

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

W.P.No.20356 of 2002

1.M.Jagadeesan
2.M.Gopal

... Petitioners

Vs

1.The District Collector
Kancheepuram
Kancheepuram District.

2.The Special Deputy Tahsildar
Adi Dravidar and Tribal Welfare Department
Sriperumbudur
Kancheepuram District.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to quash Section 4(1) notification published in Chengalpattu M.G.R. extra ordinary District Gazette dated 08.01.1996 for Adi Dravidar and Tribal Welfare 1978 in respect of land bearing Survey No.69/2 measuring 0.95.5 hectare or 2.35 acres in Sengadu Village, Chengai M.G.R. District in patta No.517 dated 11.4.1994.

For Petitioners : Mr.David Tyagaraj

For Respondents : Mr.A.Zakir Hussain
Government Advocate

ORDER

The petitioner challenges the acquisition proceedings initiated under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (Tamil Nadu Act 31/78). The petitioners are brothers and they jointly owned properties in Survey Nos.69/1B and 69/2 ad-measuring 11 cents and 2.35 acres respectively in Sengadu Village, Sriperumpudur Taluk. The properties were originally proposed for acquisition for providing house sites to the Adi Dravidar of the said Village Vide notification under the provisions of the Land Acquisition Act, 1894, dated 21.06.1995. This was challenged in W.P.No.4813 of 1996 on the ground that since a special enactment in Tamil Nadu Act 31/1978 occupies the statutory space for acquiring the lands for providing house sites for Adi Dravidar, invoking the Land Acquisition Act, 1894 is bad in law. It is

submitted that during the pendency of W.P.No.4813 of 1996, the first respondent has issued a notification in Form-II notice dated 08.1.1996 under Section 4(1) of the Tamil Nadu Act 31/1978. This is now challenged in this petition.

2. In this case, counter as well as additional affidavit is filed by the respondents. In the additional counter affidavit, it is stated that pursuant to the notification issued under Section 4(1) of the Tamil Nadu Act 31/1978, an enquiry for passing the award was undertaken, in which the petitioners have participated and have given a consent that they would not object to the passing of the award, if the compensation of Rs.5000/- per cent was given. Pursuant to the enquiry report made available by the Tahsildar under Section 4(2) of the Tamil Nadu Act 31/1978, the Collector has satisfied himself personally as mandated under Section 4(3) of the Act and has issued the notification under Sec.4(1).

3. Heard Mr.David Tyagaraj, for the petitioner and Mr.Zakir Hussain, the learned Government Advocate for the respondents.

4. Without disputing the factum of petitioners' participation in an enquiry held in connection with the passing of the award, the learned counsel for the petitioners argued that the statement given them before the Land Acquisition Authority in the award-enquiry can only be stated to be a conditional offer, but nowhere has the petitioner consented to waive his right to challenge 4(1) notification, argued the learned counsel for the petitioner. The counsel for the petitioner has relied on the following judgments in Palani Naicker and another Vs. State of Tamil Nadu and Others [L.L.R. Vol.28 1991(2)] and Fathima Beevi Vs. Government of Tamil Nadu and Ors. [MANU/TN/2973/2017].

5. On perusing the files pertaining to acquisition, a notice under Form-II as per Rule 3(2) has been given under Section 4(2) of the Tamil Nadu Act 31/1978. It is seen that no enquiry under Section 4(2) of the Act 31/1978 was appeared to have ever taken place, nor are there materials to indicate that the Collector had applied his mind for deciding the need for acquisition of land as contemplated under Section 4(3) of the Tamil Nadu Act 31/1978. Even Sec. 4(1) notification seen in the files is in a standard form, not signed by anyone and only the blanks are seen filled up. Therefore, this Court is not in a position to appreciate that the procedure as contemplated under the statute has ever been followed for acquiring the lands.

6. When an acquisition proceeding commences on a wrong note in law, the same cannot be cured or legitimised. He relied on the authorities in Raghbir Singh Sehrawat Vs State of Haryana and Others [(2012)1 SCC 792], Union of India and Others Vs. Shiv Raj and Others [(2014) 6 MLJ 500 (SC)], Competent Authority Vs Barangore Jute Factory & Others [(2005)13 SCC 477], A.S. Periasamy Vs State of Tamil Nadu [2004(2) CTC 406], Sri Vengeeswarar Devasthanam by its Hereditary Trustee, Chennai Vs. Collector of Madras, Madras and Another [(2009) 1 MLJ 833].

7. Where the procedure adopted for acquiring lands exhibits breach of mandatory provisions statutorily provided, the acquisition attempted can hardly be certified as lawful. Where there is a fundamental error that law does not permit for subsequent ratification, a statement of an unwilling owner to the acquisition who is unfamiliar with the factors affecting the legality of the acquisition cannot legitimize it. The alleged statement of the petitioners in the enquiry for passing the award must therefore be contextually understood.

8. In the end, this petition is allowed and the Section 4(1) notification published in Chengalpattu M.G.R. District Gazette Extraordinary dated 08.01.1996 in respect of the petitioner's land bearing Survey No.69/2 Sengadu Village, Chengai M.G.R. District. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1.The District Collector
Kancheepuram
Kancheepuram District.

2.The Special Deputy Tahsildar
Adi Dravidar and Tribal Welfare Department
Sriperumbudur, Kancheepuram District.

+2cc to M/S.David Tyagaraj, Advocate Sr.12675
+1cc to the Government Pleader Sr.13237

W.P.No.20356 of 2002

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