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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 14653 of 2007

and

M.P. 2 of 2007

1. C. Kannan
2. C. Govindasamy
3. P.Ramamoorthy
4. R. Veeraraghavan
5. N.Ramamoorthy
6. R. Prakash
7. S.Sarkarai
8. C.Balammal
9. K.Murugesan
10. R.Kannappan @ Kannan
11. R.Sekar @ Loganathan
12. G.Pachiappan
13. G.Kannan
14. M.Rama Nainar
15. R.Krishnamoorthy
16. D.Ramadoss
17. R.Manickam
18. M.Govindasamy
19. M.Adimoolam
20. M.Vellakutty
21. M.Janakiraman
22. V.Punniyakotti
23. R.Varadhan

... Petitioners

Vs

1. The Tahsildar,
(Adi Dravida Welfare),
Polur-606 803.

2. The District Collector,
Tiruvannamalai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of 2nd respondent in his Proceedings Special Gazette notification Ki/21782/2005, dated 06.01.2007 and quash the same as illegal, incompetent and without jurisdiction.

For Petitioner : Ms.V.Srimathi

For Respondents : Mr.M.Elumalai,

Addl. Govt. Pleader



O R D E R

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This Writ Petition has been filed challenging the impugned order of the 2nd respondent dated 06.01.2007 and quash the same as illegal, incompetent and without jurisdiction.

2. The Writ Petition arises under Tamil Nadu Acquisition of Land for Harijan Welfare Act, 1978, (hereinafter called as "State Act") for providing house sites for Adi-dravidar peoples. The 1st respondent has issued a show cause notice dated 20.10.2004 under Sec.4 (2) of the Act calling upon the petitioners to appear for enquiry, but some of the notices were not served on the petitioners and subsequently, on receipt of notice dated 25.04.2005, the petitioners have appeared before the 1st respondent and submitted their objections. The 1st respondent has rejected their objections and sent a report dated 23.08.2005 to the 2nd respondent for appropriate action. The 2nd respondent after considering the report filed by the 1st respondent and the objections made by the petitioners, has forwarded the objections and passed an order on 06.01.2007 and issued the gazette notification on 23.01.2007. Challenging the same, the present Writ Petition has been filed.

3. Ms.V.Srimathi, learned counsel appearing for the petitioner would submit that though the petitioners have made objections before the 1st respondent appointed by the 2nd respondent, the petitioners' objections were not considered by the District Collector and he has mechanically passed an order without application of mind, which is unsustainable one.

4. The learned counsel had further placed reliance upon the decision of the Full Bench of this Court reported in (2006) 4 CTC 609 (R.Pari Vs. The Special Tahsildar, Adi Dravidar Welfare, Divakottai (Pasumpon Muthuramalinga Thevar District) and another) and the relevant portion of paragraphs 42 and 43 reads as follows:

"42. However., it is necessary to enter a small caveat. The observation made by the Division bench or the judge regarding requirement to indicate reason while passing the order has to be understood in the context of non-application of mind. Even though in a given case the order which is communicated to the land owner does not indicate any reason why the objection has been rejected, if the application of mind is reflected in the file even by way of nothings and



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endorsements, the R. Pari vs The Special Tahsildar, Adi ... on 25 August, 2006 Indian Kanoon- <http://indiankanoon.org/doc/1964016/18> ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the land owner/objector does not contain any detailed reasons. The requirement is that the materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and not passing of a formal reasoned order as is required in judicial or quasi-judicial proceedings. The function obviously being administrative in nature, it is futile to expect furnishing of detailed reasons in the order which is communicated to the person. It is necessary to enter such caveat lest it may be construed that in every case, where the order of rejection communicated to the land owner does not contain the reasons, the proceeding stands vitiated. Ultimately the court is required to find out in each case whether there has been application of mind. Therefore, the brief reasons, which are contemplated, can be given either in the file in the shape of nothings, endorsements, etc., or even can be reflected in the order. But, mere non-reflection of reasons in the order communicated or in the notice published in the Gazette, would not be sufficient to hold that there has been non-application of mind and the question as to whether there has been application of mind or non-application is required to be considered on the basis of the return filed and the relevant file to be produced before the Court.

43. In view of the aforesaid discussion, our conclusions are as follows:

The owner should be furnished with a copy of the report / recommendation of the authorised officer. Thereafter, he should be given two weeks' time to make further representation, if any, before the District Collector. It is not necessary for the District Collector to give a further personal hearing or make any further enquiry. However, mere non-furnishing of the report would not have the ipso facto effect of vitiating the proceedings and the question of prejudice to the land owner is required to be considered in each case depending upon the facts and circumstances. The District Collector is



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expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons, the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report/recommendation made by the authorised officer."

5. On the strength of the judgment, the learned counsel appearing for the petitioners would further submit that after conducting enquiry, the 1st respondent Tahsildar did not supply the copy of the communication and the 2nd respondent District Collector has mechanically passed the order, which is legally unsustainable one and the same is liable to be interfered with.

6. Mr.M.Elumalai, learned Government Advocate appearing for the State would submit that the 2nd respondent District Collector while passing the order has considered the recommendation made by the 1st respondent Tahsildar and the objections made by the petitioners, and hence, it cannot be interfered with. Further, the Hon'ble Division Bench of this Court has clearly held that in view of non-furnishing of the report will not vitiate the entire acquisition proceedings. Hence, he prayed for appropriate orders.

7. On perusal of the original files, it is seen that the 1st respondent Tahsildar, who acted as authorised officer has initiated proceedings under Sec.4(2) of the Act and thereafter, issued a notice in form 3(1) and 4(2) of the Act on 25.04.2005 fixing the hearing dated 21.05.2005. Thereafter, the 1st respondent Tahsildar vide his letter dated 21.07.2007 has sent a report to the District Collector containing his recommendation as well as the objections made by the petitioners on 23.08.2005, which is in page No.33 of the District Collector's file and the objections of the petitioners found in page Nos.101 to 257 of the District Collector's file, in which they have clearly stated that the entire family have taken up agriculture income and already the possession of the adi-dravidar families in the locality have trespassed into the property and they have been evicted and further reveal that all adi-dravidar families are well-settled and there were surplus lands and the house sites in



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