collector has applied his mind on the recommendations of the Special Tahsildar and had passed orders in the file.

18. On a perusal of the file that was produced by the learned Government Advocate, this Court finds that the District Collector has not passed any order on the report/recommendation dated 09.10.2001 of the Special Tahsildar. In the light of this, the averment in the Section 4(1) notification that the Government is satisfied assumes significance.

19. In view of the law laid down in *Pari's case* (supra) and *Rasappa's case* (supra), this Court is of the considered view that the impugned notification dated 11.12.2002 issued under Section 4(1) of the Act for acquiring the petitioner's land deserves to be set aside and accordingly, the same is set aside and the matter is remanded back to the District Collector, Cuddalore, to pass fresh orders on the report dated 09.10.2001 of the Special Tahsildar, following the law laid down by the Full Bench of this Court in *Pari's case* (supra). Since a copy of the report/recommendation dated 09.10.2001 submitted by the Special Tahsildar (ADW) to the District Collector, Cuddalore has been furnished to the learned counsel for the petitioner, it is not necessary for the Collector to once again furnish the same to the petitioner. Four weeks time is given to the petitioner from the date of receipt of a copy of this order to submit his further objections to the District Collector, Cuddalore. Thereafter, the District Collector shall pass fresh orders under Section 4(3)(b) of the Act and proceed further by issuing a

fresh notification under Section 4(1) of the Act, if the need for acquisition of the petitioner's land still exists.

With the above direction, this writ petition stands allowed. No costs. Consequently, connected M.P. is closed.

s/d-
Assistant Registrar(CS VI)

//True Copy//

Sub-Assistant Registrar

To

1.The Collector of Cuddalore District
Cuddalore.

2.The Special Tahsildar
Land Acquisition
(Adi Dravida Welfare)
Cuddalore.

+2 CC to Mr. R. Gururaj, Advocate sr 2706
+1 CC to The Govt. Pleader sr 3074

GR(CO)
sp/3/2

W.P.No. 3356 of 2003

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