

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2018

Coram: The Honourable Mr. Justice N. SESHASAYEE

W.P.Nos.9353 & 10886 of 2004

1. A. Mohammad Ansari ...Petitioner in W.P.No.9353 of 2004
2. Mumtaz Begam ...Petitioner in W.P.No.10886 of 2004

Versus

1. The District Collector,
Nagapattinam.
 2. The Special Tahsildar,
(Adhi Dravidar Welfare),
Mayiladuthurai.
- ...Respondents in both the W.Ps

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the first respondent in his proceedings in Na.Ka.6440/2004/K.1 dated 28.02.2004 published in Nagapattinam District Gazette dated 02.03.2004 in so far as it relates to the acquisition of land in Survey Nos.392/2 and 378/3, 407/1 & 408/1 respectively under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 at 37 Kanganamputhur Village, Mayiladuthurai Taluk, Nagapattinam District and quash the same.

For Petitioner
in both the W.Ps : Mr.A.Muthukumar

For Respondents
in both the W.Ps : Mr. Akhil Akbar Ali,
Government Advocate

COMMON ORDER

1.1. The petitioners in both the Writ Petitions are owners of separate plots of land in Survey Nos. 392/2 and 378/3, 407/1 & 408/1 respectively. The petitioners came to know that their properties are being acquired under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (hereinafter referred to as "Act") and about the notification issued under Section 4(2) of the Act as per which the property of the petitioners were proposed to be acquired for providing a pathway for the burial ground to the Adi Dravida community. The

petitioners responded to the said notification with their objections wherein they indicated that there existed a path way on to the west of their property, that they same is being used by the members of Adi Dravida Community to reach their burial ground, and the present acquisition is absolutely unnecessary. During enquiry the merit of this objection was not considered and notification under Section 4(1) of the Act was issued.

1.2. The petitioners have come forward with the present Writ Petition seeking to quash the entire acquisition-proceedings on two major grounds:

- The Notification under Section 4(1) of the Act was issued without complying with the mandatory procedure contemplated under Section 4(2) & 4(3) of the said Act , read with Rule 4(3) of the Tamil Nadu Acquisition of Land for Harijan Welfare Rules.
- The proposed acquisition is initiated for the sole benefit of the Special Tahsildar and his family, who has a property in the Survey No.390. He has used his official power to acquire the petitioners' property for laying a path way, and in the process he has deliberately suppressed the existence of another path way that lies along the western boundary of Survey No.392. The acquisition, inasmuch as it is intended for the personal benefit of the Special Tahasildar alone, the same can never be termed as a bonafide public purpose.

2. The petitioners in both the cases enjoy the benefits of the interim order of stay. In these two cases, the very Special Tahsildar who was responsible for initiating the acquisition is accused of misusing his official power has filed a petition for vacating the stay order. It is broadly stated in his affidavit that he has served notices under Section 4(2) of the Act in the manner contemplated under Rule 3, that there was proper enquiry, and it was only after properly appreciating the enquiry-report the Collector had issued the Notification under Section 4(1). As to the specific allegation attributing malafide to his administrative action, the counter affidavit is conspicuously silent.

3. Mr.Akhil Akbar Ali, the learned Government Advocate appearing for the respondents in both the cases submitted that the affidavit in the petitioner for vacating Stay may be treated as counter affidavit to the main petition is well.

4. The second of the objections raised in this Writ Petition is taken up for consideration first. In the typed set of papers

filed in W.P.No.9353 of 2004, the petitioner has provided a rough sketch to explain the pathway. This pathway shows that petitioner's property in Survey No.392 lies to the south of the property in Survey No.390. The pathway now already in existence is denoted in red wash and it lies along the western boundary of the Survey No.392, runs southwards and then takes turn towards east. In other words, this portion appears like the English alphabet 'L' that commences from the western corner of petitioners' property, run towards south in the North-South direction, and then take a turn and runs further from West to East. The proposed pathway for which acquisition is to commence from the North-East of petitioners' property and reaches the same West to East pathway that already in existence. To state it differently, while there is a pathway already in existence on the west of petitioners property, a new pathway is no sought to be laid along the eastern extremity of petitioner's property.

5. According to the petitioner, Veeramani, the Special Tahsildar, owns the property in Survey No.390 and it is this Veeramani who has filed the affidavit (which is now being treated as counter affidavit to the main petition). As to the existence of alternate pathway, Mr.Veeramani is silent on the contrary he goes on to state in Paragraph 7 of his counter affidavit as below:

"7.
.. The new road being formed is beneficial for Adi-Dravidar families including Mr.Veeramani, Spl.Tahsildar not correct more over all the poor families and people at large will benefited in new Adi-Dravidar Colony."

The new Adi-Dravidar colony however, lies far south from the property in question.

6. The facts narrated above, disturbs the conscience of this Court for more than one reason.

- When malafide is attributed to the conduct of Mr.Veeramany/Special Tahsildar to the extent he has suppressed the existence of an alternate pathway, it is the Collector who ought to have filed the counter affidavit.

However, Veeramani himself has filed the counter affidavit which takes away the neutrality of the statutory office that this Court expects while assessing the case of the petitioners.

- Why there is silence about the existence of the alternate pathway, and why an unsubstantiated

statement was made that the members of the Adi Dravida Community might be benefited by the present acquisition. Mr.Veeramani, Special Tahsildhar in the counter affidavit has only mentioned his name prominently in acquisition.

7. The second of the two reasons stated above instantly invites the Court to use the maxim res ipsa loquitur in an action for judicial review of administrative action. The conduct of the Special Tahasildar does not appear bonafide. It is fundamental that those who decides an action including administrative action shall be above of suspicion and the present Tahsildhar has not passed its litmus test.

8. This Court is satisfied with the reasons stated above, there appears to be an abuse of power and this Court allowed this Writ Petition and quashed the proceedings in Na.Ka.6440/2004/K.1 dated 28.02.2004 published in Nagapattinam District Gazette dated 02.03.2004 without going into the merit of the first of the contention.

10. Accordingly, this Writ Petition is allowed. No costs

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

mrr

To

1. The District Collector,
Nagapattinam.
2. The Special Tahsildar,
(Adhi Dravidar Welfare),
Mayiladuthurai.

+1 CC to Mr.A. Muthukumar, Advocate sr 10466.

W.P.No.9353 of 2004

SP(01/06/2018)