



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.07.2018

CORAM:

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJW.P. (MD) No.3638 of 2017 and
W.M.P. (MD) Nos.2926 and 2927 of 2017

P.Pathmanathan

: Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Secretary,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.
2. The Director,
Adi Dravidar and Tribal Welfare Department,
Chepauk, Chennai-600 005.
3. The District Collector,
Madurai District,
Madurai-625 020.
4. The Special Thasildar (ADW),
Usilampatti,
Madurai District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the notification published in Madurai District Gazette, dated 08.12.1997, under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, insofar as the lands situated at Survey Nos.248-1, 248-2, 248-3, 248-4, 248-6, 248-7, 248-10, 248-11, 248-13, 248-22, 248-23, 248-25 Uthapuram Village, Periyayur Taluk and quash the same.

For Petitioner

: Mr.Ilanchezhiyan,

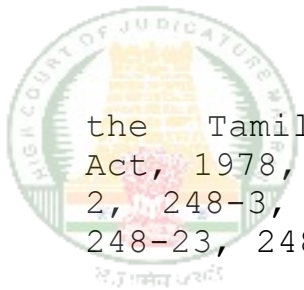
For Mr.A.Arun Prasad

For Respondents

: Mrs.J.Padmavathi Devi,

Special Government Pleader

ORDER



the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, insofar as the lands situated at Survey Nos.248-1, 248-2, 248-3, 248-4, 248-6, 248-7, 248-10, 248-11, 248-13, 248-22, 248-23, 248-25, Uthapuram Village, Periyayur Taluk.

2. According to the petitioner, the lands published under Notification were originally owned by one Ponnusamy Gounder. He inherited the lands through a Will executed by his mother-in-law Ponnuthai and also through registered sale deeds. It appears that a 4(1) notification was issued under the Tamil Nadu Act 31/1978 on 08.12.1997. The said Ponnusamy Gounder died on 18.01.1998 i.e., within 41 days from the date of the above 4(1) notification. Thereafter, the petitioner and his siblings have inherited the property and they are in continuous possession of the same.

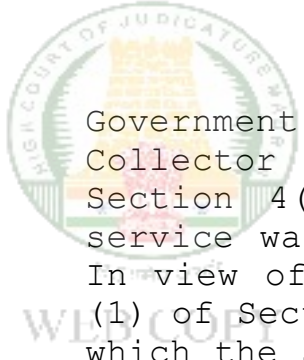
3. While the matter stood thus, when the petitioner approached the Sub-Registrar, Elumalai, for the purpose of executing sale deed, he was informed that it could not be registered in view of the impugned notification and in view of the communication sent by the fourth respondent dated 06.05.2004. Thereafter, the petitioner came to know of the land acquisition proceedings and made a representation to the third and fourth respondents. Since no notice was served on him, he has chosen to challenge the said notification in the present Writ Petition.

4. The contesting respondents have filed a counter-affidavit through the fourth respondent. The history of the inheritance of the property in dispute is explained, but, there is no answer as to the service of notice on the person concerned as per Section 4 (2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [hereinafter referred to as 'the Act'] or the other consequential proceedings and conducting enquiry and awarding of compensation to the land owners.

5. The learned counsel appearing for the petitioner would contend that the petitioner's father died on 18.01.1998 i.e. 41 days after the date of notification viz., 08.12.1997. During his life time, no notice was served on him and neither it was served on the petitioner or his siblings. If the notice is not served, which is a mandatory requirement under Section 4(2) of the Act, calling for objections from the land owners, the entire proceedings will vitiate, insofar as the particular land is concerned. In support of his contention, he relied on the judgment of this Court in **W.P.No.9605 of 1998, dated 16.02.2007 [R.Ramakrishnan vs. State of Tamil Nadu, rep. by Secretary to Government, Adi Dravidar Welfare Department, Chennai-600 009]** and another judgment in **B.Saroja vs. The District Collector and The....., dated 26.09.2003.**

<https://hcservices.ecourts.gov.in/hcservices/>

6. Controverting the contention, the learned Special



Government Pleader would vehemently contend that the District Collector on being satisfied has issued a notification under Section 4(1). The mandatory requirements were all followed and service was made on the mother-in-law of the petitioner's father. In view of Section 5 of the Act, 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. Therefore, the contention that the petitioner is in possession is not true and the land acquisition proceedings are not liable to be quashed.

7. I have given my careful consideration to the rival contentions made on either side.

8. At the first instance, it is to be noted as to whether the notification issued by the District Collector in the District Gazette is legally sustainable.

9. On a reading of the notification published in the District Gazette dated 08.12.1997, since Tamil Nadu Government is satisfied with the necessity of acquiring the land, the District Gazette came to be published. Whereas, a reading of Section 4(1) of the Act reveals that the subjective satisfaction of the District Collector is mandatory and the decision to acquire the land shall be exercised only by the District Collector independently after applying his mind to the necessity and that role cannot be taken over by the Government.

10. Section 4 of the Act reads as under:

"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 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."

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11. In the judgment of this Court in **Rajammal v. The District Collector, Dharamapuri** reported in 2008(5) CTC 154, this Court dealt with the matter of similar nature, wherein it was held thus:

"21. Even though it is possible for the Government to delegate some of the functions to the Collector as per the provisions of the relevant statute, it is not possible for the Government to take up the function of a Collector when the statute clearly mandates that the power has to be exercised by the Collector himself. Though the officers like the Collectors are also the limb of the Government, in matters wherein subjective satisfaction of the collector has to be arrived at for a particular purpose, the Government cannot substitute its opinion or views in the place of the Collector. The legislature was very conscious of the fact that in case Government is entrusted with the responsibility to acquire the land it will take its own course as the file has to be rooted through different departments at various levels and the ultimate decision would be taken only after considerable delay.

22. The very purpose of enacting the Harijan Welfare Scheme Act is to achieve the constitutional purpose of giving effect to the provisions of Article 46 of the Constitution of India as contained in the directive principles. While interpreting the provisions of an enactment, intention behind framing such law by the legislature also assumes significance and without reference to such factors, the provisions cannot be interpreted in isolation. In fact previously the lands for the purpose of Harijan Welfare Scheme were also acquired under the provisions of Land Acquisition Act, 1894. It was only when the Government found that the acquisition in such cases often takes considerable time, for culmination in passing the award and to take possession, that the legislature has enacted the special Act to reduce the delay in acquiring the property, for Harijan Welfare Scheme. In fact one of the main arguments before the Apex Court in **Anandhi Ammal's** case cited supra was to the effect that the entire matter was left to the District Collector to be satisfied that the land has to be acquired for the purpose of Harijan Welfare Scheme. It was only in consideration of the said contention and taking into account the stringent provisions of the Act



that the Supreme Court observed that the Collector is the supreme authority in the matter of acquisition under Act 31 of 1978."

12. In yet another case in **The Land Acquisition Officer and Special Tahsildar (LA), v. R.Manickammal** reported in 2002(2) CTC 1, a Division Bench of this Court has held as under:

"There is no other provision excepting the above provision empowering any authority to deal with the acquisition. The provision is absolute in so many words that if the Collector is satisfied that the lands should be acquired, he will acquire the land and then when a notification is issued, the land vests absolutely with the Government free from all encumbrances as contemplated under Section 5 of the Act. A decision to acquire a land by the Collector has to be exercised only by the Collector by application of his mind independently and the Legislature did not provide any power of delegation. This Legislature did not even reserve any power in the State to have a supervisory role as is provided in the Central Act."

13. Therefore, from the foregoing decisions, it is crystal clear that the power of the Collector cannot be taken over by the Government. In the instant case, since the Government is satisfied that it is necessary to acquire the land, the notification dated 08.12.1997 came to be issued.

14. Going further, a reference to Section 4(2) of the Act mandates that before publishing a notice under Sub-Section (1), the District Collector or any officer authorized by the District Collector shall call upon the owner or any other person to show cause why the land in question should not be acquired.

15. In the instant case, as contended by the learned counsel for the petitioner, no notice as per Section 4(2) was served on the land owner nor was there any enquiry conducted.

16. This Court called for the files relating to the land acquisition proceedings. A perusal of the files also would disclose that no notice was served on the petitioner's father or anyone inherited the land. The contention of the learned Special Government Pleader that it was served on one Ponnuthai, who was the mother-in-law of the petitioner's father is also not substantiated. The records shows that notice was served on one Ponnammal, who was also the owner of the property. Therefore, it is crystal clear that no notice was served on the petitioner before ordering the District Gazette or enquiry was conducted. In such circumstances, it can be safely inferred that the proceedings initiated through the impugned notification dated 08.12.1997 is



bad insofar as the petitioner is concerned.

17. The judgment relied on by the learned counsel for the petitioner in **Ramakrishnan's** case is applicable to the case on hand, wherein for non-service of notice under Section 4(2), the land acquisition proceedings were held to be bad.

18. It is very clear from the files that no notice was served on the petitioner's father or any adult member of the family. Since the mandatory requirement of Section 4(2) of the Act is not complied with, the land acquisition proceedings must fail. In such circumstance, in view of the above discussions made, the impugned Notification issued by the third respondent dated 08.12.1997 is set aside and the Writ Petition stands allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Secretary,
State of Tamil Nadu,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.
2. The Director,
Adi Dravidar and Tribal Welfare Department,
Chepauk, Chennai-600 005.
3. The District Collector,
Madurai District,
Madurai-625 020.
4. The Special Thasildar (ADW),
Usilampatti,
Madurai District.

+ 1 CC TO Mr.A.ARUN PRASAD, ADVOCATE IN SR No. 75492
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 75631

SML

TE/RSK/SAR-3 : 11/08/2018 : P/C