

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2018

CORAM:

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR

W.P.No.31056 of 2003

S.M.Vishnu Nadar

..Petitioner

Vs

1. State of Tamil Nadu
by its Secretary,
Backward Classes Welfare and
Nutritious Meals Programme,
and Special Welfare Department,
Fort St.George, Chennai - 600 009.

2. The Special Thasildar,
(Adi Dravidar Welfare)
Tenkasi,
Tirunelveli District.

..Respondents

Prayer: Writ petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the 2nd respondent's impugned 12(2) Award notification under Land Acquisition Act 1894 dated 27-03-1992.

For Petitioner : Mr.M.Chithira Gomathy

For Respondent : Mr.N.Sakthivel
Additional Government Pleader

O R D E R

The prayer sought for herein is for Writ of Certiorari, to call for the records of the 2nd respondent's impugned 12(2) Award notification under Land Acquisition Act 1894 dated 27-03-1992.

2. The necessary facts which are required to be noticed for disposal of this writ petition are as follows:-

The petitioner is having the land in Survey No.356/3 at Alangulam village and Taluk, Tirunelveli District to the extent of 72 cents.The first respondent/Government had issued a

Notification, dated 31.03.1988 under Section 4 (1) of the Land Acquisition Act, and Published the same in the Government Gazette on 20.04.1988, intending to acquire a portion of the land belongs to the petitioner for the purpose of laying approach road, towards the land allotted for the landless poor Adi Dravidar community people for house construction.

3. It was initially notified that acquisition for acquiring the petitioner's land to the extent of 0.06 hectare. However, when the petitioner objected for acquiring such a huge land as it may not be required for such extent for laying the approach road, the Government confined the acquisition only for 0.03 hectare.

4. As against the said land acquisition proceedings, in fact, the petitioner approached this Court by filing Writ Petition No.6458 of 1989, challenging the 4 (1) Notification as well as the declaration under Section 6 (1) of the Land Acquisition Act, 1894 hereinafter referred as the "Act". However, the said writ petition was dismissed by this Court by order, dated 06.07.1990, upholding the said acquisition.

5. Thereafter, Section 5 (A), enquiry was conducted and the petitioner also participated in the enquiry. It is in that context, the case of the petitioner was that, though 0.03 hectare of the petitioner's land was acquired for the purpose of laying the path-way as an approach road to the landless poor, who have been allotted the land after acquisition of the land, by the Government, Since, the respondents formed alternative road as an approach road for the people, the land acquired from the petitioner is absolutely not utilized for the purpose for which it was acquired. However, in the meanwhile, the award was passed under Section 12 (2) of the Act on 27.03.1992, Therefore, challenging the said award passed by the respondents, the petitioner has moved this writ petition with the aforesaid prayer. At the admission stage, interim order of stay of dispossession was granted and the stay is still continuing during the pendency of this writ petition.

6. I have heard the submission made by Ms. M.Chithira Gomathy, learned counsel appearing for the petitioner and Mr.N.Sakthivel, learned Additional Government Pleader appearing for the respondents.

7.It is to be noted that, when the case came up for hearing before my predecessor on 27.07.2018, the learned Judge has passed the following order:-

"The petitioner in this Writ Petition has challenged the award dated 27.03.1992 passed under Section 12(3)

of the Land Acquisition Act, 1894.

2.The petitioner has filed an additional affidavit dated 30.07.2010, in which, it is stated in paragraph 3 as follows:-

"3.I submit that my land admeasuring 0.03.0 Hectares comprised in Survey No.356/3B in Alangulam Village was acquired for the purpose of using as pathway to approach the house sites proposed for construction of houses for the Adhi Diravidhars. The District Backward Classes and Minority Welfare Officer, Tirunelveli after assessing the site recommended the Special Commissioner and Commissioner for Backward Classes and Minorities stating that the land is not required for the purpose for which it was acquired and that the land can be reconveyed to the petitioner. The District Collector, Tirunelveli also recommended for the withdrawal of the acquisition in view of the fact the land is not required for the purpose for which it was acquired. After the acquisition, the Second Respondent acquired a different area for the path way in the western side of the petitioner's property, laid a road and the same is now used for approaching the area where the buildings are sought to be constructed."

3.This Court by order dated 05.07.2018 had directed the Respondents to file an affidavit regarding the action taken by the Respondents on the recommendation made in the letter dated 01.07.2005 of the District Backward Classes and Minorities Welfare Officer, Tirunelveli and submit the same before this Court.

4.In pursuance thereof, an affidavit dated 25.07.2018 has been filed, in which, it is stated in Paragraph 3(iv) as follows:-

"3.(iv). In the meantime, the District Backward Classes and Minorities Welfare Officer, Tirunelveli, in his letter, dated 01.07.2005, has stated that an alternate path way had been identified for usage, that the petitioner has not received the compensation amount, he has agreed to withdraw the writ

petition, hence the acquired land may be reconveyed to him.

However the Government has not taken any decision in view of the pendency of the above Writ petition."

5. In view of the aforesaid statement made in the counter affidavit filed by the Respondents, it is hereby clarified that the pendency of this Writ Petition would not impede the Competent Authority in the Government to consider and pass orders on the aforesaid recommendation made by the Backward Classes and Minorities Welfare Officer, Tirunelveli, in the letter dated 01.07.2005. The Respondents shall accordingly inform this Court of such decision taken by the Government on the next hearing by filing a report.

Post the matter on 03.09.2018."

8. Pursuant to the said direction issued by this Court to take a decision on the recommendations made by the District Minorities Welfare Officer, Tirunelveli by his letter, dated 01.07.2005, the Government, after having considered all the aspects, has taken a decision and has issued a Government order in G.O.Ms.No.46, Backward Classes, Most Backward Classes and Minority Welfare (BC2) department, dated 21.08.2018. A copy of the said G.O.Ms.No.46, along with the supporting affidavit has been filed by the respondents.

9. Relying upon the said decision taken by the Government as reflected in G.O.Ms.No.46, the learned Additional Government Pleader would submit that the petitioner's land was acquired only for the purpose of laying the approach road. Initially, even though, the acquisition was made in respect of the land of the petitioner, subsequently, in order to reduce the width of the road, only an extent of 0.06 hectare alone was acquired and the compensation to that effect after hearing the petitioner was already ordered and the amount has also been deposited in the Treasury in the Revenue account. However, the petitioner has not received the same, so far.

10. The learned Additional Government Pleader would further submit that, because of the long pendency of the litigation including the present writ petition pending for several years, as the beneficiaries of the scheme, where lands have been allotted to the landless poor, who were suffering a lot to approach the main road, the Government having no other option except to form an alternative road, which is circuitous road and also a zigzag road. In order to establish the said fact,

the learned Additional Government pleader has filed a Map and relying upon the same, the learned Additional Government Pleader would submit that, the land belongs to the petitioner and other two land owners whose lands also have been acquired along with the petitioner's land to enable the respondent to make a straight road to reach the acquired portion which was already allotted to the beneficiaries.

11. In this regard, the learned Additional Government Pleader would further submit that, the entire straight road portion consisting of three areas i.e., A, B and C. The area noted as "B and C" have already been acquired and there had been no objection from the respective land owners. However, area A which belongs to the petitioner whose land has already been acquired which in fact is connecting or abutting the main road, i.e. Tirunelveli-Tenkasi main Road and because of this litigation, the beneficiaries could not reach their areas which were allotted to them, and they have taken a circuitous route which has also been mentioned in the Map.

12. I have perused those documents filed before this Court. No doubt, the land of the petitioner was acquired for the purpose of laying a road as an approach road to the allotted area for the landless poor. The Map, which is not disputed by the petitioner's side shows a straight road, starting from the acquired land of the petitioner and if the petitioner's land is not utilised for the purpose of laying the road certainly, there is no approach road for the acquired area, where the landless poor have already been allotted, except to take the very circuitous road.

13. Only in that context, the Government had taken a decision as reflected in the Government order i.e., G.O.Ms.No.46, dated 21.08.2018 where the Government has decided to reject the recommendation made by the District Minorities Welfare Officer to give up the acquisition and re-convey the land to the petitioner as the same was no more required to form the road, in view of the alternative road, as already been formed. The relevant portion of the order of the Government in G.O.Ms.No.46, is extracted hereunder for easy reference:-

"5. In the mean time, the Writ Petition No.31056 of 2003 was taken up for hearing and the Hon'ble High Court has directed to file an affidavit regarding the action taken in pursuance of the District Backward Classes and Minorities Welfare Officer, letter dated 01.07.2005. Accordingly, an Affidavit with status report had been filed before the Hon'ble High Court, stating that the Government has not taken any decision in the matter, in view of the pendency of Writ Petition 31056 of 2003.

6. In the Order third read above, the Hon'ble High Court of Madras has clarified that the pendency of this Writ Petition would not implead the competent authority in the Government to consider and pass orders on the recommendation made by the District Backward Classes and Minorities Welfare Officer, Tirunelveli, in the letter dated 01.07.2005 and to inform the court of such decision taken by the Government on the next hearing by filing a report.

7. The Government have examined the issue carefully with the connected records. The Government initially proposed to acquire an extent of 0.22.5 hectares of land in Survey Nos.356/3B, 355/2 and 354/2 including an extent of land 0.06.0 hectares in S.No.356/3B belonging to Thiru S.M.Vishnu Nadar for pathway purpose. He raised objection on the acquisition of land and it was reduced from 0.06.0 hectares to 0.03.0 hectares after an enquiry was conducted by the Land Acquisition Officer. However he filed Writ Petition No.31056 of 2003 before the Hon'ble High Court of Madras challenging the Award passed. The road to be formed on the lands acquired for pathway purpose is a straight pathway to the free house site scheme. In view of objections raised by the Writ petitioner, the road could not be formed and the beneficiaries of this Scheme have been forced to take a detour route, inspite of having straight access to the main road, through the pathway on the acquired lands. The land owners except Thiru S.M.Vishnu Nadar have not raised dispute over the acquisition of their lands for pathway. As all the lands acquired for pathway purpose including the land of Thiru S.M. Vishnu Nadar are required for the public purpose of laying straight road to the free house site schemes, the Government have decided to reject the proposal of District Backward Classes and Minorities Welfare Officer, Tirunelveli. Accordingly, the Government rejects the proposal of District Backward Classes and Minorities Welfare Officer, Tirunelveli for reconveying an extent of land of 0.03.0 hectares in Survey No.356/3B acquired from Thiru S.M.Vishnu Nadar."

14. To meet out the points raised by the respondent side, as the Government has already taken a decision to reject the recommendation made by the District Revenue Officer to re-convey the land acquired from the petitioner, the learned counsel appearing for the petitioner would submit that, since the alternative road has already been formed, which is being utilised by the beneficiaries, there is no need to form a fresh road. The learned counsel for the petitioner would further submit, that, even though only 0.03 hectare alone was acquired, for the purpose of four meter width road, in practical the respondents 1 & 2 laid the 20 meter road, thereby a large extent of petitioner's land is to be utilized, which is totally against the Land Acquisition proceedings.

15. It is the further objection raised by the petitioners side through the learned counsel for the petitioner, that immediately on acquisition proceedings or simultaneously at the time of the acquisition proceedings based on the earlier proposal, the petitioner has constructed a Kalyana Mandapam, abutting the main road as well as the proposed acquiring portion and after constructing the Kalyana Mandapam, which was in fact approved by the local Authorities, it was found that, the kitchen and some portion of the Kalyana Mandapam, comes within the area of the acquired portion of the land and therefore, if the land acquired in question is taken away for the purpose of laying the road, the portion of the Kalyana Mandapam has to be demolished, thereby the petitioner will loose considerably.

16. All the objections submitted by the learned counsel for the petitioner have been considered by this Court. Insofar as the utility of the excess land by the respondents for the purpose of laying the road beyond what has been acquired is concerned, such utility would not be permitted and in this regard the respondents have to ensure that only the acquired area is utilized.

17. However, insofar as the other objection in the name of portion of the Kalyana Mandapam already built therein is lying on the portion of the acquired land is concerned, it is the fact remains that, the land acquisition proceedings was initiated as early as in the year 1988 and the 4 (1) Notification, dated 31.03.1988 was notified in the Government Gazette on 20.04.1988. There is no proof to show that the petitioner already constructed the Kalyana Mandapam before the issuance of the land Acquisition proceedings. Even though, it is claimed by the learned counsel for the petitioner that simultaneously the construction went on, certainly the construction of Kalyana Mandapam could not have been made at the time of acquisition proceedings was issued. Therefore, in view of the settled legal proposition, what development is made by

the land owner subsequent to the issuance of land acquisition proceedings that would not be a matter for the acquisition authorities to take care of and to compensate.

18. Moreover, when we look at the Map filed by the respondents, which is not disputed by the petitioner, the marked portion 3 (A) is the large vacant land belonging to the petitioner, where only the eastern side end alone was acquired that too, to an extent of 0.03 hectare for the purpose laying the road. If at all the petitioner wanted to construct a building like Kalyana Mandapam, he would have constructed the same in the large extent, which is available for the petitioner. Therefore, without going to the merits of the claim made by the petitioner in this regard, assuming that the portion of the construction is made within the acquired area, that can be construed only as a purposeful invasion on the land already sought to be acquired by issuance of the Notification. Therefore, in that context, the claim now made by the petitioner to compensate for the affected portion of the building already constructed is concerned, this Court is not inclined to accept the plea raised by the petitioner.

19. On seeing the documents filed before this Court, and after having perused the entire materials placed before this Court, this Court is of the considered view that, the land acquired from the petitioner is still required to form the road straight to the welfare of the poor people in whose favour house sites have already been allotted, where the beneficiaries are already living. If that being so, merely because, during the pendency of the litigation, though beneficiaries have taken the circuitous route, they cannot be compelled to take the very same circuitous route forever.

20. It is the settled proposition of law that, when the interest of the individual and the interest of the public at large are put in juxta-position, the welfare of the public at large should always outweigh the interest of the individual, and therefore, the petitioner cannot expect the respondents to make a circuitous route as a permanent entry and exit for the poor landless people, in whose favour the entire land acquisition was made and therefore the said plea made by the petitioner also is liable to be rejected.

21. In view of the aforesaid discussions, this Court finds no merits in the writ petition, hence, the writ petition fails, accordingly the writ petition is liable to be dismissed.

22 .In the result the following orders are passed in this writ petition :

The impugned award is sustainable, therefore the writ petition is dismissed. However, it is made clear that, the

respondents shall confine only with the acquired portion of the land which is not more than 0.03 hectare at the eastern end of the property in Survey No.356/3 B, Alangulam Village and Taluk in Tirunelveli District for the purpose of laying the road, beyond the acquired portion, the respondents shall not be entitled to use any land belongs to the petitioner. With these observations and directions the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition, if any is closed.

stm/vsi2

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

To

1. The Secretary,
Backward Classes Welfare and
Nutritious Meals Programme,
and Special Welfare Department,
Fort St.George, Chennai - 600 009.
2. The Special Thasildar,
(Adi Dravidar Welfare)
Tenkasi,
Tirunelveli District.

+lcc to Mr.A.Sankara Subramanian, Advocate, SR.No.76309

W.P.No.31056 of 2003

Kak(14/10/2019)

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