

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.7624 of 2017
and
W.M.P.No.8326 of 2017

M.Elumalai

... Petitioner

Vs

1. The District Collector,
Villupuram District,
Villupuram.

2. The Special Tahsildar,
(Adi Dravidar and Tribal Welfare Department)
Tindivanam, Villupuram District.

3.The Tahsildar,
Thindivanum, Villupuram.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, by refraining from the proceeding with the land acquisition initiated vide proceedings No.A/3019/94 dated 24.1.1998 of the Special Tahsildar viz., the 2nd respondent under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 in respect of the petitioner's land in Survey No.33/1B Avanampatti Village of an extent of about 0.04.5 hectares (roughly 10 cents).

For Petitioner : Mr.V.Vijayashankar

For Respondents : Mr.M.Karthikeyan

Additional Government Pleader

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The case of the petitioner is that he owns a certain piece of agricultural land in Survey No.33/1 along with his two brothers namely Gopal and Muthukrishnan. Gopal had passed away and Muthukrishnan was mentally challenged.

2. Whilso, the 2nd respondent had issued a notice to the petitioner dated 24.01.1998, under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978,

indicating the proposal to acquire a part of his land for a purpose of providing a pathway to burial ground used by the members of Adi Dravidars. On receipt of the said notice, the petitioner and his brothers approached the 2nd respondent and raised their objections and indicated that the lands were the only source of their livelihood, and that there was an alternate pathway available to reach the aforesaid burial ground. Thereafter, the petitioner did not receive any notice from the authorities and compensation too has not been paid to him. While so, some four days prior to filing of the petition some officials of the respondents came to inspect the property and on enquiry made to them the petitioner was informed that they have taken the possession of the property in question. The only contention of the petitioner is that the entire property has been in their possession, that in view of coming into force of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Central Act, 30 of 2013) the acquisition proceedings lapses.

3. On the basis of the averment, the petitioner seeks to issue a writ of mandamus to restrain the authorities not to initiate any action pursuant to notice dated 24.01.1998 issued under Section 4(2) of the Act.

4. Heard Mr.V.Vijayashankar, learned counsel for the petitioner and Mr.M.Karthikeyan, the learned Additional Government Pleader for the respondents. Mrs.S.Dhanalakshmi, Special Tahsildar(ADW), Tindivanam, the 2nd respondent is appeared in person to assist the Court.

5. In the counter filed by the 2nd respondent, it is averred that the petitioner owned a piece of dry land measuring 1.36.5 hectares in R.S.No.33/1 that the burial ground for Adi Dravidars community existing in R.S.No.33/2 that there was no approach road or pathway to burial ground and hence, the land acquisition proceeding was initiated and award was passed in Award No.17/98 dated 25.02.1999. It is further averred that the petitioner was issued notice under Section 4(2) of the Act, restraining the same, the petitioner and his sister-in-law have participated in the enquiry and thereafter, a notification under Section 4(1) was issued, that an award too has been passed. In the meantime, some of the intended beneficiaries have moved this Court in W.P.No.23310 of 2012 to implement the recommendations of the Special Tahsildar dated 23.05.2007 for assigning the lands classified as Mandaiveli in S.No.30/14. Further, the 1st respondent/District Collector has issued a proceeding dated 21.03.2017 and directed for construction of a metal road in the property acquired. Necessary administration and financial nod have also not been obtained.

6. The learned counsel for the petitioner contended that under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, notification must be issued on the basis of the personal satisfaction of the Collector found on objection despite the enquiry report of such authority under Section 4(2) and the same cannot be exercised by the Government. He specifically drawn the attention of the Court to 4(1) notification gazetted on 14.10.1998 which indicates that the notification was issued on the satisfaction of the Government and not on the satisfaction of the Collector. He also argued that after the enquiry under Section 4(2) of the Act, the petitioner was not served with any notice but the award was passed.

7. Per contra, Mr.M.Karthikeyan, learned Additional Government Pleader appearing for the respondents argued that the notice issued only under Section 4(2) and not under 4(1) of the said Act. The fact also remains that the petitioner has been afforded opportunity to participate in the enquiry under Section 4(2), and after lapse of 19 years, the petitioner now approaches this Court to seek a direction that the respondents should be refrained from taking any action pursuant to Section 4(2) notice issued on him. He added that much water has since flown under the bridge in that 4(1) notification was issued followed by the award and none of them were challenged by the petitioner.

8. Responding to the same, the learned counsel for the petitioner brought to the notice of this Court a sequence of proceedings of the 2nd respondent dated 23.05.2007 followed by the 3rd respondent dated 25.07.2008, 28.03.2014, 07.06.2014 and 24.09.2014 and also the proceedings of the 1st respondent dated 19.03.2014 wherein a case would made out by the authorities about the existence of the alternative piece of land, the same can be laid in S.No.30/14 and this subsequent event should not be lost sight. He also brought to the notice of this Court that in the counter affidavit it is mentioned that a certain Muthukrishnan has approached this Court in W.P.No.23310 of 2012 for implementing the proceedings of the 2nd respondent dated 23.05.2007.

9. So far as these proceedings are concerned, inasmuch as the petitioner has not challenged the Section 4(1) notification, this Court cannot issue any direction to the authorities in the manner the petitioner has now sought. Therefore, the petitioner has to fail on this ground. However, since the authorities by subsequent change of events which involves parties themselves identifying another piece of land for utilisation as a pathway, it is necessary for the 1st respondent to take into account the said proceedings, one of which he himself has issued on 19.03.2014. Therefore, the petitioners are directed to approach

the District Collector with a fresh representation with all material particulars within a period of four weeks from the date of receipt of a copy of this order. The 1st respondent shall appreciate the same in the manner known to law and take such appropriate measures as are necessary.

10. With the above direction, this Writ Petition is disposed of. No. Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

ssn

To

1. The District Collector,
Villupuram District,
Villupuram.

2. The Special Tahsildar,
(Adi Dravidar and Tribal Welfare Department)
Tindivanam, Villupuram District.

3.The Tahsildar,
Thindivanum, Villupuram.

+3cc to Mr.V.Vijay Shankar, Advocate, S.R.No.12244,11564

W.P.No.7624 of 2017 and
W.M.P.No.8326 of 2017

RRK (09/03/2018)

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