

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.906 of 2018
and
C.M.P.No.7932 of 2018

- 1.Jayarama Reddiar
- 2.Thulasi
- 3.Jayanthi
- 4.M.Govindarajulu

... Appellants

versus

- 1.The Collector,
Cuddalore District,
Cuddalore.
- 2.The Special Tahsildar,
(Adi Dravidar Welfare)
Cuddalore.

... Respondents

PRAYER: Appeal filed against the order passed by this Court dated 15.02.2018 made in W.P.No.39124 of 2005 and W.P.M.P.No.41900 of 2005.

Prayer in W.P.No.39124 of 2005:

Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records of the second respondent commencing with Ka/396/04 dated 31.05.2004 under Rule 3(1) of Tamil Nadu Act, 31/78, followed by Na.Ka.Aa 396/04 dated 3/10/2005.

For Appellants : Mr.R.N.Amarnath
For Respondents : Mr.N.Manikandan
Government Advocate

J U D G M E N T

(Order of the Court made by R.SUBRAMANIAN,J.)

The challenge in this Writ Appeal is to the order of the learned Single Judge dated 15.02.2008 made in W.P.No.39124 of 2005, in and by which, the Writ Petition filed by the appellants challenging the notice issued under Section 4(2) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978 was dismissed.

2. Originally certain lands belonging to the appellants and others were sought to be acquired under the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act 31 of 1978 and notification under Section 4(1) of the Act was published in the Cuddalore District Gazette on 09.02.2000. Those proceedings were challenged in W.P.Nos.4345 to 4347 of 2000 by the appellants and others. By the judgment dated 27.02.2003, this Court had quashed the acquisition proceedings granting liberty to the respondents viz., the Government to proceed de novo under the Tamil Nadu Act 31 of 1978.

3. The said judgment was challenged by the appellants in the Writ Appeals in W.A.Nos.2173 to 2175 of 2003. Pending the above Writ Appeals, fresh proceedings were initiated by the Government for acquisition of land that were subject matter of the Writ Petitions in W.P.Nos.4345 to 4347 of 2000, recording the same, the Writ Appeals were dismissed on 29.11.2006.

4. It is not in dispute that even during the pendency of the Writ Appeals, awards were passed and the land owners have received the compensation and has also moved the sub-Court, Cuddalore for enhanced compensation. While so, the land Acquisition Officer issued another notice on 31.05.2004 seeking to acquire certain other lands belonging to the appellants herein. This notice was issued under Section 4(2) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act 31 of 1978. It is this notice which is challenged in the present Writ Petition. This Court had while admitting the Writ Petition granted stay of dispossession alone on 05.12.2005. Though a counter affidavit has been filed in this Writ Petition viz., W.P.No.39124 of 2005, it only deals with the prior proceedings and nothing is stated about the fate of the notice issued under Section 4(2) of the Act.

5. However, the typeset filed by the appellants in the Writ Appeals shows that the appellants had submitted their objections to the notice dated 31.05.2004 on 18.06.2004. From the award dated 19.10.2005 passed in respect of the lands which were

subject matter of the present Writ Petition viz., W.P.No.39124 of 2005, it is seen that after the issuance of 4(2) notice on 31.05.2004, which is impugned in this Writ Petition, a notification under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act was issued and the same was published in the Cuddalore District Gazette on 20.10.2004. Pursuant to the same an award has also been passed on 19.10.2005. Unfortunately, the said proceedings viz., the notification under Section 4(1) and the subsequent award have not been challenged by the appellants. The appellants had chosen to challenge only the 4(2) notice.

6. The learned Single Judge who heard the Writ Petition dismissed the Writ Petition on the ground that the appellants have not chosen to challenge the 4(1) notification and the subsequent award.

7. We have heard Mr.R.N.Amarnath, learned counsel appearing for the appellants and Mr.N.Manikandan, learned Government Advocate appearing for the respondents.

8. Admittedly the possession of the lands have not been taken by the Authorities. No doubt true, the appellants should have challenged the 4(1) notification and the subsequent award. Mr.R.N.Amarnath, learned counsel appearing for the appellants would submit that a request made by him for filing a necessary application for amendment was rejected by the learned Single Judge. The learned Single Judge has however observed that it will be open to the appellants to challenge either the notification under Section 4(1) or the award in a manner known to law. Mr.R.N.Amarnath, learned counsel appearing for the appellants would contend that the appellants had been vigilantly prosecuting the challenge to the acquisition proceedings and the failure to challenge 4(1) notification issued on 20.10.2004 and the subsequent award dated 19.10.2005 should not have been held against them and they should have been given an opportunity to amend the prayer in the Writ Petition.

9. Per contra Mr.N.Manikandan, learned Government Advocate appearing for the respondents would contend that the appellants having not challenged the 4(1) notification and the award at the earliest, opportunity cannot be given now to include the challenge in the Writ Petition filed by them questioning only the notices under sub-Section 2 of Section 4 of the Act.

10. We have considered the rival submissions. It is not a case of willful negligence or absence of bonafides. When earlier proceedings are initiated for the acquisition of lands of the same village, they have challenged the notification and they have been successful also. But, however, while challenging the

notification which was issued subsequently as per the liberty given in the earlier proceedings, it appears that a bonafide mistake has crept in by which the appellants have challenged only the 4(2) notice and not the subsequent notification under 4 (1) or the award.

11. Taking into account the over all circumstances we are of the considered opinion that interest of justice requires an opportunity to be given to the appellants to amend the prayer in the Writ Petition by including the challenge to the 4(1) notification dated 20.10.2004 and the subsequent award dated 19.10.2005. We do not think any prejudice would be caused to the respondents inasmuch as this Court had even while admitting the above Writ Petition in 2005 granted stay of dispossession and even as on date the Government have not taken the possession of the land.

12. For the foregoing reasons, the Writ Appeal is allowed, the order of the learned Single Judge is set aside, the Writ Petition is remitted to the learned Single Judge for fresh consideration. The appellants are given liberty to file applications seeking amendments to include the challenge to the notification under Sections 4(1) dated 20.10.2004 and the award dated 19.10.2005. However, in the circumstances we make no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dsa
To

1.The Collector,
Cuddalore District, Cuddalore.

2.The Special Tahsildar,
(Adi Dravidar Welfare)
Cuddalore.

+1cc to Mr.R.N.Amarnath, Advocate Sr.44725
+1cc to the Government Pleader Sr.45352

W.A.No.906 of 2018

vba[co]
srg 25/07/2018