

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.No.2423 of 2004
and
W.P.M.P.No.2745 of 2004

Sasikala
By Power of Attorney
N. Kalyani.

.... Petitioner

Vs

1. State of Tamil Nadu
Represented by District Collector
Villupuram.

2. Special Tahsildar
Harijan Welfare
Ulundurpet.

.... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the proceedings in Na.Ka.M.5/18248/2001 dated 23.12.2003, issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (31 of 1978), quash the same and forbear the respondents from taking possession of the petitioner's property in survey No.358/1, 1 acre out of acre 1.45 in Senthamangalam village, Ulundurpet Taluk.

For Petitioner : Mr.Sundarnarayan

For R1 & R2 : Mr.Akhil Akbar Ali,
Additional Government Pleader

O R D E R

The petitioner in this case has come forward with this petition for quashing the notification issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (31 of 1978).

2.1. The case of the petitioner is that she owned piece of property measuring 1.45 acres in Survey No. 358/1 in Senthamangalam Village, Ulundurpet Taluk and this she obtained the said property based on

the strength of a settlement deed executed by her paternal grandfather. She has been working in Behrain and the agricultural activities are being carried on by her mother. The petitioner has invested substantial sum for sinking a bore-well having submersible pump laid under ground to put the pipe line for running 1000 feet and also has electric service connection No. 52.

2.2. To the north of petitioner's property is 6.75 cents of land belonging to the petitioner's brother where he has a rice mill, oil mill and saw mill which is an agro based unit. The petitioner's mother has a block of another 4 acres of agricultural land to the south of the petitioner's property.

3.1. While so, notice under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, was issued, eliciting petitioner's objection for acquisition of her land for a proposed grant of house sites to certain Harijan families of the locality. This notice was served on the petitioner during first week of January, 2003, and on 22.01.2003, the petitioner had submitted her objection. In her objection, the petitioner had inter alia highlighted that her property is an agricultural property and that she has developed the property at considerable expenses.

3.2. However, rejecting this objection and without adequate application of mind as is required under Section 4(3) of the Act, the Collector has issued a notification under Section 4(1) of the Act and the same was published on 08.01.2004.

4. This notification issued under Sec.4(1) of the Act is now under challenge, primarily on the ground that the Collector has accepted the report of the Tahsildar in its entirety and has not cared to apply his mind independently especially in the context of the objection raised by the petitioner in her response to the notice issued under Section 4(2) of the Act.

5. Mr.Sundarnarayanan, learned counsel appears for the petitioner and Mr.Akhil Akbar Ali, learned Government Advocate appears for the Respondents. Mr.P.Elavarasan, the Special Tahsildar (ADW), Ulundurpet is present and assisted the Court and he informed this Court that as per records, house sites have been allotted to the beneficiaries but the beneficiaries have not occupied the property.

6. The Counter has been filed by the second respondent, wherein following particulars are provided:

- Enquiry under Section 4(2) of the said Act was scheduled on 22.01.2003, that the petitioners and the other land owners have filed their objections, that they were overruled by the District Collector consequent to which he had issued a notification under Section 4(1) of the TN Act 31/78 dated 23.12.2003 in Na.Ka.No.M5/18248/2001 and the same was published in the District Gazette dated 27.12.2003.
- The Collector has identified 143 beneficiaries and the properties are required for granting house sites to them.

7.1. The learned Counsel for the petitioner primarily argued that the properties of the petitioner in S.No.358/1 is an agricultural land and this is borne out by the Adangal extract (which is produced by the petitioner in the additional typed set of papers). The Special Tahsildar by overruling the objections of the petitioner in his enquiry report filed under Section 4(2), rejected them on the ground that the agricultural activity has been commenced only about a year prior to the date of his report, and this the Collector has borrowed without causing any independent investigation about the truth of such statement.

7.2. The learned counsel also submitted that the Government has published G.O.Ms.No.257/Revenue department, dated 15.02.1983 and G.O.Ms.No.2078/Revenue Department Dated 27.12.1984, wherein the Collectors were instructed not to acquire the lands of small farmers for any public purpose. Non-application of mind by the Collector is further fortified by the facts that he has not spelt out in his proceedings under Section 4(3)(2) of the said Act, as to why the aforesaid two Government Orders would not be applicable to the case of the petitioner before this Court.

8. Defending the land acquisition authority valiantly Mr.Akhil Akbar Ali, learned Government Advocate would argue that the extent of satisfaction of the Collector is for him to decide and there are no statutory parameters prescribed as to how and to what extent the Collector should apply his mind. Admittedly, there is a proceeding dated 23.12.2003, under which, the Collector has accepted the report of the Special Tahsildar and this is in conformity with the statutory requirements.

9. The pointed issue which the petitioner holds out against Collector's contention is that he has not applied his mind, that he has overlooked the assertion of the petitioner in her objections that her property is an agricultural property and that agricultural activity was being carried out and that has also omitted to consider G.O.Ms.No.257/Revenue department, dated 15.02.1983 and G.O.Ms.No.2078/Revenue department, dated 27.12.1984 which protects the agricultural lands of the small farmers from acquisition. It is obvious even on a plain reading of the proceedings of the Collector dated 23.12.2003 that he has not considered the said two Government Orders.

10. In this context, it is relevant to mention even according to the Tahsildar, agricultural activity was being carried out in the property even on that date on which he had filed the report, but would proceed to qualify that such agricultural activity was being carried out only for a year about or before he laid his report. He does not disclose how he came to the conclusion that agricultural activities were being carried out in the petitioner's property only for about a year at the relevant point of time. Even going by Tahsildar's report if agricultural activities were being carried out, then at that time when the Collector considered the same. Vide his proceedings dated 23.12.2003, it was imperative his

part to probe the matter more and to satisfy himself that the petitioner did not qualify for benefits under G.O.Ms.No.257/Revenue department, dated 15.02.1983 and G.O.Ms.No.2078/Revenue department, Dated 27.12.1984, before proceeding to issue notification under Sec.4(1) of the Act. This, admittedly was not done. Expatiating it further, it is not so whether the Tahsildar's ground for rejecting the petitioner's objection is true or not, but it is all about whether the Collector has independently applied his mind to the facts made available to him by the enquiry report of the Tahsildar. It is here this Court finds that the Collector's appreciation of the enquiry report of the Tahsildar falls short of the requirements.

11. In the result, this writ petition is allowed and the notification of the 1st respondent issued under Sec 4(1) of the Act, Vide his proceedings in Na.Ka.M.5/18248/2001 dated 23.12.2003, is hereby quashed and the matter is remanded back to 1st respondent / the District Collector for him to apply his mind to the report available, and if necessary to collect the facts on the available ground, and then to consider if the two Government Orders referred to above apply to the lands of the petitioner and to take appropriate decision consistent with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

ASST. REGISTRAR

/TRUE COPY/

SUB ASST. REGISTRAR

ssn/ggi

To

1. The District Collector,
Villupuram.

2. The Special Tahsildar
Harijan Welfare,
Ulundurpet.

+1 cc to the Government Pleader, High Court, Chennai SR.NO. 22352

+1 cc to Mr.Sundar Narayan, Advocate SR.NO. 21019

W.P.No.2423 of 2004

and

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SS (CO)

JK 18/04/18