

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM :

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. Nos. 8600, 8898 & 9112 of 2006
and M.P.Nos.9564,9854 & 10087 of 2006

Veeramuthu ...Petitioner in WP.No.8600/2006
Seethalakshmi ...Petitioner in WP.No.8898/2006
Veerappan ...Petitioner in WP.No.9112/2006

Versus

- 1.The District Collector,
Perambalur,
Perambalur District.
- 2.The Special Tahsildar,
Adi Dravidar Welfare,
Ariyalur. ...Respondents in all Wps.

COMMON PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records of the first respondent relating to the notification dated 10.11.2005 in Na.KA.No.1/38547/2005 in respect of the lands of the petitioner situated at S.F.No.552/9A, S.F.No.560/9 and S.F.No.560/7 of an extent of 0.13.0, 0.48.5, and 0.34.0 Hectares and S.F.560/11, S.F.No.552/11 and S.F.No.560/8 of an extent of 0.16.0, 0.60.0 and 0.41.5 Hectares respectively in the village of Sripuranthan (South), Udayapalayam Taluk, Perambalur District and quash the same.

For Petitioner in all WPS:M/s.Sarvabhuan Associates
For Mr.S.Parthasarathy.

For Respondents in all WPS: Mr. K.Ravikumar, AGP

COMMON ORDER

The petitioners have filed these petitioners seeking issuance of Writ of Certiorari calling for the records of the first respondent relating to the notification dated 10.11.2005

in Na.KA.No.1/38547/2005 in respect of the lands of the petitioner situated at S.F.No.552/9A, S.F.No.560/9 and S.F.No.560/7 to an extent of 0.13.0, 0.48.5 and 0.34.0 Hectares and S.F.560/11, S.F.No.552/11 and S.F.No.560/8 to an extent of 0.16.0, 0.60.0 and 0.41.5 Hectares respectively in the village of Sripuranthan (South), Udayapalayam Taluk, Perambalur District and quash the same.

2. The case of the petitioners is that the petitioners are the owners of the lands comprised in S.F.No.552/9A, S.F.No.560/9 and S.F.No.560/7 to an extent of 0.13.0, 0.48.5 and 0.34.0 Hectares and S.F.560/11, S.F.No.552/11 and S.F.No.560/8 to an extent of 0.16.0, 0.60.0 and 0.41.5 Hectares respectively in the village of Sripuranthan (South), Udayapalayam Taluk, Perambalur District. While so, the second respondent has issued a notification under Section 3(i) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978, thereby proposing to acquire the lands of the petitioners. Though objections were raised by the petitioners, the second respondent conducted an enquiry on 20.09.2005 and a report has been forwarded to the District Collector for his consideration. The District Collector overruled the objections raised by the petitioners on 05.11.2005 and thereafter 4(1) notification was issued on 15.11.2005. The first respondent/District Collector did not furnish a copy of the report or the recommendations of the second respondent and instead passed a notification under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act by his proceedings in Na.KA.No.1/38547/2005 on 10.11.2005. Aggrieved against the same, the petitioners have filed the present writ petitions.

3. Heard Mr.S.Parathasarathy, learned Senior Counsel for the petitioners and Mr.K.Ravikumar, learned Additional Government Pleader for the respondents.

4. The foremost contention raised by the learned senior counsel for the petitioner is that as per the Full Bench Judgment of this Court in R.Pari Vs.The Special Tahsildar, Adi Dravidar Welfare, Devakkottai and another reported in 2006-3 L.W.1000, on receipt of the recommendations from the Special Tahsildar, the District Collector should have furnished a copy of the same to the land owners and thereafter he should have given two weeks' time to make further representation, if any, before the District Collector and the application of mind by the District Collector for over ruling the objections if any, by the land owners, sine qua non and the said dictum is laid down by the Full Bench of this Court cannot not be followed in this case. The learned counsel further relied upon the following paragraphs in the case of R.Pari Vs.The Special Tahsildar, Adi Dravidar Welfare, Devakkottai and another reported in 2006-3 L.W.1000:

"42. However, it is necessary to enter a small caveat. The observation made by the Division Bench or the single 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 notings 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 notings, 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.

43. "In view of the aforesaid discussion, our conclusions are as follows:-
The owner should be furnished with a copy of the report/recommendation of the authorised officer. Thereafter, he should be given two weeks' time to make further representation, if any, before the District Collector. It is not necessary for the District Collector to give a further personal hearing or make any further enquiry. However, mere non-furnishing of the report would not have the ipso facto effect of vitiating the proceedings and the question of prejudice to the land owner is required to be considered in each case depending upon the facts and circumstances. The

District Collector is expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons, the decisions of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report/recommendation made by the authorised officer."

5. In similar circumstances, this Court on an earlier occasion in W.P.No.8040 of 2006, where the very same notification was challenged and this Court after having detailed discussion allowed the writ petition. The relevant portion of the order of this Court is as follows:

"10.In my considered opinion, non furnishing of report/recommendation of the first respondent and not calling the petitioner to submit his explanation has certainly caused prejudice to the petitioner. In view of the same, I am of the view that the order of the first respondent in respect of the land belonging to the petitioner concerned is liable to be quashed.

11.In the result, the writ petition is allowed;the impugned order of the first respondent insofar as it relates to the lands of the petitioner in S.F.No.552/5 of an extent of 0.16.5 Hectares, in S.F.No.552/7 of an extent of 0.14.0 Hectares Village of Sripuranthan (South) Udayarpalayam Taluk, Perambalur District is quashed and the matter is remitted back to the first respondent-District Collector. The first respondent is directed to furnish a copy of the report/recommendation of the second respondent to the petitioner, afford him two weeks' time to submit his further report and then decide the matter strictly in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed."

6.In view of the above, I am inclined to follow the decision rendered by this Court in an unreported judgment made in W.P.No.8040 of 2006. Accordingly, these writ petitions are allowed. The impugned order of the first respondent is quashed and the matter is remitted back to the first respondent-District Collector. The first respondent is directed to furnish a copy of the report/recommendation of the second respondent to the petitioner and after affording an opportunity to the petitioner

take a decision according to the law laid down by the Full Bench of this Court in R.Pari Vs.The Special Tahsildar, Adi Dravidar Welfare, Devakkottai and another cited supra. No costs. Consequently, connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1.The District Collector,
Perambalur,
Perambalur District.

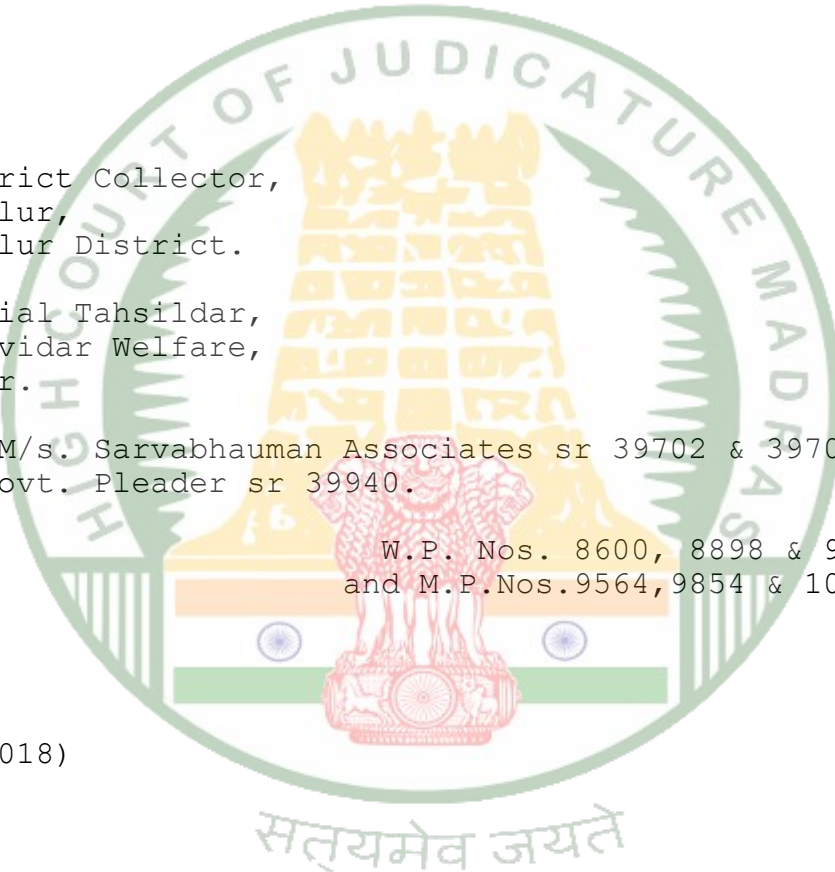
2.The Special Tahsildar,
Adi Dravidar Welfare,
Ariyalur.

+3 Ccs to M/s. Sarvabhauman Associates sr 39702 & 39703.

+1 CC to Govt. Pleader sr 39940.

W.P. Nos. 8600, 8898 & 9112 of 2006
and M.P.Nos.9564,9854 & 10087 of 2006

NA(CO)
SP(20/07/2018)



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