

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 10.09.2018

Order Pronounced on : 27.09.2018

CORAM :

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

W.P. No. 32665 of 2004

1. Ariya Gounder
 2. Poomalli @ Palayathammal
 3. Sumathi
- Petitioners

Vs.

- 1.The District Collector,
Tiruvanamalai District,
Tiruvannamalai
 2. The Tahsildar,
Polur Taluk,
Tiruvanamalai District.
- Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the file of the first respondent in proceedings K.1/51276/2001 as published in the District Gazette on 29.03.2004 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Mr.V.Raghayachari

For Respondents : Mr.C.Thirumaran,
Spl.G.P.,
for R1 and R2

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O R D E R

This Writ Petition has been filed challenging the notification issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. (herein after called Act 31/1978)

2. The case of the petitioner, in brief, is as follows :

An agricultural land in Survey No.93/9c in Padiyampudur Village, Polur Taluk, Tiruvannamalai District, to an extent of 3.75 acres, is the ancestral property of the first petitioner and it was enjoyed by the first petitioner and his brother's wife. Subsequently, by way of a registered partition deed, a portion of the property was given to the second petitioner. That apart, the first petitioner has given an extent of 0.85 cents in favour of his daughter by way of a registered settlement deed. Thereafter, the petitioners 2 and 3 are in possession and enjoyment of the said property.

2(i). The respondents have initiated proceedings under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978, for acquiring the said land for providing house sites to Arunthathiar community people in the above village without issuing any notice whatsoever as contemplated under the Act. The petitioners came to know about the acquisition proceedings only after the receipt of the notice under Section 5 of the Act, for awarding compensation for the acquisition. Thereafter, the petitioners submitted a written objection to the respondents, for which, the respondents had informed the petitioners that they are only entitled for compensation. According to the petitioners, they are poor agriculturist depending upon the above land to eke out their livelihood. In the said circumstances, the petitioner challenges the acquisition proceedings on the ground that no notice was served on the petitioners as per Section 4(2) of the Act, and the first respondent/District Collector did not pass any separate order recording his satisfaction for acquiring the land and the objection filed by the petitioners was also not considered.

3. The second respondent filed a counter affidavit inter alia contending that the land of the petitioners sought to be acquired for providing free house sites to the Arunthathiyar people under the Adi-Dravidar Welfare Scheme to an extent of 0.60.0 Hectre, and the above lands belong to the petitioners. Earlier a notice was issued to the petitioners directing them to appear for enquiry under Section 4(1) of the Act, on 17.08.2001, through a registered post with RPAD. But the land owners refused to receive the same, and the notices were returned as refused. Thereafter, an enquiry under Section 4(2) of the Act has been conducted on 17.08.2001 at the Panchayat Union Elementary School, but the petitioners/land owners did not appear for enquiry on that day. The Village Administrative Officer and other villagers have been enquired, thereafter, a proposal has been sent to the first respondent, District Collector, Tiruvannamalai. The District Collector has approved the proposals and ordered to publish the notice under Section 4(1) of the Act in the District Gazette. The notification under

Section 4(1) of the Act for acquisition of the land has been published in District Gazette on 29.03.2004. Further notice under Section 5(1) of the Act has been sent to the petitioners through RPAD directing them to appear for the award enquiry to be conducted on 10.09.2004. The petitioners have received the notice and they have appeared for enquiry, but they refused to give statement and the Village Administrative Officer and the villagers were enquired on that date. Thereafter, the petitioners had given representation on 31.08.2004 and 10.09.2004 and their objections have been discussed in the award enquiry proceedings, and the award was also passed. The copy of the award was sent to the petitioners and the amount was also deposited in the Revenue Deposits.

4. Mr. Ragavachari, learned counsel appearing for the petitioners has submitted that the first respondent, District Collector, without issuing any notice under Section 4(2) of the Act, and without recording his satisfaction that the lands are necessary for Harijan Welfare Schemes. Even in the cases where no objection has been raised by the land owners, a duty is cast upon the District Collector under the Act to apply his mind and record his satisfaction that the lands were necessary for the Harijan Welfare Scheme, and he has to record the reason for the satisfaction. Whereas the District Collector, without passing any separate order as contemplated under Section 4(3)(b) of the Act, has mechanically issued the declaration under Section 4(1) of the Act and on that ground alone the acquisition proceedings is liable to be set aside. To support his contention, the learned counsel relied upon a judgment of the Division Bench of this court reported in 2005-2 L.W.199 (The District Collector, North Arcot Ambedkar District, Vellore and others /vs/ Manickam) . The learned counsel further contended that the petitioners are poor agriculturists and they are depending upon the land to eke out their livelihood, now their only source of livelihood has been deprived by the respondent.

5. Per contra, Mr.C.Thirumaran, learned Spl.G.P., appearing for the respondents submitted that, earlier notice has been issued under Rule 3(1) the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978, by RPAD, but the petitioners refused to receive the same, and, the notices were returned as refused to receive. Thereafter, enquiry was conducted by the Tahsildar and based on his recommendations, the Collector applied his mind and passed a separate order for issuance of notification under Section 4(1) of the Act, thereafter, the notification has been issued. Subsequently, the award enquiry was conducted, in which, the petitioners appeared and an award was also passed, and the compensation amount has also been deposited in the revenue deposits. Since the petitioner has not raised any objection during the enquiry under Section 4(2)

of the Act, now the petitioner cannot claim that the petitioners' objection has not been considered by the District Collector. The District Collector considering all those materials and after being satisfied that the lands are required for providing house sites to Arunthathiyar community people, he has ordered for issuing a notice under Section 4(1) of the Act. The judgment relied upon by the petitioners is not applicable to the facts of the present case. The learned Government Pleader has also produced the entire records relating to the acquisition proceedings.

6. I have heard the rival submissions and also perused the materials available on records carefully.

7. From the perusal of the records, it could be seen that a notice under Rule 3(1) of the Rule has been issued to the petitioner directing them to appear for enquiry by a registered post, but the petitioner refused to receive the same. Thereafter, the Tahsildar, second respondent has conducted an enquiry on 17.08.2001, and sent his recommendations to the District welfare Officer, Adi -Dravidar Welfare Schemes in and by his proceedings in Na.Ka.No.932/2001 dated 24.12.2001. Considering the recommendation, the District Welfare Officer has conducted a field inspection on 20.12.2003, after lapse of two years, and submitted a report to the District Revenue Officer. Based on that report, the District Revenue Officer, once again conducted a field inspection on 18.02.2004, and he has sent his report to the District Collector on the very same day. But, even before receipt of these reports sent by the District Adi-Dhiravidar Welfare Officer as well as the District Revenue Officer, the District Collector has passed an order in a printed form, in and by his proceedings in K1.51276/2001 dated 04.03/2003, thereby accepting the recommendation of the Special Tahsildar and over-ruling the objections to the acquisition and directed for publication of notice under Section 4(1) of the Act in the District Gazette. Interestingly, from the available records, it could be seen that the second respondent, who conducted the enquiry under Section 4(2) of the Act, did not sent his recommendation to the District Collector, but his recommendation was sent to the District Welfare Officer, in turn, the District Welfare Officer has conducted a field Inspection and he made a further report to the District Revenue Officer on 20.12.2003. Thereafter, based on that report, the District Revenue Officer also conducted another field inspection on 18.02.2004, and being satisfied that the land is required for providing house site for Adi-Dhiravidar, he sent a report to the first respondent on that day itself i.e., on 18.02.2004. But even before all those reports would reach the District Collector, the District Collector passed an order under Section 4(3) of the Act as early as on 04.03.2003 accepting the

recommendation of the Special Tahsildar in a printed form. The order passed by the District Collector is reads as follows :

" 1. The collector accepts the recommendation of the Special Tahsildar (ADW) and directs that the objection to acquisition be over ruled.

2. The Notice under Section 4(1) of the Tamil Nadu Acquisition of land Adi-Dravidar Welfre Schemes act 1978 is approved and it will be published in the next of the District Gazette.

3. The Assistant Works Manager, Govt. Branch Press, Pudukottai is requested to publish the notice in an extra-ordinary issue of the District Gazettee.

4. The entire cost of acquisition will be borne by the Government.

5. The Special Tahsildar (ADW) Pollur is authorised to perform the functions of the prescribed authority under Section 7,10,11,12 and 14 of the Act 31/78 "

It clearly shows a total non-application of mind on the part of the District Collector.

8. Section 4(1) of the Act contemplates that before publishing a notification under Section 4(1) of the Act, the District Collector should satisfy himself that, it is necessary to acquire any land for the purpose of Harijan Welfare Scheme and he is expected to record the reason for his satisfaction. For that purpose, he should conduct an enquiry under Section 4 (3)(a) of the Act or he may authorize another officer to conduct enquiry, in that event, after considering such report, the District Collector, should pass an order. The relevant portion of the Act is as follows :

" 4. Power to acquire land -

(1) Where the District Collector is satisfied that, for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this Section.

(2) Before publishing a notice under sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who in the opinion of the District Collector or the officer so authorized may be interested in such land, to

show cause why it should not be acquired.

(3) (a) The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown ;

(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. "

9. In the instant case, enquiry has been conducted by the Tahsildar/second respondent, and he has sent his recommendation to his higher authorities, District Adi-Dhiravidar Welfare Officer and thereafter, Adi-Dhiravidar Welfare Officer filed a report to the District Revenue Officer and he has also made a report to the District Collector on 18.02.2004 and without considering all those report, the District Collector passed an order in a printed form on 04.03.2003 recommending for acquisition.

10. In similar circumstances, a Division Bench of this Court in The District Collector, North Arcot Ambedkar District, Vellore and others /vs/ Manickam reported in 2005-2 L.W.199 has held that such an order passed by the District Collector without proper application of mind by merely filling up the cyclostyled format is not sustainable, and the acquisition proceedings were set aside. The relevant portion of the judgment reads as follows :

"In the present case, it appears that the order of the District Collector was passed in a mechanical manner without proper application of mind by merely filling up a cyclostyled form. We cannot approve of such kind of orders. It may be that the Special Tahsildar, who was authorised by the District Collector, considered the objections of the land owners, but in our opinion the District Collector must also consider those objections and apply his own mind to those objections, as has been held in the Wednesbury case (see quotation above.)

In the instant case also the District Collector has passed an

order in a mechanical manner in a printed format, in total non application of mind, and on that ground alone, the impugned notification is liable to be set aside.

11. Accordingly, this Writ Petition is allowed and the impugned notification is set aside. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

mrp

To

- 1.The District Collector,
Tiruvanamalai District,
Tiruvannamalai
2. The Tahsildar,
Polur Taluk,
Tiruvanamalai District.

+1cc to Mr.V.Raghavachari, Advocate SR.No.66884

+1cc to Government Pleader SR.No.67432

W.P.No. 32665 of 2004

GMV (16/10/2018)

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