

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.01.2017

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

W.P.No.13534 and 13535 of 2003
and WPMP Nos.16968 and 16969 of 2003

Govindarajan
Subramaniam

-Petitioner in WP.13534/03
-Petitioner in WP.13535/03

Vs

1. The District Collector,
Thiruvellore District
Thiruvellore

2. The Secretary to Govt.,
(Adi Dravidar Welfare),
Fort. St. George,
Chennai-9

3. The Special Thasildar,
Adi Dravidar Welfare Scheme,
Pallippattu Taluk,
Thiruvellore District

Respondents in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying this Court to issue Writs of Certiorari to call for the 4(1) Notification published in Gazette No.17 (Adi Dravidar Welfare) dated 12.10.2000 Rc.J1/36294/2000, 18.9.2000 and quash the same.

For petitioners : Mr.R. Margabandhu

For respondents : Mr.S. Pattabiraman
AGP (L.Acq.)

ORDER

Challenging the acquisition of land, for providing house plots for Adi Dravidar community, under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules 1979, these writ petitions have been filed by the land owners viz., Govindarajan (the petitioner in WP No.13534 of 2003) and Subramani (the petitioner in WP No.13535 of 2003). At the time of admission of the writ petitions on 18.09.2003, this Court

passed the following Order:

“Dispossession of the petitioners alone is made absolute, if they are not already dispossessed”

2. Heard Mr.R. Margabandhu, learned counsel for the petitioners and Mr.S. Pattabiraman, learned Additional Government Pleader for respondents.

3. Mrs.R. Kiruba Usha, the Special Tahsildar, Tiruttani is present. Govindarajan and Subramani are brothers and they are the owners of the following property, which is under acquisition:

SCHEDULE

TIRUTTANI TALUK

Description of land whether wet or dry, inam or poramboke with survey/paimash number	Name of the owner/occupier	Boundaries of the land required to be taken up	Extent under acquisition (approximate)	Whether enable or waste details of structures, if any, number and description of trees, if any
Dry, 43-1A	Govindaraj, Son of Sanjeevi Mudali	North-162, East-43.2 South-43-1B, 1C West-42	0.61.0	
Dry, 43-1C	S. Subramani, Son of Sanjeevi Mudali	North-43-1A, 4 and 2 East 43-1D, 6A West Vellore Dist South 43-1B	0.32.5	
Dry, 43-1E	-do-	North-43-1B, East-43.45, 55, South 55 West 4301B	0.32.5	

Total

1.26.5

Notice in Form No.I under Sec.3(1) of the Tamil nadu Acquisition of Land for Harijan Welfare Scheme Act 1978 was issued on 16.05.2000 and the date of enquiry was fixed on 7.6.2000. After receipt of enquiry notice, Govindarajan and Mrs.Shantha, W/o Subramani appeared before the Special Tahsildar for enquiry and submitted their objections. They contended that apart from the land, under acquisition, they do not have any other land. The

Tahsildar negated their objections and sent a report dated 03.07.2000 to the District Collector, pursuant to which, the impugned notification under Sec.4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act was published in the District Gazette on 12.10.2000, challenging which, these writ petitions have been filed.

4. In the case of R. Pari vs Special Tahsildar, Adi Dravidar Welfare, Pasumpon Muthuramalinga Thever District and another, the Full Bench Division of this Court, while dealing with the Constitutional validity of the Act, has issued certain guidelines and they are required to be followed by the acquisition authorities and it may be relevant to extract the relevant paragraphs:

42. However., it is necessary to enter a small caveat. The observation made by the Division bench or the 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 nothings 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 nothings, 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 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.

5. The Full Bench has mandated that the copy of the report of the Special Tahsildar should be furnished to the land owners and two weeks time should be given to them to make further representation if any to the District Collector.

6. That apart, the District Collector is also required to consider the representation and pass orders on the report/recommendation of the Special Tahsildar under Sec.4(3)(b) of the Act. In this case, admittedly, the report of the Special Tahsildar was not furnished to the petitioners. That apart, the Collector has also not passed any order as required under Sec.4(3)(b) of the Act. The Full Bench has stated that just because the report has not been furnished to the land owners, the entire land acquisition proceedings will not stand vitiated and this Court can scrutinize the relevant files and find out whether any prejudice has been caused to the land owners. Therefore, this Court called for the files and perused the same.

7. The land owners have contended that they have no other lands apart from the land, under acquisition. This plea has been negatived by the Special Tahsildar on the ipse dixit of the Village Administrative Officer that the contention of the land owners is false. Apart from this, no other material was produced by the Village Administrative Officer to the Tahsildar rebutting the contention of the petitioners/land owners. Therefore, in the considered opinion of the Court, the land owners have been prejudiced by the report of the Tahsildar in negating their plea mechanically. That apart, the District Collector has also not passed any order on the report/recommendation of the Tahsildar, as required under Sec.4(3)(b) of the Act.

8. It is also represented by the learned Additional Government Pleader that the Award enquiry is over and the amount has been deposited in the Revenue Deposit on 24.12.2003.

9. In the result, these writ petitions are allowed and the impugned Notification published in Gazette No.17 (Adi Dravidar Welfare) dated 12.10.2000 Rc.J1/36294/2000, 18.9.2000 is hereby quashed. A copy of the report/recommendation dated 03.07.2000 of the Tahsildar has been furnished to the learned counsel for the petitioners/land owners across the bar and therefore, the authorities need not furnish them the report once again. The matter is remanded back to the Collector. The petitioners are permitted to file their objections to the report dated 03.07.2000 within four weeks from the date of receipt of a copy of this order to the District Collect, Thiruvellore. The District Collector, Thiruvellore shall consider the objections and pass orders under Sec.4(3)(b) of the Act either to proceed with the acquisition proceedings or drop the same if he deems fit. No costs. Consequently, connected WMPS are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

sr

To

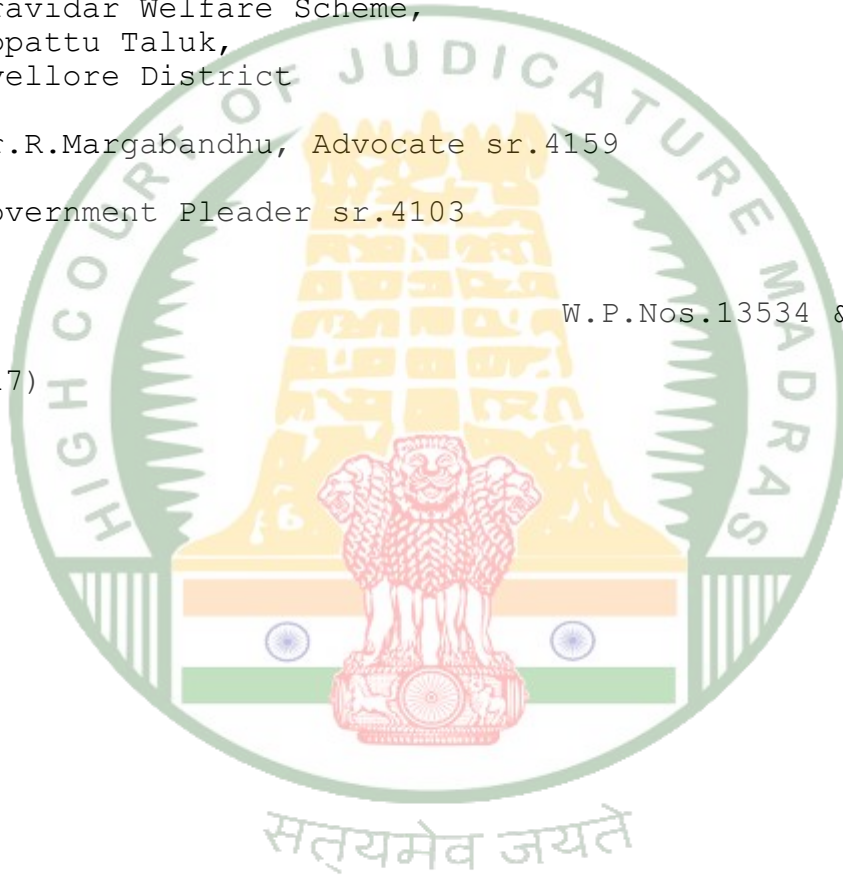
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Thiruvellore District

+1cc to Mr.R.Margabandhu, Advocate sr.4159

+1cc to Government Pleader sr.4103

sv(co)
ss(7/2/2017)

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