

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.2556 of 2009
and WMP.No.2 of 2009

T.Rajaram

...Petitioner

Versus

1.The Government of Tamil Nadu
repd. By its Secretary,
Adi-Dravidar Welfare Department,
Fort St.George,
Chennai 600 009.

2.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

3.The Special Tahsildar,
Adi-Dravidar Welfare Department
Vandavasi Taluk,
Thiruvannamalai District.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the 2nd respondent and quash the proceedings of the 2nd respondent dated 21.01.2009 in No.K1/65691/2008 under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijans Welfare Scheme Act 1978.
(prayer amended as per Court order dated 17.02.2010 by KSAJ in M.P.No.1 of 2010 in W.P.No.2556 of 2009)

For Petitioner : Mr.P.Sivamani

For Respondents : Mr.M.Elumalai
Government Advocate

O R D E R

This writ petition has been filed seeking to quash the proceedings of the 2nd respondent dated 21.01.2009 in No.K1/65691/2008 under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijans Welfare Scheme Act 1978.

2.The petitioner is the owner of the land in S.Nos.212 and 213 in Vallam Village, Vandavasi Taluk, Thiruvannamalai District to an extent of 1.16 Hectare and also some parts. The petitioner has developed his property and constructed a building and also erected pipelines for cultivation. The petitioner has digged a big well and also availed electricity connection and placed a submersible motor for cultivating the lands and he is complete possession and enjoyment of the property. While so, the 2nd respondent issued a notice under Section 4(2) of the Tamilnadu Acquisition of Lands for Harijans Welfare Scheme Act 1978 (hereinafter called as 'the Act') for providing house sites to the local Adi-dravidas comprised in S.No.212 and 213. On receipt of the notice, the petitioner sent a detailed explanation on 17.10.2008 and also appeared before the Village Administrative Officer, Vallam on 23.10.2008, the date on which he was asked to appear for enquiry and submitted his objections. However, without considering the objections raised by the petitioner, the 3rd respondent has proceeded further in this matter. Aggrieved against the same, the petitioner has filed the present writ petition with the aforesaid prayer.

3.Heard Mr.P.Sivamani, learned counsel for the petitioner and Mr.M.Elumalai, learned Government Advocate appearing for the respondents.

4.The learned counsel for the petitioner would submit that the petitioner is the owner of the land comprised in S.No.212 and 213 in Vallam Village, Vandavasi Taluk to an extent of 1.16 hectares. While so, the 2nd respondent issued notice under Section 4(2) of the Act in order to acquire the lands for the local Adi-dravida people. The petitioner raised his objection stating that he has constructed a part of the area as a farm house and also developed his property by erecting pipelines, digged a big well and also installed submersible motor pumps and also obtained electricity connection and also spent huge money to converted the punja land as nanja land in order to cultivate paddy crops. Since the entire land is converted as cultivation land and was doing cultivation, the said land cannot be allotted for providing house sites. However, the 2nd respondent without considering the petitioner's objection and without applying his mind has mechanically recommended for acquiring the lands by the 3rd respondent. The action of the 2nd respondent viz., District Collector, Thiruvannamalai District, in passing an order to acquire the lands of the petitioner, without applying his mind is non-est in the eye of law. In support of his contention, the learned counsel referred the decision of the 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. Accordingly, he prays for allowing this petition.

5. The learned Government Advocate appearing for the respondents would submit that the land acquisition proceedings was initiated against the petitioner's lands and the petitioner is well aware of the proceedings and he had received the enquiry notices. He has participated in the award enquiry and the compensation amount was also deposited in the Treasury on 12.03.2009 and the said land was taken possession by the Government on 04.03.2009 and the said land stands in the name of the Government.

6. On perusal of the records, it is seen that the 2nd respondent issued notice under Sec.4(2) of the Act, for which the petitioner has also submitted his objection on 17.10.2008. However, the 3rd respondent without conducting an enquiry forwarded a recommendation to the 2nd respondent on 28.11.2008. The District Collector i.e., the 2nd respondent without going into the details has mechanically passed an order on 12.01.2009 and the said order was produced before this Court. This Court perused the order of the District Collector, wherein the District Collector has passed an one page order simply overruling the objection made by the land owners, accepted the recommendation of the Special Tahsildar (ADW), Vandavasi and approved the notice under Section 4(1) of the Act and informed that it will be published in the next District Gazette. Therefore, the act of the District Collector shows clear case of non-application of mind.

7. The Full Bench of this Court has discussed the said issue in the decision reported in (2006) 4 CTC 609 (R.Pari Vs. The Special Tahsildar, Adi Dravidar Welfare, Divakottai (Pasumpon Muthuramalinga Thevar District) and another), the relevant portion of which, 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 endorsements, 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 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 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."

8. On a perusal of the above decision makes it clear that 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 is 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. However, in the present case, the District Collector, Tiruvannamalai District, granted permission to the Special Tahsildar for conducting enquiry under Section 4(2) of the Tamil Nadu Land Acquisition Act, 1978. Thereafter, Form I notices were issued and enquiry was conducted at the Village Administrative Office and the petitioners filed their objections. However, the objections were not considered in a proper and prospective manner and the Special Tahsildar has omitted to discuss about the subsequent purchasers from the land owners and the District Collector also has mechanically approved the recommendation of the Special Tahsildar.

9. On a perusal of the above decision makes it clear that in each case, this Court has to find out the application of mind of the District Collector if the files reflect any endorsement, underlining or any noting by the District Collector. In the present case this Court perused the order of the District Collector over-ruling the objections and recommendation and did not find any noting or underlining. Hence, the files containing the District Collector's order reveals non application of mind. This indicates the non application of mind by the Special Tahsildar as well as the District Collector.

10. In view of all the above, the writ petition is allowed and the impugned proceedings is quashed in so far as the petitioner is concerned. No costs. Connected miscellaneous petition is closed.

rm

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary,
Government of Tamil Nadu
Adi-Dravidar Welfare Department,
Fort St.George,
Chennai 600 009.

2.The District Collector,
Thiruvannamalai District,
Thiruvannamalai.

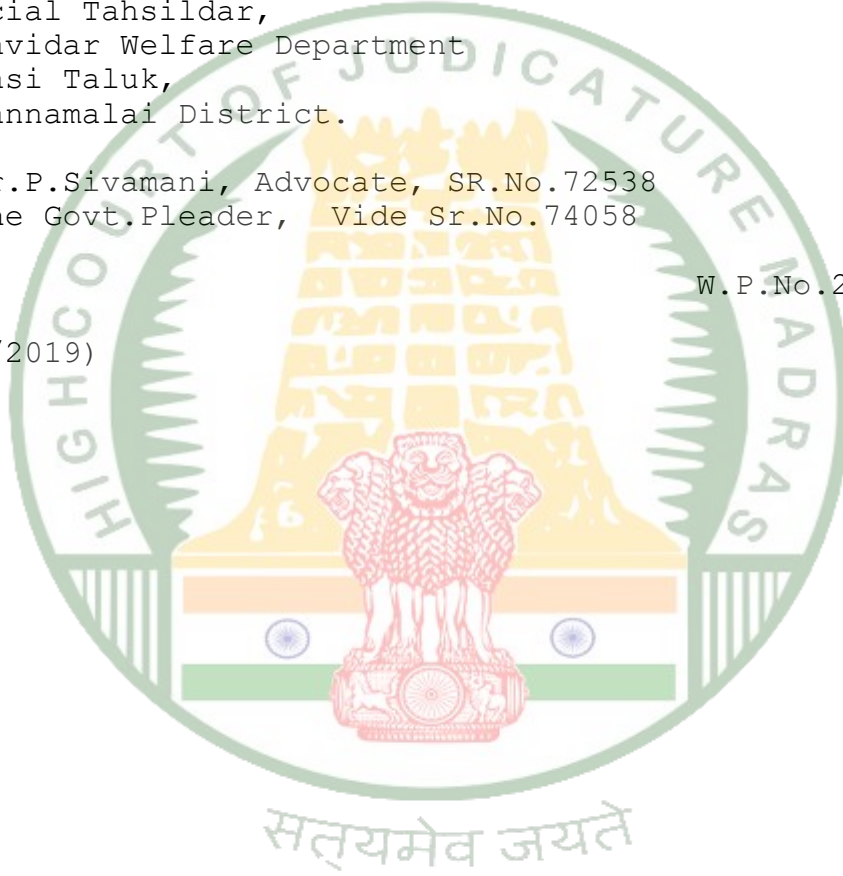
3.The Special Tahsildar,
Adi-Dravidar Welfare Department
Vandavasi Taluk,
Thiruvannamalai District.

+lcc to Mr.P.Sivamani, Advocate, SR.No.72538

+lcc to the Govt.Pleader, Vide Sr.No.74058

W.P.No.2556 of 2009

Kak(30/09/2019)



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