

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2018

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P. No.19394 of 2003
and
W.P.M.P. No. 24219 of 2003

J.David ... Petitioner

Vs.

1.The Collector,
Thiruvallur District.

2.The Special Thasildar (ADW),
Ponneri Division,
Ambattur.

... Respondents

Prayer:Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari to call for the proceedings of the First Respondent herein viz., the Collector, Thiruvallur District, in Lr.No.Rc.J1/20030/2002 dated 24.07.2002 published in the Tamilnadu Gazette in so far as the lands of the Petitioner in Survey No.14/4 and 15/5 in Ariyalur Village, Ambattur Taluk, Thiruvallur District is Concerned as published in Thiruvallur District Gazette on 03.08.2002 and quash the same.

For Petitioner : Mr.R.Manickavel

For Respondents : Mr. K.S.Suresh

Government Advocate

सत्यमेव जयते
O R D E R

Heard Mr. R. Manickavel, learned Counsel appearing for the Petitioner and Mr. K.S. Suresh, learned Government Advocate appearing for the Respondents.

2. The Petitioner, who is owning the land measuring 3.33 acres in Survey Nos. 14/4 and 15/5 in Ariyalur Village, Ambattur Taluk, Thiruvallur District, has challenged notification bearing Lr. No. Rc. J1/20030/2002 dated 24.07.2002 published in Thiruvallur District Gazette on 03.08.2002, inn so far as it relates to the acquisition of his aforesaid lands under Section 4(1) of the Tamilnadu Acquisition of Land for Adi Dravidar Welfare Schemes Act, 1978 (hereinafter referred to as 'Act' for

short). It is claimed by the Petitioner that he did not have any knowledge relating to the said acquisition till his neighbour, viz., Victor Devasagayam, informed him of the same two weeks prior to the filing of the Writ Petition and he had thereafter immediately approached this Court on 09.07.2003, in which an interim order of stay of dispossession has been passed on 14.07.2003 and made absolute on 10.09.2003. The main focus of attack of the learned Counsel for the Petitioner against the impugned acquisition made under Section 4 of the Act is that prior notice under Section 4(2) had not been issued to the Petitioner which vitiates the proceedings. In this regard, reference is made by the learned Counsel to Rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979 (hereinafter referred to as 'Rules' for short), which provides the manner in which the notice under Section 4(2) of the Act has to be served, and according to him, the same has not been complied in the present case.

3. Before proceeding further it would be necessary to extract Section 4 of the Act, which reads as follows:-

"4. Power to acquire land:- (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 authorized 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 authorized 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 authorized by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorized 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.

Rule 3 of the Rules is extracted below:-

"3. Procedure for acquiring land:- (i) The District

Collector or the Officer authorised 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 (Acknowledgment 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."

4. On a plain reading of Rule 3(i) and (ii) of the Rules, it would clearly show that the show cause notice in Form I under Section 4(2) would have to be issued individually on the owner or on all persons interested in the land to be acquired and if they were residing elsewhere than the land situated, the show cause notice should be sent by registered post with acknowledgment due to the last known address of the owner or any other person interested.

5. In the counter affidavit dated October 2003 filed by the Special Tahsildar (ADW), Ponneri Division, Ambathur at para 2, it is accepted by the Respondents that the notice under Rule 3 (1) of the Rules had been issued to all the land owners concerned on 09.02.2002 by Registered Post with the acknowledgment due but the address of the Petitioner could not be ascertained and hence, another notice under Form I was issued on 21.03.2002 and affixed on his land by planting a stick and the enquiry was proposed to be conducted on 01.04.2002.

6. In this context, it is urged by the learned Counsel for the Petitioner that as stated in para 3 of the affidavit filed in support of the Writ Petition that the Petitioner was running a school in a small extent of the adjoining lands where his name was entered in the revenue records and patta issued to him and the Respondents could not feign ignorance of the same.

7. It is required to be pointed out here that when Rule 3(i) of the Rules specifically requires a notice under Section 4(2) of the Act has to be issued to the owner to his last known address, if that owner is not residing in the land, it is incumbent upon the concerned authorities to take efforts to ascertain the correct address of the owner to serve such notice by registered post, and the non compliance of that requirement would vitiate the acquisition itself. It cannot be gainsaid that the aforesaid mandatory provision in the statute, which prescribes the manner of serve of such notice, attracts the celebrated rule in Taylor

vs. Taylor that has stood the test of time and has been recognized by the Hon'ble Apex Court in various decisions including in Ramchand Keshav Adke vs. Govind Joti Chavare (AIR 1975 SC 915), reiterating that when a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performances are necessarily forbidden. Viewed from that perspective, the contentions of the learned Government Advocate appearing on behalf of the Respondents that the affixture of notice by planting a stick by the Respondents in the land of the Petitioner would amount to substantial compliance of the requirement of Rule 3(1) of the Rules read with Section 4(2) of the Act, cannot be countenanced.

8. The learned Counsel for the Petitioner submits that the same view has also been taken by this Court in the order dated 27.07.2009 in W.P. No. 2557 of 2003 filed by the said Victor Devasagayam in respect of the neighbouring lands.

9. In order to verify whether the Petitioner has been really prejudiced by the failure of the Respondents to issue the requisite notice, this Court required the Petitioner to file a affidavit setting out the objections, if any, to the acquisition. In pursuance to the same, an affidavit dated 02.08.2018 has been filed in which it has been stated in para 4 and 5 as follows:-

"4. The petitioner reliably learn earlier, similar attempt was made and a notice under Section 4(2) of the Act was sought to be served on the petitioner and the adjacent owners as if their land was sought to be acquired for Harijan Welfare Scheme. Even in the earlier occasion no notice was served on me as I was employed in abroad. Some of the owners gave their objections that the lands sought to be acquired were under active cultivation. The alleged requirement for Adhidravidar housing requirement was not genuine and only to satisfy some interested persons. In view of water stagnation the site was not suitable for any construction on the above objection the acquisition proposal was dropped by an order dated 30.03.2001. I do not have the copy of the order as in both the occasions I am not served. The second respondent informed the land owners that the acquisition proceedings were dropped after inspection of the lands taking into account of the fact that it would not be possible to make pucca construction on this said lands. I came to know of the above facts from the adjacent land owners only when the respondent once again initiated acquisition proceedings for the second time.

5. Even in the second attempt as stated above no notice under Section 4(2) of the Act was served on me in any manner known to law. I was employed in abroad my wife Felaxine Nirmala is running a school in the adjacent land. And the school is running for more than 20 years no such notice was ever served on us. At the time of my purchase and after the purchase the land is only used for agricultural purposes. It has been already decided by the second respondent that the lands were not suitable for construction purposes. And therefore, the acquisition proceeding initiated for a second time was only to oblige some politically influential persons in the area and made without considering the very serious loss and hardship suffered by the land owners."

It is seen from the affidavit of the Petitioner that the objections sought to be raised by him require to be considered by the concerned authorities before deciding to acquire the land in question and failure to issue such notice has definitely caused prejudice to the Petitioner.

10. In view of the aforesaid reasons, the impugned order of acquisition of the lands of the Petitioner made by the Respondents under Section 4(1) of the Act, cannot be sustained and the same is quashed. However, it is open to the Respondents to initiate fresh proceedings, if they desire so and in the event of satisfying and establishing that the lands of the Petitioner are still required for the public purpose for which they were sought to be acquired earlier.

11. The Writ Petition is allowed on the aforesaid terms. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1. The Collector,
Thiruvallur District.

2. The Special Thasildar (ADW),
Ponneri Division,
Ambattur.

+1cc to the Government Pleader, S.R.No.53240

W.P. No. 19394 of 2003

KK(CO)

GSP(26/09/2018)