

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11663 of 2005
and
W.P.M.P.No. 12707 of 2005

1. Ganesan

2. Mrs.Chinnammal

...Petitioners

Vs.

1. The Special Tahsildar
(Land Acquisition)
Harijan Welfare Scheme
Ariyalur Taluk
Perambalur District.

2. The District Collector
Perambalur District
Perambalur

3. The Government of Tamil Nadu
Rep. by its Secretary
Department of Adhi Dravidar Welfare
Fort St.George
Chennai - 600 009.

... Respondents

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the Land acquisition Proceedings in Award No. 3/2004-2005 dated 29.11.2004 passed by the 1st Respondent and quash the same and forbear the Respondents from in any manner interfering with the Petitioners peaceful possession and enjoyment of the Land in Survey No. 142/14, 143/10, 143/1G and 143/9 of Thoothur Village, Ariyalur Taluk, Perambalur District measuring about 1.3600 and 0.40.5 hectares.

For Petitioners : Mr.M.Kamalanathan

For Respondents : Mr.M.Elumalai,
Government Advocate.

ORDER

The petitioners have filed this Writ Petition praying to issue a writ of Certiorarified Mandamus, calling for the records relating to the Land acquisition Proceedings in Award No. 3/2004-2005 dated 29.11.2004, passed by the 1st Respondent and to quash the same and forbear the Respondents from in any manner interfering with the Petitioners peaceful possession and enjoyment of the Land in Survey Nos. 142/14, 143/10, 143/1G and 143/9 of Thoothur Village, Ariyalur Taluk, Perambalur District, measuring about 1.3600 and 0.40.5 hectares.

2. The case of the petitioners is that they have owned a patta land and the same was acquired on 04.07.2003. The District Collector, Ariyalur, has delegated power to Special Tahsildar (ADW) Ariyalur to conduct enquiry under Section (2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 Act of 31/78. Accordingly, Form I was issued on 29.07.2003, for the enquiry to be conducted on 14.08.2003 at Panchayat Board Office, Thoothur and it was also received by the writ petitioners and the petitioners appeared for the enquiry before the Land Acquisition Officer and Special Tahsildar (ADW), Ariyalur on 13.08.2003. However, the land owner refused to give Statement. Thereafter, the proposals were sent to District Adi Dravidar Welfare & Tribal Welfare Officer, Perambalur on 28.06.2004 and after his Field inspection on 18.07.2004, revised proposal for acquiring 1.15.0 hecsts of dry lands belonging to the writ petitioners in S.F.No. 142/9A etc, were sent and the District Collector, Perambalur, after over-ruling the objections raised by the Land owners on 16.09.2004 has approved the notification under Section 4(1) of Tamil Nadu Act 31/1978, which was published in Perambalur District Gazette on 30.09.2004. Thereafter, the Award was passed on 29.11.2004. Challenging the said Award, the present writ petition is filed.

3. The learned counsel appearing for the petitioners would submit that though the 4(1) notification was issued on 30.09.2004, without conducting any enquiry in the manner known to law, the said Award was passed. Hence the learned counsel appearing for the petitioner relied upon a decision of the Hon'ble Supreme Court in (2012) 9 SCC 509 and the relevant paragraphs are extracted here under;

"12. ... "31. ... In all the cases, challenge to the acquisition proceedings was negatived primarily on the ground of delay. An additional factor which influenced this Court was that physical possession of the acquired land had been taken by the authorities concerned. In none of these cases, the landowners appear to have questioned the legality of the mode adopted by the authorities

concerned for taking possession of the acquired land. Therefore, these judgments cannot be relied upon for sustaining the High Court's negation of the appellant's challenge to the acquisition of his land."

13. In view of the above discussion, we hold that the High Court was not right in holding that the writ petition of the appellant was not maintainable because the same was filed after the passing of the award."

4. Per contra, the learned Government Advocate appearing for the respondents would submit that the petitioners have not challenged the 4(1) notification and without challenging 4(1) notification, they cannot challenge the Award.

5. On perusal of the records, it appears that the petitioner's land was acquired for the purpose of providing house sites to the Adi Dravidar Welfare People. Accordingly, 4 (1) notification was issued to the petitioners and thereafter, enquiry was conducted on 13.08.2003. After receipt of the recommendation from the Tashildar, the District Collector has passed 4(1) notification on 30.09.2004. After conducting the enquiry, the Award was passed on 29.11.2004. However, the petitioners have challenged the Award without challenging the 4 (1) notification. The same is not permissible. The Award is a consequential one. Without challenging the 4(1) notification, challenging the Award is impermissible.

6. In view of all the above, the present writ petition stands dismissed and liberty is granted to the petitioner to challenge the 4(1) notification in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Insp cell)

//True Copy//

Sub Assistant Registrar

kmm

To

1. The Special Tahsildar
(Land Acquisition)
Harijan Welfare Scheme
Ariyalur Taluk
Perambalur District.

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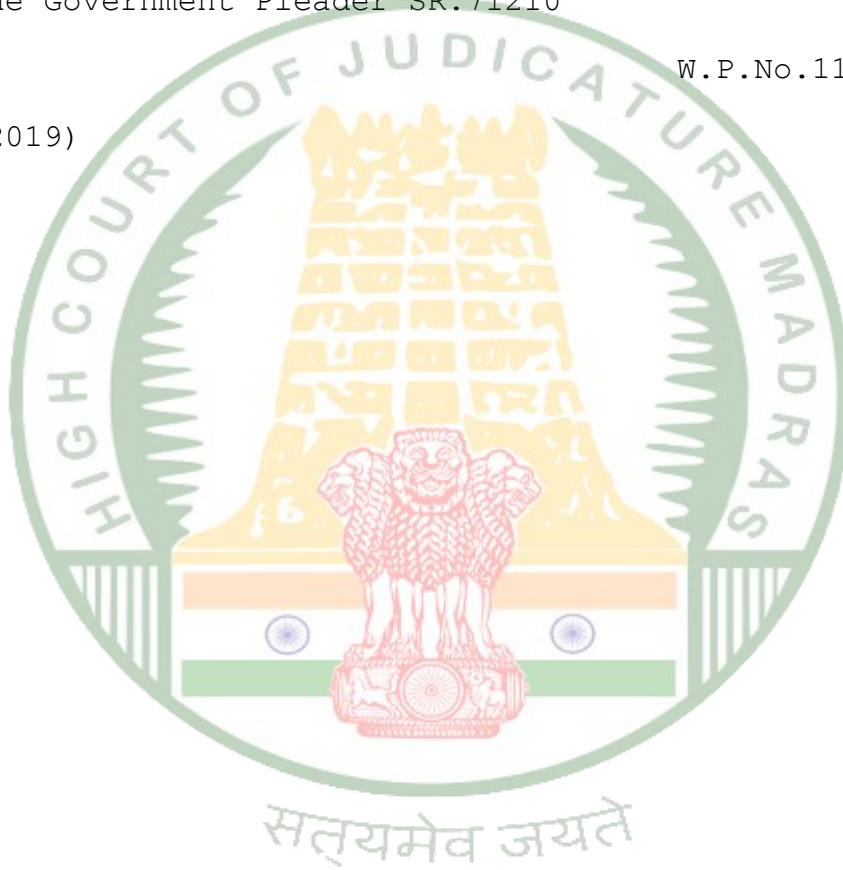
2. The District Collector
Permabalur District
Perambalur

3. The Secretary
Government of Tamil Nadu
Department of Adhi Dravidar Welfare
Fort St.George
Chennai - 600 009.

+2cc to Mr.M.Kamalanathan, Advocate SR.70455
+1cc to the Government Pleader SR.71210

W.P.No.11663 of 2005

RK(CO)
CB(05/11/2019)



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