

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2018

CORAM

THE HONOURABLE Mr. JUSTICE V.BHARATHIDASAN

W.P. 32305 of 2014 and M.P. 2 of 2014

R.Govindaswamy Chettiar & Sons Trust,
rep. by the Chairman,
Board of Trustees,
Mr.G.Muruganantha Swamy,
#7/2, Gopalapuram,
Coimbatore-641 018. Petitioner

Vs.

1. The Government of Tamil Nadu
rep. by its Secretary,
Adi Dravida Welfare Department,
Fort St. George,
Chennai-600 009.
2. The District Collector,
Office of the Collector,
Dharmapuri District,
Dharmapuri.
3. The Special Tahsildar,
Adi Dravida Welfare Department,
Dharmapuri District,
Dharmapuri.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the II respondent in the notification in Na.Ka.No.97377/96, Ko.1, dated 14.02.1997 as published in the Dharmapuri District Gazette Extraordinary Edition No.11 dated 25.02.1997 in respect of the acquisition of the lands at No.64, Kerakodihalli village, Palakode Taluk, Dharmapuri District comprised in SF No.399/3 measuring an extent of 1.15.0 hectares and SF No.401/2B measuring 0.31.5 hectares under Sec.4(1) of the Tamil Nadu Acquisition of Lands for Adi-Dravida Welfare Schemes Act, 1978 and quash the same and direct the respondents to re-convey the said lands to the petitioner.

For Petitioner : Mr.M.K.Kabir,
Senior Counsel for
Mr.T.Jayaraman

For Respondents : Mr.C.Thirumaran,
Special Government Pleader
for R1 to R3

O R D E R

This Writ Petition has been filed challenging the notification issued under Sec.4(1) of the Tamil Nadu Acquisition of lands for Adi-Dravida Welfare Schemes Act, 1978 (hereinafter called as 'Scheme').

2. According to the petitioner, it is a public trust having the land in an extent of 1.15.0 hectares in Survey No.399/3 and another extent of 0.31.5 hectares in Survey No.401/2B. The above said lands were sought to be acquired for providing house sites to Adi-Dravidar people at Kerakodihalli Village, Palakode Taluk, Dharmapuri District. Even though the petitioner trust is a registered one, no notice under Sec.4(2) of the Act was issued to them and no opportunity was given to the petitioner to raise their objections. Though the notification has been issued in the year 1997, the lands acquired by the authorities were kept vacant, and the purpose for which the lands were acquired were not fulfilled. In the said circumstances, challenging the above said order, the present Writ Petition has been filed.

3. The 3rd respondent Special Tahsildar has filed a counter affidavit stating that, the lands of the petitioner were acquired for providing house sites for Adi-dravidar and landless poor people living in Kerakodihalli village, and the land in dispute belong to the petitioner trust, and the notification under Sec.4(1) of the Act was issued on 25.02.1997. The award enquiry notice has been served on to the landowners, and they have also acknowledged the notice, and the petitioner also attended the award enquiry proceedings. After passing the award, they refused to receive the compensation amount, hence, the award amount has been deposited by means of demand draft in the Sub-Court, Dharmapuri. There are more than 105 Adi-dravidar people are living in Kerakodihalli village, and they have applied to the authority requesting to allot house sites for them. On considering their request, the total extent of 2.08.5 hectares of land was acquired, and it was subdivided into plots to allot free house sites for adi-dravidar people.

4. Mr.M.K.Kabir, learned senior counsel appearing for the petitioner submitted that, even though the petitioner trust is the owner of the property, notice was not issued to the petitioner under Sec.4(2) of the Act and no opportunity was given to them to raise their objections. The counter affidavit filed by the 3rd respondent is silent regarding the same, and did not answer the contentions raised by the petitioner in their

counter affidavit.

5. It is further submitted that challenging the very same notification, another landowner filed a Writ Petition in W.P.No. 11168 of 1997 raising the very same plea that notice under Sec.4 (2) of the Act was not served on to them, and this Court by an order dated 16.04.2004 has set aside the notification and allowed the Writ Petition.

6. Per contra, Mr.C.Thirumaran, learned Special Government Pleader appearing for the respondent has produced the relevant records and submitted that the petitioner has refused to receive the notice, when the notice was served on to the petitioner Trust. He has further submitted that the petitioner has also appeared for the award enquiry, and thereafter, the petitioner also made representation to the authorities to re-convey the lands belongs to the petitioner. Having failed in all their attempts, they have filed the present Writ Petition after lapse of 21 years. Hence, the Writ Petition is liable to be dismissed.

7. I have considered the rival submissions and perused the relevant records carefully.

8. The specific contention of the petitioner is that even though it is admitted that the petitioner is the registered owner of the lands, which are sought to be acquired, notice under Sec.4(2) of the Act was not served on to the petitioner, and no opportunity was given to the petitioner, and no enquiry was also conducted as contemplated under the Act. Mr.C.Thirumaran, learned Special Government Pleader has submitted that when the notice was attempted to serve on the petitioner, they have refused to receive the same. Hence, the notice was served by affixure.

9. In a similar circumstances, another Writ Petition has been filed by a neighbouring landowner challenging the very same notification before this Court in W.P. No.11168 of 1997, and this Court has considered that, even assuming the petitioner has refused to receive the notice, Rule 3(i) of the Rules framed under the Act contemplates that a show cause notice should be served through a registered post with acknowledgement due to the landowners of the property, and allowed the Writ Petition. The relevant portion of the order passed by this court is reproduced hereunder:-

"3. The records were called for and there is nothing in records to show that notice was attempted to be served on the Writ Petitioner and that he had refused to receive it. The first document enclosed in the file is the recommendation of the Special Tahsildar under Section 4 (3)(b) of the Act. When a specific allegation is made that notice was not served on the petitioner, it is for the respondents to prove that notice was served in accordance with the

rules governing such service of notice. The records do not show that the notice was sought to be served and that the petitioner refused to receive it or that the notice was sent by registered post with acknowledgement due as per Rule 3(i) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979. We must accept the grievance of the petitioner that he was not served with the notice before his lands were acquired.

4. It has been repeatedly held by this Court that the right to raise objections after the receipt of notice under Section 4(2) is the only opportunity given to the land owner under the Tamil Nadu Act 31 of 1978 and when this opportunity is denied to him or when it is made illusory by non-service of the notice, the acquisition proceedings suffer from violation of principles of natural justice."

In the instant case also, there is nothing on record to show that the notice was attempted to serve on the petitioner, and a show cause notice has not been served on to the petitioner through registered post as contemplated under Rule 3(i) of the Rules. In the similar circumstances, this Court in a similar Writ Petition has set aside the very same notification.

10. So far as the contentions raised by the learned counsel appearing for the respondent regarding the delay in filing the Writ Petition is concerned, earlier, a Writ Petition challenging the very same notification has been allowed, and considerable part of the land acquired under the notification has been released from acquisition, and the petitioner also standing on the same footing, this Writ Petition cannot be rejected on the ground of laches. Considering the above circumstances, I am inclined to set aside the impugned notification.

11. In the result, the present Writ Petition is allowed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

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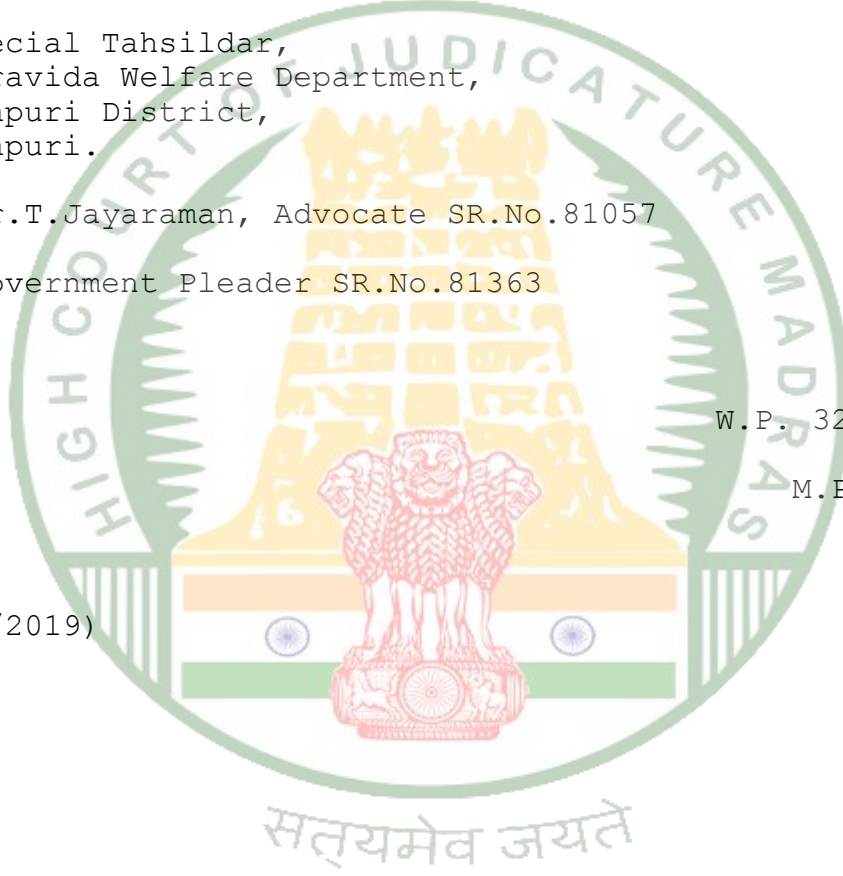
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+1cc to Mr.T.Jayaraman, Advocate SR.No.81057

+1cc to Government Pleader SR.No.81363

W.P. 32305 of 2014
and
M.P. 2 of 2014

NMI (CO)
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