

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 22.11.2017
PRONOUNCED ON : 01.02.2018

CORAM :

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

WA.No.1730 of 2014
and MP.No.1 of 2014

1.The District Collector,
Salem.
2.The/(A1 dated Land Acquisition Officer and Special Tahsildar
(Adi Dravidar Welfare),
Sankari. ... Appellants.

Vs.

1.K.Sundaram
2.K.Kumaravel
3.A.Viji
4.K.Kaliammal ... respondents

PRAYER : Appeal is filed under clause 15 of Letters patent,
against the order dated 15.04.2008 made in WP.No.6034 of 1999.

W.P. 6034/1999:

Writ Petition filed under Article 226 of the constitution of India pleased to issue a Writ of Certiorari to call for records of the Respondents relating to the notification of the 1st Respondent in R.O.C. No 17898/1999(D8) dated 17.03.1999 published in Salem District Gazette on ordinary No 9 dated 19.03.1999 and the notice of the 2nd Respondent in R.O.C. No 2299/98(A1 dated 19.03.1999 and quash the same.

For appellants : Ms.A.Srijayanthi, Spl.GP.

For respondents : Mr.Kandan Doraisami,
for Mr.Muthumani Doraisami.

JUDGMENT
P. VELMURUGAN, J.

This Appeal is filed against the order passed by the learned single judge in WP.No.6034 of 1999 dated 15.04.2008.

2. The land in S.Nos.232/1K, 232/4G, 232/5 and 209/3D of Pakkanadu village, Elapadi Taluk, Salem District originally belonged to the father of the respondents. After his death in the year 1996, the respondents have jointly inherited the property and they are in joint possession. Whiles, the first appellant/District Collector, Salem has issued a notice on 09.10.1998 for acquisition of the land for providing house sites to Adi-Dravidars under Act 31 of 1978, for which the respondents have filed their objection on 26.10.1998. A further representation was made on 26.01.1999 stating that an alternative poromboke land in S.No.229/1A is available which would be more suitable for the Harijan Housing colony. The representation was rejected. The first respondent has issued an order dated 17.03.1999 publishing the notification under Section 4(1) of Act 31/1978. The second respondent issued notice on 19.03.1999 for conducting the award enquiry on 26.03.1999.

3. Before the Writ Court, the appellants have stated that Form-I notice dated 09.10.1998 was served on 25.10.1998 fixing the date of enquiry as 26.10.1998. The respondents have filed their objections on 26.10.1998. Their objections were considered by the Tahsildar in his proceedings dated 30.10.1998 and it was overruled. Thereafter, the District Collector, in his proceedings dated 17.03.1999, considered the proceedings of the Tahsildar dated 30.10.1998 and overruled the objection of the land owners and directed notification to be issued under Section 4(1) of the Act. It is further stated that the award was passed on 26.03.1999. The writ petition came to be filed during the first week of April 1999.

4. The learned single judge after hearing the arguments of both sides, allowed the writ petitions. Aggrieved against the order passed by the learned single judge in WP.No.6034 of 1999, the appellants preferred the present writ appeal.

5. Heard the submissions made on behalf of the parties and perused the available records.

6. The appellants have produced the original file for our perusal. We have carefully perused the records in original.

7. On a perusal of the order passed by the learned single judge it is found that the land was acquired for the purpose of providing house sites to the Adi-Dravidars in Pakkanadu village under Harijan Welfare schemes Act, 1978 (Tamil Nadu Act 31 of 1978). The Special Tahsildar (ADW), Sankari was authorised by the District Collector under Section 4(2) of the Act to conduct a preliminary enquiry and find out the suitability of the land for the Adi-Dravidars. The Special Tahsildar issued notice to

the land owners and recorded their objections. The report of the Special Tahsildar dated 15.02.1999, reveals that during the enquiry Sundaram and Kumaravel have appeared on 30.10.1998 and submitted their objections. After considering the same, the objections were overruled and a report was submitted along with the recommendations to the District Collector for approval. The District Collector accepted the recommendation and rejected the objection raised by the land owners vide order dated 17.03.1999 and effected publication in the Salem District Gazette on 19.03.1999. We are therefore of the considered view that there is no violation of Section 4 of the Act and Rule 3 of the Tamil Nadu Acquisition of land for Harijan Welfare Scheme Rules, 1979.

8. In their objection petition, the land owners have stated that they are living in a joint family that they are small farmers and they got only 4½ acres of land in the village and opposed the acquisition proceedings in respect of their land. The Special Tahsildar over ruled the objections of the land owners and forwarded the draft notification under Section 4(1) of the Act to the District Collector and recommended for providing house site to the Adi-dravidars of Packkanadu village. The said recommendation was approved by the District Collector and effected publication in the Salem District Gazette on 19.03.1999, mentioning that the land in the above survey numbers were acquired for the purpose of providing house sites to the Adi-Dravidars of Kutti Adi-Dravidar Street, Pakkanadu Village.

9. The counsel for the respondents contended that records have been manipulated by the revenue department to acquire the land for the welfare scheme and certain corrections were made. It is found that the District Collector approved the recommendation of the Special Tahsildar on 17.03.1999 and effected publication on 19.03.1999. The Award was passed on 26.03.1999. The entire process of the acquisition proceedings are in order and without any deviation. Hence, the question of manipulation of records by the authorities does not arise at all.

10. We have carefully perused the reports submitted by the authorised officer to the District Collector, representations made by the land owners, the recommendation made by the Special Tahsildar to the District Collector and the order passed by the District Collector, Salem.

11. As per Section 4(1) of the said Act 31 of 1978, the District Collector, Salem has published the notification in the District Gazette. Before publishing the notification under sub section (1) of Section 4 the Special Tahsildar who was authorised under sub section 2 of Section 4 made a detailed enquiry. After enquiry the Special Tahsildar filed a report to

the District Collector with his recommendation under sub section 3(b) of Section 4 of the Act on the cause so shown for the decision of the District Collector. After considering the report, the District Collector passed the order dated 17.03.1999.

12. It is useful to extract herein paragraph 42 of the Full Bench judgment of this Court reported in (2007) 2 MLJ 706 - R.Pari v. Special Tahsildar, Adi Dravidar Welfare, Pasumpon Muthuramalinga Thevar District and another. It reads thus :-

"42. However, it is necessary to enter a small caveat. The observation made by the Division bench or the judge regarding requirement to indicate reason while passing the order has to be understood in the context of non-application of mind. Even though in a given case the order which is communicated to the land owner does not indicate any reason why the objection has been rejected, if the application of mind is reflected in the file even by way of nothings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the land owner/objector does not contain any detailed reasons. The requirement is that the materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and not passing of a formal reasoned order as is required in judicial or quasi-judicial proceedings. The function obviously being administrative in nature, it is futile to expect furnishing of detailed reasons in the order which is communicated to the person. It is necessary to enter such caveat lest it may be construed that in every case, where the order of rejection communicated to the land owner does not contain the reasons, the proceeding stands vitiated. Ultimately the court is required to find out in each case whether there has been application of mind. Therefore, the brief reasons, which are contemplated, can be given either in the file in the shape of nothings, endorsements, etc., or even can be reflected in the order. But, mere non-reflection of reasons in the order communicated or in the notice published in the Gazette, would not be sufficient to hold that there has been non-application of mind and the question as to whether there has been application of mind or non-application is required to be considered on the basis of the return filed and

the relevant file to be produced before the Court."

13. From a reading of the above judgment, it is clear that application of mind could be reflected in the file even by way of notings and endorsements. The ultimate decision to acquire the land cannot be said to be vitiated merely because the enquiry report or order of the District Collector were not communicated to the land owner. Mere non mentioning of reasons in the order communicated or in the notice published in the Gazette, would not be sufficient to hold that there was non application of mind. The question as to whether there has been application of mind or non application is required to be considered on the basis of the documents available on record and the relevant file to be produced before the Court.

14. In view of the facts and circumstances of the case and the full bench judgment of this Court in R.Pari case (cited supra), we are not in a position to agree with the reasons given by the learned Single Judge for allowing the writ petitions. We are also of the considered opinion that the order passed by the learned single judge is legally unsustainable.

15. In the result, the writ appeal is allowed by setting aside the order passed by the learned single judge in WP.No.6034 of 1999 dated 15.04.2008. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1.The District Collector,
Salem.

2.The Land Acquisition Officer and Special Tahsildar
(Adi Dravidar Welfare),
Sankari.

+1 CC to Govt. Pleader sr 2969.

+1 CC to M/s. Muthumani Doraisamy, Advocate sr 7584.

WA.No.1730 of 2014

SP(23/02/2018)