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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.17455 of 2009
and
M.P.No.1 of 2009

S.Shanthi

... Petitioner

Vs.

1.The District Collector,
Ariyalur District,
Ariyalur.

2.The Special Thasildar,
Adi Dravidar Welfare,
Ariyalur.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling upon the production of the records relating to the order dated 16.03.2009 published in Ariyalur District Gazette Part 4 made by the first respondent under Section 4(1) of the Tamilnadu Acquisition of Lands for Harijan Welfare Scheme 1978 and quash the same.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.M.Elumalai
Government Advocate

ORDER

This writ petition has been filed to quash the order dated 16.03.2009 published in Ariyalur District Gazette Part 4 made by the first respondent under Section 4(1) of the Tamilnadu Acquisition of Lands for Harijan Welfare Scheme 1978.

2.This writ petition arises under the Tamilnadu Acquisition of Lands for Harijan Welfare Scheme 1978 for providing free house site patta for the Adi Dravidar people. The acquisition proceedings were initiated and notices were issued to the petitioner on 06.11.2008, who is the land owner, in Form-I under Rule 3(1) of the Tamilnadu Acquisition of Lands for Harijan Welfare scheme Rules, 1979, calling upon the petitioner and



others, to attend enquiry on 21.11.2008 at 10.30 a.m., and give their objections. The petitioner attended the enquiry and gave objections for the acquisition proceedings on the ground that she has obtained loan from the Canara Bank for raising eucalyptus trees in the said land. However, after considering the objections, the Special Tahsildar, forwarded the report to the District Collector for appropriate action. Thereafter, the District Collector, by overruling the objections of the petitioner, accepted the report of the second respondent and issued Form-II notice.

3.The learned counsel for the petitioner placed reliance on the decision of the Hon'ble Full Bench of this Court reported in (2007) 2 MLJ 706 in the case of R.Pari Vs. Special Tahsildar, Adi Dravidar Welfare, Pasumpon Muthuramalinga Thevar District and another. The relevant paragraphs are extracted hereunder:

"42.However, it is necessary to enter a small caveat. The observation made by the Division Bench or the single 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 landowner 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 notings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the landowner / 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 landowner 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 notings, 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



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questions 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 landowner 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."

4. The learned counsel appearing for the petitioner further contended that after conducting enquiry the Special Tahsildar forwarded a report to the District Collector and a copy of the report was not served to the petitioner. After receiving the enquiry report, the District Collector mechanically accepted the recommendation made by the second respondent without application of mind. Accordingly, he prayed for allowing the writ petition.

5. Per contra, the learned Government Advocate refuting the allegations that the authorities complied with the mandate of the law laid down by the Hon'ble Full Bench of this Court in the decision reported in (2007) 2 MLJ 706. The learned Government Advocate submit that there is no need to serve a copy of the report of the Special Tahsildar to the petitioner. However, the District Collector while deciding the recommendation made by the second respondent, has applied his mind in compliance of Section 4(1) of the Act. Accordingly, he prayed this Court to dismiss the writ petition.



6.Ms.K.Amutha, Special Tahsildar(ADW), Udayarpalayam, Ariyalur District, appeared in person and produced the original files.

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7.On perusal of the original files, this Court came to know that the Special Tahsildar / authorised officer issued notice to the petitioner and on receipt of the objections from the petitioner the second respondent made recommendation for acquisition of lands to the first respondent on 17.02.2009 which is found in page No.63 of the original file. The first respondent did not pass any order, however, sent a letter to the Branch Manager, Government Press, Thuvakudi, for further notification.

8.As per the decision of the Hon'ble Full Bench of this Court, the District Collector has to pass separate order. But the District Collector did not pass any order for approving the recommendation made by the Special Tahsildar. Hence the decision of the Hon'ble Full Bench of this Court is squarely covered and the act of the District Collector is contrary to the provisions of Section 4(1) of the Tamilnadu Acquisition of Lands for Harijan Welfare Scheme 1978.

9.Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pnn
To

1.The District Collector,
Ariyalur District, Ariyalur.

2.The Special Thasildar,
Adi Dravidar Welfare, Ariyalur.

+1cc to Mr.S.Senthilnathan, Advocate Sr.57923
+1cc to the Government Pleader Sr.59230

W.P.No.17455 of 2009
and
M.P.No.1 of 2009

ln[co]
srg 20/08/2019