

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.NOS.15232 OF 2001 AND 2938 OF 2012

W.P.NO.15232 OF 2001

1.Lakshmi
2.Baskaran
3.Rani
4.Latha
5.Rahini
6.Suseela

...Petitioners

Vs.

1.The District Collector
Trivellore.

2.The Special Tahsildar
(Adidravida Welfare)
Trivellore.

3.Durai Naidu

...Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari, to quash the orders in RC 6662/99J1 dated 02.12.2000 published in Trivellore Government Gazette (Extraordinary) dated 30.12.2000 issued by the first respondent, in so far as the same is related to lands in Survey No.449/1 of No.97, Vengathur Village, Trivellore Taluk and District, measuring 1.37 acres of land and to quash the same.

For Petitioners : Mr.R.Selvakumar

For Respondents : Mr.V.Jayaprakash Narayanan
1&2 Special Government Pleader

W.P.NO.2938 OF 2012

V.Lakshmi

.. Petitioner

Vs.

1.The District Collector
Trivellore.

2.The Special Tahsildar
Adi Dravidar Welfare
Trivellore.

3.The Authorised Officer /
The Joint Commissioner
Land Reforms (Kancheepuram)
O/o. The District Collector,
Villupuram.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus, directing the third respondent herein to furnish the land reforms assignment records pertaining to allotment of excess lands, in Vengathur Village S.No.449/1, Trivellore Taluk, Kancheepuram District (formerly) presently Trivellore District, in pursuant to the representation dated 10.03.2010.

For Petitioner : Mr.R.Selvakumar

For Respondents : Mr.V.Jayaprakash Narayanan
Special Government Pleader

COMMON ORDER

On 05.01.2017, this Court passed the following order:

"This case arises under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978.

2. It is the case of the petitioner that the land under acquisition was purchased by her husband Venkatesan from one Palani on 28.07.1979. Admittedly, the revenue records do not contain the name of Venkatesan or the petitioner. Acquisition proceedings were initiated by the Collector on the premise that the land in S.No.449/1 in Vengathur Village, Tiruvallur Taluk measuring 0.55.5 hectare belongs to one Durai Naidu, S/o.Lakshmana Naidu and no objections was received by the Tahsildar. Therefore, the acquisition proceedings proceeded further and the final order under

Section 4(1) of the Act has been passed by the Collector, challenging which, the petitioner is before this Court.

3. According to the petitioner, there is no person in the name of Durai Naidu and that she is the owner of the land and that her deceased husband had purchased the land.

4. The learned counsel appearing for the petitioner produced the patta Pass Book which clearly shows that the land in S.No.449/1 in Vengathur Village stands in the name of Palani and at least notice should have been given to Palani, who is the vendor.

5. Today Mr.G.Elangovan, ST.ADW, Tiruvallur is present. The original patta pass book with all the entries standing in the name of Palani has been handed over by this Court to Mr.G.Elangovan for verification and report. Even the files produced by the Government show that it is only the Village Administrative Officer who has conducted the enquiry and not the Special Tahsildar. This means that the petitioner has not appeared before the Special Tahsildar at all and further, the Village Administrative Officer was aware that the land in question belongs to the petitioner's husband Venkatesan. The Special Tahsildar is required to check the records and report to this Court on 19.01.2017.

Post the matter "for orders" on 19.01.2017 in the top of the list."

2. Today when the matter is taken up for hearing, Mr.G.Elangovan, Special Tahsildar (ST / ADW) Tiruvallur is present. He returned the original patta pass book that was handed over to him by this Court on 05.01.2017. The same has been handed over to the learned counsel for the petitioner.

3. Mr.V.Jayaprakash Narayanan, learned Special Government Pleader, on instructions from the Special Tahsildar, submitted that the patta pass book relating to S.No.449/1, Vengathur Village, standing in the name of Palani is a genuine document according to the revenue records.

4. This Court places on record its appreciation to Mr.G.Elangovan, Special Tahsildar (ST / ADW) Tiruvallur, for conducting the enquiry fairly and placing the true facts before this Court. Thus, from the above, it is clear that Palani's name

was in the revenue records as pattadar of the land in Survey No.449/1, Vengathur Village, under acquisition.

5. Mr.V.Jayaprakash Narayanan, learned Special Government Pleader submitted that from 1983 to 1986, a complete re-survey was undertaken throughout Tamil Nadu and the revenue records were updated based on field inspection and enquiry. Only thereafter, the name of Durai Naidu was included as the Pattadhar of S.No.449/1, Vengathur Village and that is why the enquiry notice in Form No.1, Sub - Rule 3, was issued to Durai Naidu.

6. Admittedly, Durai Naidu did not raise any objection during the enquiry, before the Special Tahsildar, on 07.04.2000. Therefore, the Special Tahsildar, in his report / recommendation dated 25.04.2000, that was submitted to the District Collector, has stated that Durai Naidu, to whom the enquiry notice was served, did not appear and raise any objections. Since there was no objection, the Special Tahsildar sent the report dated 25.04.2000, to the District Collector, for acquiring the land in S.No.449/1, measuring 0.55.5 Hectares (1.38 acres). The District Collector accepted the report / recommendation of the Special Tahsildar and has passed the order dated 02.12.2000 presumably under Section 4(3)(b) of the Act directing issuance of notification under Section 4(1) of the Tamil Nadu Acquisition of Land for Adi Dravidars Welfare Schemes Act 1978, for acquiring the said land, for providing house-site to members of Irular community. Thereafter, the notification under Section 4(1) of the Act was published in the District Gazette on 30.12.2000, which is under challenge before this Court.

7. In R. PARI VS. THE SPECIAL TAHSILDAR [2007 (2) MLJ 706] the Full Bench of this Court has laid down the guidelines that has to be followed by the authorities before acquiring lands under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. It may be relevant to extract paragraph nos.42 and 43 of the said judgment, which reads as follows:

"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."

8. In this case, the revenue records up to 1980 unmistakably shows that one Palani is the Pattadhar of the land in S.No.449/1, Vengathur Village, measuring 0.55.5 Hectares. According to the petitioners, the said land was purchased by Venkatesan, husband of the first petitioner, on 28.07.1979, by deed of sale, registered as Document No.2167/1979, in the Sub Registrar Office, Tiruvallur. Genuineness of this sale is not in dispute, because, even in the award enquiry, the Village Administrative Officer has given a report that it is the first petitioner, who is in enjoyment of the property under acquisition. Venkatesan, the husband of the first petitioner died on 16.12.1985 and thereafter, the petitioners were in enjoyment of the property. The only sin committed by the petitioners was that they did not move the revenue authorities for patta and for entering their name in the revenue records.

9. Of course, it is trite that the land acquisition authorities would issue enquiry notice only to persons, whose names figure in the revenue records and they are not bound to obtain information from the Sub Registrar to find out the actual ownership of the land under acquisition. But in this case, the patta pass book clearly shows that the Pattadhar is one Palani and therefore, enquiry notice should have at least been sent to Palani. This was not done. That apart, the District Collector has passed the order dated 02.12.2000, by filling up blanks in a cyclostyle format, wherein, it is stated as follows:

"The Collector of Tiruvallur District at Tiruvallur accepts the recommendations of Special

Tahsildar (ADW Thiruvallur) and directs that the objections of the land owners to the proposed acquisition are overruled and to proceed further."

10. The word Thiruvallur has been written in hand and the rest of the sentence is in cyclostyle format. The fact remains that no one appeared for the enquiry before the Special Tahsildar and no objections were received. Despite that, the Collector has mechanically stated that the objections of the land owners to the proposed acquisition is overruled, which shows that there has been clear non-application of mind on the part of the Collector.

11. In view of the above, writ petition in W.P.No.15232 of 2001 is allowed as prayed for and the acquisition proceedings are hereby quashed.

12. Since W.P.No.15232 of 2001 is allowed by this Court, no further order needs to be passed in W.P.No.2938 of 2012 and accordingly, the same is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

TK

Sub Assistant Registrar

To

1. The District Collector
Trivellore.

2. The Special Tahsildar
Adi Dravidar Welfare
Trivellore.

3. The Authorised Officer /
The Joint Commissioner
Land Reforms (Kancheepuram)
O/o. The District Collector,
Villupuram.

+lcc to Mr.Selva Kumar, Advocate, S.R.No.3869
+lcc to the Government Pleader, S.R.No.3967

SR(CO)
RS(14/02/2017)

W.P.NOS.15232 OF 2001 AND 2938 OF 2012