

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 27.09.2018
Orders Pronounced on: 23.11..2018
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.6175 of 2006
Writ Petition No.6903 of 2006
&
Writ Petition No.38311 of 2005

W.P.No.6175 of 2006

- 1.Mallika Bi
- 2.Lal Bi
- 3.Piari John
- 4.Bibi John

.... Petitioners

-Versus-

- 1.The Special Tahsildar,
(Adi Dravidar Welfare),
Kallakurichi,
Villupuram District.
- 2.The District Collector,
Villupuram,
villupuram District.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the Notice dated 15.12.2005 issued by the Special Tahsildar (ADW) Kallakurichi, Villupuram District under Rule 5 (2) of the Tamil Nadu acquisition of Land for Harijan Welfare Scheme Rules 1979 to the petitioners to acquire their land in Survey Non 57-1B to the extent of 20.0 cents held in Joint ownership in Moongilthuraipattu village Kallakurichi Taluk, Villupuram and quash the same and direct the respondents to exempt the petitioners dry land in S.No.57/1B measuring an extent of 0.20.0 Hectares situate at Moongilthuraipattu Village in Kallakurichi Taluk in Villupuram District as the petitioners are poor Muslim Women and living therein.

W.P.No.6803 of 2006

Ismail

.... Petitioners

-Versus-

- 1.The Special Tahsildar,
(Adi Dravidar Welfare),
Kallakurichi, Villupuram District.

2.The District Collector,
Villupuram,
villupuram District..

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the Notice form III Rule 5(i) dated 15.12.2005 issued by the Special Tahsildar (ADW) Kallakurichi Villupuram District under Rule 5(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules 1979 to the petitioner and quash the same and consequently direct the respondents to exempt the petitioner dry land comprised in Survey No.57/1B measuring an extent of 0.10.0 cents situate at Moongilpaduraipattu Village in Kallakurichi Taluk in Villupuram District as he is a Poor Muslim and living therein.

W.P.No.38311 of 2005

- 1.Angammal
- 2.R.Ragothaman (since deceased)
- 3.R.Chandran (since deceased)
- 4.R.Venu
- 5.R.Kumar @ Venkata Krishnan (Since deceased)
- 6.R.Gnanavel

- 7.Mrs.Vasantha
- 8.Sundar
- 9.Suresh
- 10.Prathap
- 11.Mrs.Uma Maheswarai
- 12.Muthukrishnan

[Petitioners 7 to 12 were impleaded as legal heirs of the deceased 2nd petitioner as per order dated 17.07.2018 in W.M.P.No.19442 of 2018]

- 13.Mrs.Meera
- 14.Kulothungan
- 15.Sathya Narayanan
- 16.Mrs.Gomathi

[Petitioners 13 to 16 were impleaded as legal heirs of the deceased 3rd petitioner as per order dated 17.07.2018 in W.M.P.No.19442 of 2018]

- 17.Mrs.Sulochana
- 18.Selvaraj
- 19.Mrs.Anusuya

[Petitioners 17 to 19 were impleaded as legal heirs of the deceased 5th petitioner as per order dated 17.07.2018 in W.M.P.No.19442 of 2018]

... Petitioners

-Versus-

1.State of Tamil Nadu,
Re. by its Secretary to Government,
Department of Adi-Dravida Welfare,
Fort St. George, Chennai 600009.

2.The District Collector,
Villupuram,
Villupuram District.

3.The District Welfare Officer,
Collector Office,
Villupuram.

4.The Special Tahsildar (ADW),
Kallakurichi,
Villupuram District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records relating to the notification dated 5.10.2005 in (M2/47480/2804) (A/253/2004) published in Villupuram District Gazette Extraordinary dated 8.10.2005 by the second respondent herein quash the same in so far as land comprised in Survey No.57/2 57/3A 57/3B and 57/4 measuring 0.64.0 hectares 0.29.0 hectares 0.29.0 hectares and 0.55.0 hectares of Moongilthoraipattu Village are concerned.

For Petitioner(s) : Mr.S.Krishnaswamy for
petitioners in
W.P.Nos.6175 and 6903
of 2006

Mr.Mujibur Rahman for
petitioner in
W.P.No.38311 of 2005

For Respondents : Mr.D.Raja, Addl.
Govt. Pleader for
respondents in
W.P.No.6175 & 6903 of
2006*

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Mr.C.Thirumaran, Spl.
Govt. Pleader for
respondents in
W.P.No.38311 of 2005*

COMMON ORDER

(i) Challenging the notification dated 05.10.2005 issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (herein after called as, the Act) by the 2nd respondent and published in the Villupuram District Gazette Extraordinary dated 08.10.2005, the owner of the land in S.Nos.57/2 etc comprised at Moongilthuraipattu Village in Kallakurichi Taluk, has come up with W.P.No.38311 of 2005;

(ii) Challenging the validity of the Notice dated 15.12.2005 issued by the Special Tahsildar (ADW), Kallakurichi under Rule 5(1) of The Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979 and also for a consequential direction to the respondents to exempt his land from the acquisition, the owner of the land comprised in S.No.57/1B at Moongilthuraipattu Village in Kallakurichi Taluk, has come up with W.P.No.6903 of 2006.

(iii) Challenging the validity of the Notice dated 15.12.2005 issued by the Special Tahsildar (ADW), Kallakurichi under Rule 5(1) of The Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979 [hereinafter called as "the Rules"] and also for a consequential direction to the respondents to exempt their land from the acquisition, the owners of the land comprised in S.No.57/1B at Moongilthuraipattu Village in Kallakurichi Taluk, has come up with W.P.No.6175 of 2006.

2. Since the issue involved in all these writ petitions relating to the very same acquisition proceedings, they are taken up together for hearing, heard and disposed of by this common order.

3. The case of the petitioners in brief is as follows:- The petitioner in W.P.No.6903 of 2005 is the owner of the land measuring an extent of 0.10.0 Hectares comprised in S.No.57/1B situate at Moongilthuraipattu Village; the petitioners in W.P.No.6175 of 2006 are the owners of the land measuring 0.20.0 Hectares comprised S.No.57/1 situate at Moongilthuraipattu Village; and the petitioners in W.P.No.38311 of 2005 are the owners of the land measuring an extent of 0.64.0 Hectares comprised in S.No.57/2, 0.29.0 Hectares

comprised in S.No.57/3A , 0.29.0 Hectares comprised in S.No.57/3B and 0.55.00 Hectares in S.No.57/4 situate at Moongilthuraipattu Village. The lands of the petitioners were sought to be acquired by the State for providing house sites to landless adi dravidas residing at Moongilthuraipattu Village in Kallakurichi Taluk and a notice was issue to the petitioners in W.P.No.38311 of 2005 and W.P.No.6175 of 2005 under Section 4(2) of the Act calling upon them to submit their objections as to why their lands should not be acquired for the intended purpose. Pursuant to the same, the petitioners had submitted their objections and an enquiry was conducted by the Special Tahsildar (ADW), Kallakurichi. Thereafter, without passing any order under Section 4(2) of the Act, a notification under Section 4(1) of the Act has been issued by the District Collector. The grievance of the petitioners is that the objections submitted by them were not considered by the District Collector and no order has been passed either accepting or rejecting their objections.

4. It is the further case of the petitioners that they are poor agriculturists and they do not own any other lands except the agricultural lands which are sought to be acquired. According to the petitioners, there are natham lands available near to the existing Adi Dravida colony and the same could be easily utilized for providing house sites to the land less Adi Dravida people in the village and there is no necessity to acquire the lands belonging to the petitioners.

5. According to the petitioner in W.P.No.6903 of 2006, he claims to be the owner of the land measuring 0.10.0 Hectares out of 0.20.0 Hectares and pursuant to the same, on 05.11.2004 by way of a registered sale deed for a valuable consideration. The grievance of the petitioner is that his land was also sought to be acquired by the respondents without issuing any notice to him. He was only issued with notice under Rule 5(1) of the Tami Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979.

6. The 4th respondent in W.P.No.38311 of 2005 has filed his counter affidavit contending that an extent of 7.03 Acres of land situate in Moongilthuraipattu were sought to be acquired for the purpose of providing house sites to the landless Adi Dravidas. As the respondents could not succeed in their efforts to acquire the lands in question through private negotiation , they had no other go, except to acquire the land under the provisions of the Act. The District Collector, had accorded necessary authorization under Section 4(2) of the Act to the Tahsildar concerned and thereafter, a notice under Rule 3(1) of the Act in Form-1 was served on the land owners concerned and

the notice was also published in the notice board in the Office of the Tahsildar concerned and in the other conspicuous places in the locality. Thereafter, an enquiry under Section 4(2) of the Act was conducted by the Special Tahsildar (ADW) on 02.08.2005 and all the land owners had appeared for the enquiry and raised their objections for acquiring their lands. The Special Tahsildar (ADW) after having considered the objections submitted by the land owners concerned submitted a report to the District Collector and the District Collector in turn, passed appropriate orders rejecting the objections of the petitioners and had issued a notification under Section 4(1) of the Act and there is no illegality in the land acquisition proceedings.

7. I have heard the learned counsel for the petitioner and the learned Addl. Government Pleader and also perused the records carefully.

8. The learned counsel for the petitioner submitted that the petitioners are poor farmers and they do not own any other lands except the lands situate in the above village in question and which were sought to be acquired. When the petitioners appeared for enquiry and submitted their objections before the Special Tahsildar (ADW) under Section 4(3) of the Act, the District Collector ought to have considered the objection and passed an order either accepting or rejecting the objections of the petitioners. But, in the instant case, according to the learned counsel, no such order has been passed.

9. The learned counsel appearing for the petitioner in W.P.No.6903 of 2006 contended that even though the petitioner had purchased the land which was sought to be acquired much before the publication of notice under Section 4(2) of the Act, no notice has been issued to him under Section 4(2) of the Act and only a notice under Rule 5(1) of the Rules was served on him. On this ground alone, according to the learned counsel, the impugned acquisition proceedings is liable to be set aside in its entirety.

10. Per contra, the learned Addl. Government Pleader contended that a notice under Section 4(2) of the Act was issued to the respective owners in whose name the lands were found place in the revenue records. Pursuant to such notice, the land owners had appeared for the enquiry and submitted their objections and the Special Tahsildar (ADW) after having conducted an enquiry submitted his report to the District Collector, who, in turn, after having considered the objections and the report of the Special Tahsildar (ADW), issue a notification under Section 4(1) of the Act after over ruling

the objections of the land owners.

11. So far as the petitioner in W.P.No.6903 of 2006 is concerned, according to the learned Addl. Government Pleader, even though the petitioner claimed to have purchased the land in question, no mutation had taken place in his name in the revenue records and therefore, notice was issued to the person interested in the land based on the revenue records and as such the petitioner cannot have any grievance. That apart, according to the learned Additional Government Advocate, subsequent to the filing of the writ petition, an award has also been passed by the District Collector, Villupuram, and the petitioner has not chosen to challenge the notification issued under Section 4 (1) of the Act and he cannot maintain the writ petition challenging the notice under Rule 5(1) of the Rules alone.

12. I have considered the rival submissions carefully.

13. The challenge in W.P.No.6903 of 2006 and W.P.N.6175 of 2006 is to the notice issued under Rule 5(1) of Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979, whereby the land owners were called upon to appear for award enquiry and they did not come forward to challenge notification under Section 4(1) of the Act. As rightly pointed out by the learned Addl. Government Pleader, as the Award has already been passed by the District Collector and hence, without challenging the notification issued under Section 4(1) of the Act and the Award, petitioner cannot maintain the writ petition. Hence, the writ petition in W.P.No.6903 of 2006 and W.P.No.6175 of 2006 are liable to be dismissed on this ground alone.

14. So far as the contention of the learned counsel for the petitioners in the other writ petition, admittedly, enquiry under Section 4(2) of the Act was conducted by the Special Tahsildar (ADW) wherein the petitioners had appeared and submitted their objections and from the perusal of the records made available to the court, it could be seen that the objections submitted by the petitioners and the report of the Special Tahsildar (ADW) were considered by the District Collector and appropriate orders were also passed by the District Collector overruling the objections and appropriate notification was also issued under Section 4(1) of the Act.

15. From the perusal of the order passed by the District Collector, it could be seen that the District Collector had considered the objections of the petitioners individually and had given reasons for rejecting the objections of the petitioners. The District Collector had applied his mind and

passed appropriate orders as contemplated under Section 4(3) of the Act and, thereafter, he had proceeded to issue a notification under Section 4(1) of the Act. Hence, the contention of the petitioners that their objection for acquisition of land were not taken into account by the District Collector, cannot be countenanced.

16. Even though the petitioners claimed that they do not possess any other lands except the land which were sought to be acquired the District Collect had observed in his order that the petitioners own vast extent of land and had also given particulars of the lands possessed by each of the petitioners and therefore, this contention of the petitioner also cannot be countenanced.

17. So far as the petitioner in W.P.No.6903 of 2006 is concerned, even though he claimed to have purchased the land on 05.11.2004, there is nothing to show that after the purchase, mutation had taken place in the revenue record. It is the settled law that the Acquisition Officer is bound to issue notice to the person in whose name the land stands in the revenue record and without mutation of revenue records, the petitioner cannot now contend that no notice was issued to him. Further, it could be seen from the records produced before this court that the vendor of the petitioner had appeared before the Special Tahsildar for enquiry and had submitted that he sold a portion of the land comprised in the disputed survey number, but, he did not furnish the particulars of the purchaser to whom the land had been sold and the Acquisition Officer had no other option except to go by the revenue records. Therefore, this contention of the petitioner is also untenable.

18. For the foregoing discussions, this court is of the view that the writ petitions are devoid of merits and they same are liable only to be dismissed.

19. In the result, the writ petitions are dismissed. No costs. Consequently, connected WMPs are closed.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

kmk

To

1.The Secretary to Government, Department of Adi-Dravida Welfare,
Fort St. George, Chennai 600009.

2.The District Collector, Villupuram, Villupuram District.

3.The District Welfare Officer, Collector Office, Villupuram.

4.The Special Tahsildar (ADW), Kallakurichi, Villupuram District.

+1cc to Mr.M.MD.Ibrahim Ali, Advocate SR.No.80311

W.P.Nos.6175, 6903 of 2006
& 38311 of 2005

EV(CO)

GMV (05/12/2018)



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