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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2018

CORAM:

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.3714 of 2008

Minor.Gayathri
(declared the petitioner as a major
(M.Gayathri) as per order dated 25.06.2018
in WMP.No.18073 of 2018 in W.P.No.3714 of 2008) .. Petitioner

Vs.

1.The District Collector,
Salem District.

2.The Special Tahsildar,
Land Acquisition (ADW),
Omaller, Salem District.

.. Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the entire records relating to the notification issued by the first respondent herein under S.4 (1) of the T.N.Act No.31 of 1978 in his proceedings in ROC.No.68488/95/D-9 dated 30.11.1995 and published in the Salem District Gazette (Extraordinary) No.24 dated 15.12.1995 and quash the same in so far as it relates to the acquisition of an extent of 0.37.50 hectare lands in S.No.235/2B of Semmandapatty Village, Omaller Taluk belongs to the petitioner herein.

For Petitioner : Mr.V.R.Rajasekaran

For Respondents: Mr.B.Suryanarayanan
Additional Government Pleader

O R D E R

The relief sought for in this writ petition is to call for the entire records relating to the notification issued by the first respondent herein under Section 4 (1) of the T.N.Act No.31 of 1978 in his proceedings in ROC.No.68488/95/D-9 dated 30.11.1995 and published in the Salem District Gazette (Extraordinary) No.24 dated 15.12.1995 and quash the same in so



far as it relates to the acquisition of an extent of 0.37.50 hectare lands in S.No.235/2B of Semmandapatty Village, Omalur Taluk belongs to the petitioner herein.

2. The learned counsel for the petitioner has submitted that the petitioner's father had purchased a land vide a sale deed in Document No.1654 of 1995 dated 10.07.1995. In respect of the said land, proceedings were under contemplation under Section 4 (i) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 for acquiring lands for housing Harijan families.

3. The petitioner claims that her father was not aware of the above developments that the Government had proposed to acquire the land from the previous owner under the above Act.

4. On 15.12.1995, the impugned notification came to be issued by the Government of Tamil Nadu under the provision of Sub-section (1) of Section 4 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978). which reads as under:

"Whereas it appears to the Government of Tamil Nadu that the lands specified in the schedule below and situated in the following Village and Taluk of Salem district are needed for the purpose of Harijan Welfare Scheme to will, for the provision of house site to the Adi-Dravidars/Arunthathiyars/Pallars notice to that effect is hereby given to all to whom it may concern in accordance with the provisions of Sub-Section (1) of Section 4 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978).

And, whereas, it has become necessary to acquire immediate possession of the lands specified in the schedule below:-

Now, therefore, in exercise of the powers conferred by Sub-Section 4 of the said Act, the Collector of Salem district hereby directs that the lands be acquired under provision of the said Section."

5. The learned counsel for the petitioner mentioned that they had earlier filed a civil suit in O.S.No.24 of 2002 on the file of the District Munsif Court, Omalur, for a permanent injunction to restrain the respondents from interfering with their peaceful possession and enjoyment of the property.



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6. On 31.10.2003, the said suit was dismissed as not maintainable therefore A.S.No.9 of 2004 was filed before the Sub-Court, Salem. It was also dismissed on 01.12.2004. Therefore, S.A.No.876 of 2007 was before this Court which was also dismissed on 09.09.2007. Thereafter, the petitioner filed the present writ petition.

7. The petitioner is aggrieved the impugned notification dated 15.12.1995, issued by the Government of Tamil Nadu and has challenged the same by way of the present writ petition in the year 2008.

8. The learned counsel for the petitioner submits that the notification is barred in law under Section 4(1) of the said Act. The learned counsel for the petitioner refers on the decision of this Court in Secretary to Government, Adi Dravidar and Tribal Welfare Department, Chennai and others Vs. P.Dhanabakkiam (2009) 1 MLJ 569, wherein the Division Bench of this Court held as hereunder:

"4. Before we delve upon the issue of non application of mind on the ground that the purpose for which the acquisition is being made itself differs in the preamble and the schedule portions, we would refer to the absence of satisfaction of the District Collector in the impugned notification. The notification issued under Section 4(1) reads as under.

5. A perusal of the said notification shows that the satisfaction or the necessity to acquire the land for the purpose of Harijan Welfare scheme was only at the level of the Government of Tamil Nadu and not of the District Collector. The question as to whether the satisfaction arrived at the level of the Government would constitute sufficient compliance of the provisions of Section 4(1) came up for consideration before a Division Bench of this Court in the Judgment in Jainabi v.State of Tamil Nadu rep. by its Secretary to Government, Adi-Dravidar Welfare, Chennai and Another (2006) 4 MLJ 71: 2006 writ L.R.653. After referring to the provisions of Section 4 f the Act, namely, the power to acquire the land, this Court found that a plain reading of the said Section would show that the satisfaction must be that of the District Collector and the acquisition is also by the District Collector by publishing a notification in the District Gazette. They very same issue



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came up for consideration before another Division Bench of this Court in the Judgment in R.Rasappa Gounder S/o.Rasappa Gounder v. District Collector, Dindigul District and Another (2008) 7 MLJ 314: (2008) Writ LR 585 and on consideration of Section 4 of the Act, the Division Bench has observed as follows at p.316 of MLJ:

"6. A perusal of the aforesaid provision makes it amply clear that it is the District Collector who is required to take an appropriate decision in the matter. The relevant portion of the notification, which has already been extracted, indicates as if the satisfaction was that of the Tamil Nadu State Government. There is no indication in such notification that the District Collector was satisfied regarding the requirement to acquire the land. Under the Act, power has been statutorily conferred on the collector to consider the requirement for the acquisition. But, in the present case, notification issued by the Collector indicates as if the satisfaction was that of the State Government. Thus, it is obvious that notification suffers from the vice of non-application of mind."

9. The Hon'ble Division Bench set aside the notification on the ground that the notification did not indicate the satisfaction of the District Collector, who alone was competent to apply his mind as to whether a particular land should be acquired for the purpose as stated in the said notification.

10. The learned counsel for the petitioner also relied on the decision of the Hon'ble Division Bench of the Supreme Court in Competent Authority Vs. Barangore Jute Factory and others (2005) 13 SCC 477. The relevant Paragraph No.9, is extracted hereunder:

"9. The learned counsel supporting the acquisition submitted that the delay in filing the writ petition is fatal to the case of the landowners. It is true that 11.06.1998 notification was challenged only in September 2001 by filing the writ petition. But if the notification violates the very statute from which it derives its force, will delay in challenging it clothe it with legitimacy? The Act requires the notification to be issued in a



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particular manner with brief particulars of land being acquired. The notification in this case fails to meet this requirement. We have held it to be bad in law. It has no legs to stand. The conduct of the opposite party cannot be used to make it stand. Moreover, the writ petitioners have explained the reasons for the delay in filing the writ petition. The Company which owns the lands had been de-registered. It is a Company registered in the U.K. It had to be revived. Revival came in mid-2001 where after the action was taken. Thus, we find no merit in the argument about delay in challenging the notification rendering the challenge liable to be rejected."

11. Per contra the learned counsel for the respondents reiterated the content of the counter affidavit and referred to order dated 30.11.1995, wherein it indicates that the Collector has accepted the report of the Special Tahsildar (ADW), Omalur for acquisition of 1.71 acres of lands in Survey No.235/1B and 235/2B of Semmandappatti village and therefore there was subjective satisfaction for acquiring land and therefore notification cannot be quashed as prayed for by the petitioner. The learned counsel further submit that the writ petition is liable to be dismissed on account of latches.

12. I have considered the affidavit, counter affidavit and the arguments advanced on behalf of either of the parties.

13. From the records of the case, it is noticed that the subject land in Survey No.235/1B in Semmandapatty Village was originally owned by one Mr.Vellaian S/o.Velliya Gounder.

14. A perusal for acquiring the land was sent on 18.05.1995 and it was later appeared by the 1st respondent on 23.09.1995.

15. Petitioner's father Late Mr. N.Mohanasundaram however purchased the land to an extent of 0.5 acres from the said Mr.Vellaian vide registered sale deed dated 10.07.1995 vide Registered Document No.1654 of 1995. This is about five months prior to the issue of the impugned notification.

16. It is not known under what circumstances the petitioner's father purchased the land, inasmuch as proceedings already had been initiated by the respondents and proposals to



acquire the land was under active consideration prior to purchase of the land.

17. It is further noticed that the petitioner's father Late. Mr.N.Mohanasundaram died on 23.10.2000 leaving behind the petitioner and her mother and the younger brother.

18. The petitioner and her brother were minor at the time of filing of the writ petition. Subsequently, the petitioner attained majority and suitable amendments were effected to declare her as major.

19. Be that as it may, the land in question was acquired pursuant to G.O.Ms. No.143 AD & TN Department, dated 01.08.1995 and report from the Special Tahsildar (ADW), Omalur in ROC No.523/1995 dated 07.11.1995.

20. By the impugned notification dated 15.12.1995 published in District Gazette Extraordinary No.24, the Government of Tamilnadu acquired the land under Section 4 (1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978.

21. An award dated 06.03.1995 for acquisition of land has been passed vide Award No.26 of 1995-1996 dated 06.03.1995 in which the original seller was awarded a compensation of Rs.78,200/- for the said land.

22. The original owner had refused to receive the compensation and therefore the amount of compensation was deposited in the Sub-Court and the acquisition stands in the name Adi-Dravidars Natham.

23. However, in view of the pendency of the present writ petition, the respondents have not been able to proceed further. Several collateral proceedings came to be initiated by the petitioner's father but he was not successful. It is thereafter, the petitioner has filed the present writ petition.

24. It appears that the purchase of the land was not under a bonafide circumstances as acquisition proceedings were already under contemplation.

25. In the present case, the 1st respondent has acted pursuant to Award dated 06.03.1995, G.O.Ms. No.143 AD & TN Department, dated 01.08.1995 and report from the Special Tahsildar (ADW), Omalur in ROC No.523/1995 dated 07.11.1995.

26. It is pursuant to the Notification issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare



Schemes, 1972 the impugned notification was issued for acquiring the lands vide Gazette dated 15.12.1995.

27. The language of impugned notification and the notification in the case of Secretary to Government, Adi Dravidar and Tribal Welfare Department, Chennai and Others vs. P.Dhanabakkiam, cited supra are identical.

28. Therefore, I am of the constrained to allow the above writ petition even though on facts it emerges that the purchase of the land by late Mr.N.Mohanasundaram, the father of the petitioners from Vellaian s/o.Velliya Gounder was not bona fide and was intended to defeat the acquisition under Section 4(1) of the aforesaid Act.

27. The writ petition therefore stands allowed with liberty to the respondents to initiate fresh proceedings under Section 4 of the said act after affording opportunity to the petitioners in accordance with law. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

kkd

To

1.The District Collector,
Salem District.

2.The Special Tahsildar,
Land Acquisition (ADW),
Omaller, Salem District.

+1 CC to Mr.V.R.Rajasekaran, Advocate sr 75792.

W.P.No.3714 of 2008

AD(CO)
SP(18/12/2018)