

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2017
PRONOUNCED ON : 12.02.2018

CORAM :

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

WA.No.2890 of 2012
and MP.No.1 of 2012

Kandasamy Thevar (deceased)

1. K.K.Balasubramanian
2. K.Shanmugam
3. Karunambal
4. K.Govindaraju
5. K.Balakrishnan

... Appellants

V.

1. The District Collector, Coimbatore District, Coimbatore.
2. The Special Tahsildar (land acquisition) Adi Dravidar Welfare Scheme, Tiruppur.

... Respondents

PRAYER : Appeals are filed under clause 15 of Letters patent, to set aside the order dated 16.11.2012 made in WP.No.9239 of 1998.

WP.No.9239 of 1998: The writ petition filed under Article 226 of the Constitution of India for issue of writ of certiorari to call for the records of the first respondent herein in Collector's Notice Na.Ka.No.6670/97/8 dt.12.2.1998, Published in Coimbatore District Gazette, dated 12.2.1998 and to quash the declaration issued under Section 4(1) of the Tamil Nadu Harijan Welfare Scheme Acquisition Act 1978 with respect to the Petitioner's lands situated in S.F.94, measuring 3.31 acres in Karuvalur Village, Avinasi Taluk, Coimbatore District, for Harijan Welfare Schemes.

For appellants : Mr.V.Raghavachari.

For respondents: Mrs.A.Srijayanthi, Spl.GP.

JUDGMENT

P. VELMURUGAN, J.

This appeal is filed against the order dated 16.11.2012 passed by the learned single judge in WP.No.9239 of 1998.

2. The appellants herein challenged the Notification issued by the first respondent under Section 4(1) of the Tamil Nadu Acquisition of lands for Harijan Welfare Scheme Act, 1978 (herein after referred to as Act) by which the land in SF.No.94, Karuvalur village, Avinashi Taluk, Coimbatore District measuring to an extent of 3.31 acres owned by them was acquired for the purpose of providing house sites to the houseless Harijans residing in Karuvalur village.

3. The appellants contended that the respondents ought to have taken note of the fact that there are vast extent of poramboke lands available in the village which could have been utilised for the Harijan welfare scheme without acquiring the private property. The notification does not contain the purpose of acquisition and therefore the same is null and void. The relatives of the appellants have given lands for the Harijan welfare schemes earlier. The said fact was brought to the knowledge of the respondents and they failed to drop the acquisition proceedings. The appellants are depending upon the said lands and they are all engaged in agricultural operations. If the lands are acquired, their family would be put to great prejudice. The acquisition proceedings is vitiated on the ground that the report of the Special Tahsildar, Adi Dravidar and Tribal Welfare, Tiruppur which was forwarded to the District Collector was not furnished to the landowner. Since there has been violation of principles of natural justice, the entire acquisition proceeding is liable to be quashed.

4. It was contended by the respondents herein before the writ Court that the procedure contemplated under the Act has been strictly followed and after issuing notice to the appellants under Section 4(2) of the Act, enquiry was conducted on 04.02.1998, in which the 4th appellant participated and after considering the fact that the objections were not sustainable and that the appellant and family members owned 50 acres of land and residential houses, their objections were found to be not sustainable and forwarded it to the District Collector, who after considering the entire facts, rejected the objections and granted approval for acquisition, pursuant to which the impugned notification was issued. After issuing the notification, the amount of compensation was determined with opportunity to the land owners.

5. The learned single judge after considering the arguments of both sides, dismissed the writ petition filed by the appellants.

6. Aggrieved against the order passed by the learned single judge in WP.No.9239 of 1998, the appellants have preferred the present writ appeal.

7. We have heard the learned counsel for the parties.

8. It is evident from the records that as per the direction of the District Collector, Coimbatore, the Special Tahsildar conducted preliminary enquiry. The Tahsildar submitted a report to the District Collector on 22.07.1996 stating that there is no poramboke land available in the said village for acquisition for the welfare of the Harijans. The private land owners are having vast lands and therefore, the Special Tahsildar recommended to the Collector that the lands are suitable for acquisition. The father of the appellant's herein had submitted a legal notice dated 12.08.1996 stating that he entered into an equitable mortgage with the State Bank of India, Avinashi Branch and requested to drop the acquisition proceedings.

9. Thereafter, the 4th appellant/Govindaraju submitted his statement before the Special Tahsildar on 15.12.1996 wherein it was disclosed that he had knowledge about the acquisition proceedings and the Form-I notification for acquiring the land for the welfare of the Harijans. He further stated that his father owns the subject land. His father had five children and the entire family members are carrying on agricultural activities in the land and they are wholly depending upon the income from the said land. If the land is acquired the entire family members will be put to irreparable loss. Further, he stated that his father has availed a loan for Rs.1,50,000/- from the State Bank of India, Avinashi branch and received a sum of Rs.5,00,000/- from the finance company situated at Bangalore and there are some electrical lines taken through the said land. Subsequently, the Special Tahsildar in his letter dated 13.01.1997 sought certain particulars from the Branch Manager, State Bank of India, Avinashi to clarify as to whether EP.No.52 of 1992 in OS.No.89 of 1987 on the file of Sub Judge, Tiruppur was pending.

10. The Special Tahsildar on 10.12.1997 submitted his recommendation report for acquiring the land along with the statements recorded from the land owners. On a perusal of the records, it is seen that the District Collector on 14.01.1998 has authorised the Special Tahsildar to acquire the land for the welfare of the Harijans and issue notice under Section 4(2) of the Act and to submit the draft notification under Section 4(1) of the Act.

11. In the meanwhile, the VAO, Karuvalur in his statement dated 04.02.1998 submitted to the Special Tahsildar has stated that the land owner/Kandaswamy Devar has neither appeared for the enquiry nor submitted his objections. Hence, it was stated that he has no objection for acquiring the land. Whereas, the Govindaraju/4th appellant herein appeared for the enquiry and filed his objections. Both the land owner and his son by name Govindaraju have not filed any documents showing that they are not having any other lands and they obtained loan from the Bank

and private financiers. The objection filed by the 4th appellant was not accepted.

12. The Special Tahsildar sent a recommendation report along with the statement of the land owners. The District Collector accepted the recommendation and granted permission to issue notification and to publish the same in the District Gazette.

13. It is clear from the records that the authorities have meticulously followed the procedure while acquiring the land. In order to avoid the land acquisition proceedings the land owners have made a false representation that they are small farmers and except the present land they have no other land for their livelihood. The landowners further stated that they have availed bank loan and other loans from the private persons. The records revealed that the appellants were owners of about 50 acres of land besides a residential house in the same locality apart from the acquired land. Therefore their objections was rejected. The District Collector has applied his mind and the appellants have been given full opportunity to submit their representation and to participate in the acquisition proceedings. The District Collector considered the representation of the land owners and rejected the same for valid reasons.

14. It is useful to extract 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."

15. On a bare perusal of the files, it is clear that the District Collector has followed the procedure meticulously. There was no violation of the mandatory provisions as contemplated under the Act. We are therefore of the considered view, that the order of the learned single judge does not warrant any interference by this Court.

16. In the result, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

tsh/tar
To

1. The District Collector, Coimbatore District,
Coimbatore.

2. The Special Tahsildar (land acquisition)
Adi Dravidar Welfare Scheme, Tiruppur
+1cc to Government Pleader Sr.No.11177
+1cc to Mr.V.Raghavachari, Advocate Sr.No.10530

SS(CO)
sm:22.2.2018

Judgment in

WA.No.2890 of 2012