

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI

W.P.Nos.21104 and 21105 of 2006

1. D.P. Narasimha Reddy (Deceased)

2. Thayaremmal

3. Vijayasimhalu

P2 and P3 are substituted as LRs. in the place of deceased petitioner as per order dated 17.09.2013 by KRCBJ in M.P.No.1 of 2013 in W.P.No.21104/2006

D. Thayaremmal ...Petitioners in W.P.No.21104 & 21105/2006.

Vs

1. The Special Tahsildar,
Adi Dravidar Welfare,
Thirutani.

2. The District Collector,
Tiruvallur District,
Tiruvallur.

... Respondents in both the W.Ps

W.PsPRAYER:

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorari or any other appropriate writ or direction calling for the records in proceedings R.C.No.38169/2005/J1 dated 16.03.2006 published in the Thiruvallur District Gazette (Extra Ordinary) dated 21.03.2006 and quash the same as illegal, incompetent, unconstitutional and without jurisdiction.

For Petitioners	:	Mr. V. Ragavachari
For Respondents	:	Mr. M. Elumalai, Government Advocate

C O M M O N O R D E R

These Writ Petitions have been filed to call for the records in proceedings R.C.No.38169/2005/J1 dated 16.03.2006 published in the Thiruvallur District Gazette (Extra Ordinary) dated 21.03.2006 and quash the same.

2. Heard Mr. V. Ragavachari , learned counsel for the petitioners and Mr. M. Elumalai, learned Government Advocate for the respondents.

3. These two Writ Petitions arise against the notification under section 4(1) of the Tamil Nadu Acquisition of land for Adi Dravidar Welfare Schemes Act, 1978 (for brevity the 'Act') for providing house sites for Harijan people. The Special Tahsildar initiated action under section 4(2) of the Act and issued a notice on 06.01.2004 and 03.02.2004 to the petitioners who are land owners in form No 1 (under Rule 3) of the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act, 1978 calling upon them to attend the enquiry. Thereafter, the petitioners submitted their objections to the Special Tahsildar on 23.02.2004. The Special Tahsildar rejected the objections and sent a report to the District Collector for further proceedings. The District Collector had issued the impugned order dated 16.3.2006 under Section 4(1) which was published in the Gazette on 21.03.2006. Challenging the same, the petitioners are before this Court.

4. The Learned counsel appearing for the petitioners place strong reliance on the Full Bench decision of this Court reported in 2006 (4) CTC page 609 in the case of R. Pari Vs. The Special Tahsildar Adidraavidar Welfare, Devakottai, and relied upon paragraphs 42 and 43, which read 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 objections has been rejected, if the application of mind is reflected in the file even by way of nothings and endorsement, the 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 proceedings 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 authorized 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 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 authorized officer.

All the writ petitions are now required to be placed before the Single Judge."

5. On the basis of the above Judgment, the learned counsel for the petitioners contended that after conducting enquiry, the Special Tahsildar did not supply a copy of the report/recommendation to the petitioners nor the petitioners were given time to raise their objections.

6. The Learned counsel further submitted that though no order was forwarded to the petitioners, however it is the duty cast upon the District Collect to consider the objections of the petitioners and pass speaking order. As per the above decision, the District Collector is expected to reflect the reasons for arriving at the conclusion.

7. Per Contra, Learned Government Advocate contended that the procedure contemplated under the Act was followed, the objections of the petitioners were considered by the District Collector and the District Collector after applying mind has passed the impugned order, which is an unassailable one.

8. In order to satisfy whether the authorities had complied with the mandate of law as laid down by the Full Bench, this Court perused the records. On a perusal of the records filed in the matter, it is seen that the Special Tahsildar as authorized officer, though issued proceedings under section 4(2) of the Act calling upon the petitioners to file their objections and the petitioners filed their objections stating that alternative lands are available. Admittedly, the petitioners were not served with a copy of the report dated 19.08.2005. However, the Special Tahsildar rejected the objections of the petitioners and recommended for acquisition to the District Collector. Though the petitioners had not appeared before the Tahsildar during the enquiry proceedings, however they submitted their representations to the Tahsildar on 18.06.2005 along with medical records for their non appearance. Now this Court has to decide whether the file reflected the application of mind on the

part of the District Collector. The District Collector's order is found at page No. 159 of the files. Though the District Collector is the Acquisition Officer, however the District Collector did not file his counter. However the Special Tahsildar filed has his counter in order to justify that there is application of mind.

9. However, on perusal of the original file, it is found that the District Collector has passed one page order simply on the basis of the recommendation of the Special Tahsildar. Hence, it is clear that the decision of the District Collector is totally with non application of mind. Therefore, in view of the decision rendered by the Full Bench of this Court, accordingly the entire acquisition proceedings are set aside and the Writ Petitions are allowed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

mrn

To,

1. The Special Tahsildar,
Adi Dravidar Welfare,
Thirutani.

2. The District Collector,
Tiruvallur District,
Tiruvallur.

+2 CC to Mr.V. Ragavachari, Advocate sr 54719.

+1 CC to The Govt. Pleader sr 54905.

W.P.Nos.21104 and 21105 of 2006

MP(CO)
SP(26/08/2019)

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