

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 29.06.2018
ORDER PRONOUNCED ON : 11.07.2018

CORAM:

THE HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

W.P.No.2880 of 2009
and M.P.Nos.1 & 2 of 2009

Padmanaban

... Petitioner

Vs.

1. The District Collector,
Villupuram District, Villupuram.

2. The Special Thasildhar,
Adidravida Welfare, Tindivanam.

3. The Block Development Officer,
Vanur Panchayat Union,
Vanur, Villupuram District.

... Respondents

PRAYER: The Writ Petition has been filed for the issuance of Writ of Certiorari, to call for the records of the 1st respondent of his notification in the Villupuram District Gazattee publication in M1/751/98, dated 19.05.1998 in respect of the property of the petitioner in old S.No.33/3B and new S.No.86/9B - 0.10.0 hectares at Komadipattu Village, Vanur Taluk, Villupuram District.

For Petitioner : M/s.N.Suresh

For Respondents : Mr.M.Sricharan Rangarajan
Additional Government Pleader

O R D E R

On 29.06.2018, the following order was passed:-

"The instant Writ Petition has been filed for the issuance of Writ of Certiorari, to call for the records pertaining to Notification dated 19.05.1998 vide Gazattee publication in M1/751/98, passed by the first respondent regarding acquisition of land in respect of the property of the petitioner in old S.No.33/3B and new S.No.86/9B - 0.10.0 hectares at

Komadipattu Village, Vanur Taluk, Villupuram District, and quash the same.

2. The Government of Tamil Nadu, on requisition of the Irular community of Komadipattu Village, Vanur Taluk, Villupuram, instructed the Adi-Dravidar Welfare Special Tahsildar, Tindivanam, and called for a proposal to provide burial ground to the Irular community of the Komadipattu Village. Inspections were conducted for finding a suitable place for the purpose of burial ground. An extent of 0.10.0 hectares of dry land out of 1.28.0 hectares in R.S.No.86/9 in Komadipattu Village was identified and selected. The procedure for acquiring land as laid down in Rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979, (hereafter referred to as "the Rules") which has been made in exercise of powers conferred by Section 23 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, (hereafter referred to as "the Act") were followed. Notice in Form-I under Rule 3(1) read with Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, was published. Objections were called for and the land was acquired.

The acquisition of land has been challenged by the petitioner in this Writ Petition.

3. Mr.N.Suresh, learned counsel appearing for the petitioner submits that the petitioner purchased the land by a sale deed dated 12.04.2007 from one Pandarinathan. He further submits that there was no service of the notification dated 19.05.1998 issued under Rule 3 of the Rules, read with Section 4 of the Act, to the owner. Since there was no service of notice to the owner, the entire acquisition is bad. He further submits that in any event, one Murugan had gifted a portion of land on 13.02.1998 for the purpose of burial ground in the Village and since the purpose for which the land is sought to be acquired has been achieved, no useful purpose would be served in acquiring the land afresh.

4. On the other hand, the State through Mr.M.Sricharan Rangarajan, learned Special Government Pleader, submits that on the date of the notification dated 19.05.1998 was issued under the Rules and the Act, the petitioner Padmanaban was not the owner. He further submits that as per the village records, the land was owned by one Loganatha Naicker. He submits that necessary notice in Form-I under Rule 3(1) read with Section 4(2) of

the Act, was served on the said Loganathan Naicker, the owner, inviting objections for the acquisition. No objections were received from any corner. He submits that an enquiry contemplated under Section 4(2) of the Act was conducted on 24.04.1998 in the office of Village Administrative Officer and at the time of enquiry also no objection was received. He further submits that notice in Form-III Rule 5(1) of the Rules, was issued fixing the date of award of enquiry on 21.10.1998, on which date, Loganatha Naickar appeared before the enquiry officer and he had no objection to acquire the land for the purpose of burial ground to the Irular community. He further submits that an award was passed on 09.11.1998, in Award No.5/98-99 and the compensation amount has been paid to Loganatha Naicker and necessary changes have been made in the village records. He further submits that the land given by Murugan, for the purpose of burial ground was not suitable, because, it was near a Channel and during rainy season, dead bodies get washed away. Therefore, he submits that the present land is necessary for the purpose of providing a burial ground. He further submits that in any event, once notice in Form-III under Rule 5 of the Rules has been issued, the land vests in the State under Section 5 of the Act, without any encumbrances.

5. No other submissions were advanced on both sides".

2. I have heard the learned counsel appearing for both sides on 29.06.2018 and I have perused the records.

3. The land is being acquired under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (hereafter referred to as "the Act"). The procedure has been laid down under the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979, (hereafter referred to as "the Rules"). The relevant section of the Act and the Rules which are necessary for the case are as reproduced:-

Section 3:-

(g) "Harijan Welfare Scheme " means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans;

Section 4: (1) Where the District Collector is

satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.

(3) (a) The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown ;

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorised, shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report the District Collector may pass such orders as he may deem fit.

Section 5: When a notice under sub-section (1) of section 4 is published in the District Gazette, the land to which the said notice relates shall, on and from the date on which the notice is so published vest absolutely in the Government free from all encumbrances.

Section 6: Every person having any interest in any land acquired under this Act shall be entitled to receive and be paid an amount as hereinafter provided.

Section 20: Save as otherwise provided in this Act, the provisions of the Land Acquisition Act, 1894 (Central Act I of 1894) shall cease to apply to any land which is required for the purpose specified in sub-section (1) of section 4 and any such land shall be acquired by the Government only in accordance with the provisions of this Act.

Rule 3: Procedure for Acquiring Land " (i) The District Collector or the Officer authorized by him in this behalf shall serve a show cause notice in Form I under sub-section (2) of section 4 individually on the owner or on all persons interested in the land to be acquired. If the owner or any other person interested in the land resides

elsewhere than where the land is situated, the show-cause notice shall be sent by registered post (Acknowledgement Due) to the last Known address of the owner or any other person interested.

(ii) The District Collector, if after passing such orders as required by sub-sections (2) and (3) of section 4 is satisfied that it is necessary to acquire the land, notice in Form II to that effect shall be published in the District Gazette.

Rule 4: Determination of Market Value of the land " The market Value of the land under sub-section (1) of section 7 shall be determined in one or more of the following methods:-

(i) The price for similar land or portion of the same land in recent years after due allowance being made for lapse of time, advantage of situation or any other possible differences between the land sold and that proposed to be acquired;

(ii) The price for similar lands in the Vicinity in recent years;

(iii) The annual income from the land which may be capitalized for a certain number of years of purchase the number of years being determined on the nature of the land, the State of the money market and other relevant circumstances;

(iv) The value of the land shall be subject to full assessment including the value of trees, buildings, or crops standing thereon in the normal condition in which it would have come into the market at the time of publication of the notice under sub-section (1) of section 4.

Rule 5: Procedure for determining the amount " (i) Immediately after the publication of the notice under sub-section (1) of section.

4. The land is being acquired for the purposes of providing a burial ground for the Irular community belonging to Kommadupattu Village, Vannur Taluk, Villupuram District. The process for acquisition was initiated on the basis of a requisition from the Irular community belonging to Kommadupattu Village, Vannur Taluk, Villupuram District. On receiving the requisition the Collector, Villupuram instructed the Adhi Dravidar Special Tahsildar to secure a proposal for acquiring land for the said purpose. Inspection was conducted and land which is the subject matter of the present proceeding was identified. Necessary notice in form I under Rule 3 (1) under Section 4(2) of the Act was published in the Village and as well as the notice was served to the land owner Thiru Loganathan S/o.Thulasinga Naickar of Uppuvelur Village to inviting objections if any to the notification. No objections were

received. Necessary notices in Form III Rule 5(1) of the Rules fixing the date of award enquiry on 21.10.1998 was served on the land owner and the same notices were put up in public places of the Village and was also publilshed by beat of Tom-Tom in the Village regarding the acquisition of the land. After the award enquiry was completed an award was passed on 09.11.1998. Compensation was paid to the land owner. The land records have been changed. The land has vested in the State under Section 5 of the Act.

5. The petitioner has not filed any document to show that on the relavant date this is on the date when the notification under Section 4 was published, the vendor of the petitioner was as the owner of the land. Admittedly, the petitioner had purchased the property only in the year 2007 which is long after the land has vested in the State under Section 5 of the Act. The State has also filed a document styled a 'Nila Oppanda Pathiram' in which it is recorded that the owner Loganathan Naickar had no objection for the land being acquired for the purpose of burial ground. Further, the petitioner claims to have purchased the property from one Pandarinathan in the year 2008. Pandarinathan has not come forward to challenge the Notification. The petitioner therefore has no locus to challenge the acquisition nine years after the land vested in the State.

6. The contention that the one Murugan has gifted some land for the purposes of burial ground and that therefore the purpose for which the land is sought to be acquired has been achieved and the acquisition proceedings should be dropped cannot be accepted. The gift deed is dated 13.02.2008 much after the land has vested in the State Government. The land is being used as a burial ground. There is no provision under the Act by which the land which has been acquired and which vests in the Government can be returned.

7. The Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition are closed.

Sd/-
Assistant Registrar(CS VI)

//True copy//

Sub Assistant Registrar

asi/gsp

To

1. The District Collector,
Villupuram District, Villupuram.
2. The Special Thasildhar,
Adidravida Welfare, Tindivanam.
3. The Block Development Officer,
Vanur Panchayat Union,
Vanur, Villupuram District.

+1cc to Mr.N.Suresh, Advocate SR.No.44505

+1cc to Government Pleader SR.No.44941

W.P.No.2880 of 2009
and M.P.Nos.1& 2 of 2009

RJ(CO)
GN(20/07/2018)