

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2018

CORAM: THE HONOURABLE MR. JUSTICE N. SESHASAYEE

W.P.NOS.5124 OF 2016 & 15647 OF 2012

AND

W.M.P.NO.4483 OF 2016 IN W.P.NO.5124 OF 2016

AND

W.P.M.P.NOS.2 OF 2012 & 1 OF 2013 IN W.P.NO.15647 OF 2012

1. N. Raju Padayachi

2. R. Maniammal

...Petitioners in both the W.Ps

Versus

1. The District Collector,
Perambalur District,
Perambalur.

2. The Special Tahsildhar,
(Land Acquisition)
Adi Dravidar Welfare,
Perambalur District.

3. Ramasamy
impleaded as per order dated 10.07.2014
by SVNJ in MP.2 of 2013 in WP.15647 of 2012 (only)

...Respondents in both the W.Ps

Prayer in W.P.No.5124 of 2016:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order made in Na.Ka.A1/248/2013 dated Nil.02.2016 signed on 04.02.2016 by the second respondent and quash the same and consequently forbear the respondents from acquiring the lands comprised in S.Nos.39/1, 39/3, 40/2, 40/3, 48/1A, 48/1C & 48/E and extent of 0.04.5, 0.07.0, 0.03.0, 0.03.0, 0.0.5, 0.04.0 and 0.01.5 Ares respectively in all together an extent of 0.24.5 Ares.

Prayer in W.P.No.15647 of 2012:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus

calling for the records relating to the notification made in Na.Ka.A-544/2004 dated 08.06.2012 issued by the second respondent under Section 4(2) of the Tamil Nadu Land Acquisition for Harijan Welfare Scheme Act by the second respondent and quash the same and consequently forebear the respondents from acquiring the agricultural lands comprised in S.Nos.39/1, 48/1A, 39/3, 48/1E, 40/2, 40/3, & 48/1C situated at Nannai East Village, Kunnam Tk, Perambalur District owned by the petitioners in terms of Notification made in Na.Ka.A-544/2004 dated 08.06.2012 issued by the second respondent.

For Petitioners

in both W.Ps : Mr. G. Ethirajulu

For Respondents

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

C O M M O N O R D E R

The only point to be ascertained in this case is whether any enquiry under Section 4(2) of the Tamilnadu Acquisition of lands for the Harijan Welfare Schemes Act, 1978, granting the petitioners full opportunity to raise their objections pursuant to the order in W.P.No.15647 of 2012.

2. The broad facts necessary for the disposal of these Writ Petitions may be stated briefly: Petitioners, spouses among themselves, owned separate properties in Survey Nos. 39/1, 48/1A, 39/3, 48/1E, 40/2, 40/3, 48/1C situated at Nannai East Village, Kunnam Tk, Perambalur District. These properties were sought to be acquired under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978. From now on, the following sequence of facts may be stated:

- Initially on 29.09.2004, the Special Tahsildhar had issued a notice under Rule 3(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules in accordance with Section 4(2) of the said Act, inviting objections from the petitioners. On 05.10.2004 for an enquiry Schedule to take place on 19.10.2004. Expressing their grievance that they were not granted adequate time to participate in the enquiry, the petitioners had filed separate Writ Petitions in W.P.Nos.3104 to 3105 of 2005 before this Court. On 18.11.2009, these Writ Petitions were allowed by this Court. The learned Single Judge found that the petitioners were denied a proper opportunity of being heard in the matter and has set aside the impugned proceedings from the stage in which the

irregularity has crept in, in the conduct of the enquiry. Inasmuch as the Court has found that the enquiry in terms of Section 4(2) has not been properly complied with, anything that has been done subsequent thereto, has been set aside. In the meantime, the Collector has issued a Notification under Section 4(1) of the Act. The consequence of the Order of this Court is that the notification issued under Section 4(1) which stood ceased to have any effect vis-a-vis the lands of the petitioners.

- Thereafter, on 08.06.2012, yet another notice under Rule 3(1) r/w Section 4(2) was issued and the enquiry was scheduled for 29-06-2012. The learned counsel for the petitioners submitted that even though the enquiry was to take place on 29.06.2012, the Notice was not served in time. The petitioners therefore challenged this in W.P.No.15647 of 2012 and the learned Single Judge of this Court has found that the same is appropriate and directed the Authorities to conduct further enquiry as contemplated. This was subsequently challenged by the Writ Petitioners in W.A.No.26 of 2015. The Division Bench, opted not to stay the acquisition proceedings, instead directed the authorities to proceed with the enquiry in terms of the directions given by the learned Single Judge. Later, this W.A. 26 of 2015 was allowed it on 01.11.2017, setting aside the order of the learned Single Judge in W.P.No.15647 of 2012 dated 10.11.2014 on the ground that the order is silent in assigning reasons for dismissing the writ petition. This is how W.P.No.15647 of 2012 has come forward before this Court.
- In the meantime, Special Tahsildhar/second respondent has passed another proceedings dated 04.02.2016 informing the petitioners that 24.05 Ares of land has been acquired and taken by the Government and this is now in challenge in W.P.No.5124 of 2016. In other words, the cause of action for filing the W.P.No.5124 of 2016 is founded on a consequential act pursuant to the notice issued under Section 4(2) on 08.06.2012. The respondents have not filed the counter affidavit in W.P.No.5124 of 2016.

3. Mr.Akhil Akbar Ali, the learned Government Advocate appearing for the respondents submitted that inasmuch as the proceeding of the Tahsildhar dated 04.02.2016 is challenged in W.P.No.5124 of 2016 is essential, consequential proceeding informing the petitioners of what has taken place. That per se fit any cause of action. Turning to the main aspects, the learned Government Advocate brought one fact instantly to the

knowledge of this Court, in that the notice issued under Section 4(2) was dated 08.06.2012 wherein fifteen days' time was granted for the petitioners to raise their objections. This is the subject matter of challenge in W.P.No.15647 of 2012. But, the petitioners rushed to the Court with W.P.15647/2012 on 13.06.2012, on the fifth day since the date of the said notice. This was however taken on file, possibly after a return by the Registry, on 19.06.2012, but the fact remains that there is hardly any bonafide in petitioners' conduct and have attempted to shift the blame on the respondents, and showed their intention to obstruct the acquisition proceedings even at the preliminary stage.

4. The two major issues raised by the learned counsel for the petitioners are :

a) The original intention was to acquire the land was in 2002 and that attempt ended in 2009 but thereafter, a fresh notification was issued in 2012, which is eight years from the date of original notification and this implies that the intended public purpose can no longer be relevant.

b) That the second notice dated 08.06.2012 was served on them after the date of time stipulated for filing objections.

5. In view of the submissions made by the learned Government Advocate, the learned counsel for the petitioners fairly withdrew the second of his contention. Here this court considers it necessary to record that the conduct of the petitioners is hardly appreciable. Here is a situation where the petitioners have rushed to the Court making an incorrect allegation that they were not granted time to participate in an enquiry contemplated under Sec.4(2) of the Act, unmindful of the fact that they are abusing the judicial process without waiting for the statutory process to complete. The disappointment that power of eminent domain brings on the owners of the land when they face the prospect of losing their property involuntarily is understandable. However, to rush to Courts, camouflaging their resistance to acquisition, with accusation of lapses in procedure which the petitioners themselves knew or ought to know are not correct, does not behove well of responsible citizens. It is time they and those who are similarly placed realised that judicial system is not a vehicle to carry forward their ambitious designs, that they in the process become obstructionist of the justice delivery system. The stakeholders of the justice delivery system are required to introspect on how they use the system with a sense of belongingness to it.

6. Turning to the first of the point raised by the counsel for the petitioners, it is for the land acquiring authority,

District Collector in the instant case, who has to decide on that, and this Court cannot pre-empt a decision on it. Suffice to state that if the petitioners have not participated in any enquiry under Section 4(2), the authorities are directed to issue fresh notice for them to participate in an enquiry within four weeks from the date of receipt of this notice. If, an opportunity has already been accorded then there is no need for granting fresh opportunity and whatever that has already been done pursuant to the same shall stand.

7. In the view of the above, nothing survives in W.P.15647 of 2012 and the same is dismissed, while W.P.No.5124 of 2016 is disposed of in the manner indicated above. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mrr

To

1. The District Collector,
Perambalur District,
Perambalur.
2. The Special Tahsildhar,
(Land Acquisition)
Adi Dravidar Welfare,
Perambalur District.

+1cc to Mr.G.Ethirajulu, Advocate, S.R.No.11690

W.P.Nos.5124 of 2016 & 15647 of 2012

SKS(CO)
CS/22/03/18

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