

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 10128 of 2010

and

M.P. 3 of 2010

1. K.S.Prasad
2. K.S.Prabakaran
3. K.S.Radhammal
4. K.S.Ganesh
rep. by their Power of Attorney
Holder M.Nagaraj

... Petitioner

Vs

1. The District Collector,
Vellore District,
Vellore.

2. The Special Tahsildar,
Adi-Dravida Welfare,
Gudiyattam.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent in respect of the Land acquisition proceedings notified in the Vellore District Gazette dated 04.03.1997 in RCK No.10/65455/96 and quash the same.

For Petitioner : Mr.D.Rajagopal
For Respondents : Mr.M.Elumalai,
Govt. Advocate

O R D E R

This Writ Petition has been filed challenging the impugned order of the 2nd respondent dated 04.03.1997 and quash the same.

2. The case of the petitioner is that the petitioner is the Power of Attorney holder of petitioners viz., K.S.Prasad, K.S.Prabakaran, K.S.Radhammal and K.S.Ganesh and executed a power of attorney dated 24.03.2008 before the Sub-Registrar, Gudiyatham. The petitioners are the owners of the property in Survey No.79/2B of the Pichanoor Village measuring about 2.3 acres. The said land is an agricultural land and the main source of income of the petitioners family is agriculture. The

respondents herein initiated land acquisition proceedings under Act 31 of 1978 in respect of the land in Survey No.82/1 measuring an extent of 1.01 hectare of Pichanoor Village for providing house sites to Harijans.

3. The petitioners have further averred that in an earlier occasion, the 1st petitioner has filed a Writ Petition in W.P.No.9923/1999 forbearing the respondents from any manner interfering with the peaceful possession and enjoyment of the petitioners property with an extent of 2.3 acres in Survey No.79/2B of Pichanoor Village, Gudiyatham Taluk without due process of law. In the said writ petition, the respondents have filed a counter stating that the notification under Sec.4(1) of the Act has been published in Vellore District Gazette dated 04.03.1997, but this was not produced before this Court. Then the petitioners have tried to get the District Gazette Notification dated 04.03.1997 and they have also made a request to the respondents to furnish the notification issued under Sec.4(1) of the Act. However, they were orally informed that there is no such gazette notification in the file and they are not going to take possession in the land in Survey No.79/2B. However, in the second week of April 2009, the respondents officials came to the petitioners land and attempted to measure the land by putting stone. Thereafter, the petitioners have issued a legal notice to the respondents to furnish the copy of the District Gazette notification, but, even then the respondents authorities have not furnished the District Gazette notification. Hence, the petitioners have filed the Writ Petition before this Court in W.P.No.9395 of 2009 seeking to furnish the District Gazette Notification and subsequently, the said Writ Petition was withdrawn in order to approach the authorities under the Right to Information Act.

4. Thereafter, the petitioners have sent a representation under the Right to Information Act requesting to furnish the District Gazette Notification. After that, the respondents have sent a copy of the District Gazette Notification in the 3rd week of April 2010. Thereafter, the petitioners have appointed one Mr.Nagarajan as their power of attorney and he has filed the present Writ Petition challenging the District Gazette Notification.

5. Mr.D.Rajagopal, learned counsel appearing for the petitioner would submit that initially, the 1st petitioner has filed a Writ Petition in W.P. 9923 of 1999 forbearing the respondents from acquiring the land from the petitioners without due process of law. However, the respondents have initiated the land acquisition proceedings on the sole ground that the said Writ Petition was dismissed. However, in order to secure the notification published in the Vellore District Gazette dated 04.03.1997, the petitioners have sent a representation to the

respondents requesting to furnish the copy of the notification so as to enable them to challenge the same before this Court. However, the petitioners were furnished with the copy of the District Gazette Notification only during the 3rd week of April 2010. Hence, there was a delay in filing the Writ petition, which is legally permissible one. Accordingly, he prayed to allow this Writ Petition.

6. Mr.M.Elumalai, learned Government Advocate appearing for the respondents has filed a counter stating that the original owner Radhammal and K.S.Ganesh have filed a Writ Petition before this Court in W.P.No. 9923 of 1999 and this Court by its order dated 22.11.2007 dismissed the Writ Petition. Now, for the very same acquisition, the present Writ Petition has been filed, which is unsustainable one. In fact, in the earlier Writ Petition, this Court has elaborately discussed Section 4(1) notification published in the Vellore District Gazette and passed a detailed order, in which, this Court need not interfere with the same. Accordingly, he prayed to dismiss the Writ Petition.

7. On perusal of the records, it is seen that the petitioners are the owners of the property in Survey No.79/2B of Pichanoor Village measuring about 2.3 acres and he is the power of attorney holder as per the power of attorney document registered on 24.03.2008 before the Sub-Registrar, Gudiyatham. Further, this Court has perused the order dated 22.11.2007 passed by this Court in W.P.No.9923 of 1999, wherein this Court has held that the respondents have initiated the land acquisition proceedings with regard to the petitioners' land in Survey No.92/2, in accordance with the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31/78). Further, since the landowners are residing at Tirupattur and Chennai, Form I notice could not be served on them and therefore, the said notice was pasted on a stick and kept in the field after the beating of tom tom. Even thereafter, the petitioners have not turned up for the enquiry and hence, the award was passed in proceedings No.18/96-97, dated 27.03.1997 and the compensation amount of Rs.1,34,429/- was ordered to be deposited in the Sub-Court, Vellore. After the deposit of amount, the possession of the acquired land was taken by the Special Revenue Inspector (Adi-Dravidar Welfare) on behalf of the Government. Thereafter, the layout has been prepared and approved and the pattas have been issued to the beneficiaries on 20.12.1998. However, the petitioners did not annex the copy of the order of this Court dated 22.11.2007 and this Writ Petition was filed in the year 2010 itself even though the petitioners have come to know about the acquisition proceedings in the year 1999 and the possession was taken from the petitioners and the lands were distributed to the beneficiaries and subsequently, the patta was also issued in favour of the beneficiaries. Therefore, after approval of the

layout as well as after the issuance of patta in favour of beneficiaries, the present Writ Petition is not maintainable. Hence, the Writ Petition is liable to be dismissed.

8. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpp

To

1. The District Collector,
Vellore District,
Vellore.
2. The Special Tahsildar,
Adi-Dravida Welfare,
Gudiyattam.

+lcc to Government Pleader sr.74059

W.P. 10128 of 2010
and
M.P. 3 of 2010

nr 09/10/2019