

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.07.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI, J.

W.P.No.12412, 12413 & 6663 of 2005
W.M.P.Nos.13569, 13571 and 7316 of 2005

E.Muthu ...Petitioner in W.P.No.12412 & 6663 of 2005
J.Vasantha ...Petitioner in W.P.No.12413 of 2005

Vs

1. The District Collector
Villupuram District,
Villupuram.
2. The Special Tahsildar
(Land Acquisition)
Adi Dravidar Welfare,
Gingee, Villupuram District.
... R1 and R2 in all W.Ps
3. The District Revenue Officer,
Villupuram,
Villupuram District.
...R3 in W.P.No.12413 of 2005

PRAYER IN W.P.No.12412 of 2005: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the respondents notification under Section 4(1) of the Tamil Nadu Acquisition of Lands for Adi Dravidar Welfare Scheme Act, 1978 published in the Villupuram District Gazette (Extraordinary) dated 03.02.2005 issued by the first respondent consequent to the notification under Section 4(2) of the Act made in Na.Ka.A.748/99 dated 04.08.2003 issued by the second respondent and quash the same and forbear the respondents from acquiring the lands of the petitioner comprised in RS.No.40/5C and RS.No.40/5E to an extent of 0.23.0 Hectares Manalapadi Village, Gingee Taluk, Villupuram District.

PRAYER IN W.P.NO.12413 OF 2005: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the respondents notification (M1/58276/99) (A/748/99) dated 25.01.2005 under Section 4(1) of the Tamil Nadu Acquisition of Lands for Adi Dravidar Welfare Scheme Act, 1978 published in the

Villupuram District Gazette (Extraordinary) dated 03.02.2005 issued by the first respondent and the consequential enquiry notice made in Form-III in A/748/99 dated 12.02.2005 issued by the second respondent and quash the same and forbear the respondents from acquiring the lands of the petitioner comprised in RS.No.40/5B 40/5D and 40/5F in Manalapadi Village, Gingee Taluk an extent of 0.58.0 Hectares.

PRAYER IN W.P.NO.6663 OF 2005: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus, to call for the records relating to the respondents order made in Na.Ka.M.1/58276/99 dated 27.01.2005 issued by the first respondent and the notification under Section 4(2) of the Act made in Na.Ka.A.748/99 dated 04.08.2003 issued by the second respondent and quash the same and forbear the respondents from acquiring the lands of the petitioner comprised in R.S.No.40/5C and R.S.No.40/5E an extent of 0.23.0 Hectares Manalapadi Village, Gingee Taluk, Villupuram District.

For Petitioner
in all Wps : Mr.G.Ethirajalu

For Respondent : Mr.M.Elumalai,
Government Advocate
in all Wps

O R D E R

The prayer in W.P.No.12412 of 2005 for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the respondents notification under Section 4(1) of the Tamil Nadu Acquisition of Lands for Adi Dravidar Welfare Scheme Act, 1978 published in the Villupuram District Gazette (Extraordinary) dated 03.02.2005 issued by the first respondent consequent to the notification under Section 4(2) of the Act made in Na.Ka.A.748/99 dated 04.08.2003 issued by the second respondent and quash the same and forbear the respondents from acquiring the lands of the petitioner comprised in RS.No.40/5C and RS.No.40/5E to an extent of 0.23.0 Hectares Manalapadi Village, Gingee Taluk, Villupuram District.

2. The prayer in W.P.No.12413 of 2005 for issuance of a writ of Certiorarified Mandamus, to call for the records relating to the respondents notification (M1/58276/99) (A/748/99) dated 25.01.2005 under Section 4(1) of the Tamil Nadu Acquisition of Lands for Adi Dravidar Welfare Scheme Act, 1978 published in the Villupuram District Gazette (Extraordinary) dated 03.02.2005 issued by the first respondent and the consequential enquiry notice made in Form-III in A/748/99 dated 12.02.2005 issued by

the second respondent and quash the same and forbear the respondents from acquiring the lands of the petitioner comprised in RS.No.40/5B 40/5D and 40/5F in Manalapadi Village, Gingee Taluk an extent of 0.58.0 Hectares.

3. The prayer in W.P.No.6663 of 2005 for issuance of a writ of Certiorarified Mandamus, to call for the records relating to the respondents order made in Na.Ka.M.1/58276/99 dated 27.01.2005 issued by the first respondent and the notification under Section 4(2) of the Act made in Na.Ka.A.748/99 dated 04.08.2003 issued by the second respondent and quash the same and forbear the respondents from acquiring the lands of the petitioner comprised in R.S.No.40/5C and R.S.No.40/5E an extent of 0.23.0 Hectares Manalapadi Village, Gingee Taluk, Villupuram District.

4. The case of the petitioners is that they are the owners in Rs.No.40/5C and 40/5E in Manalapadi Village, Gingee Taluk to an extent of 0.23.0 Hectares. The respondents have sought to acquire the aforesaid lands for the purpose of providing house sites to the Harijans residing in Manalapadi Village. The petitioners stated in the affidavit that the second respondent herein in his office proceedings A/748/99 dated 22.12.1999 issued a show cause notice under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 to provide house sites for the Adi Dravidar of Malaipadi and the said notice was received by them only on 29.12.1999. The second respondent fixed the date of enquiry on 13.01.2000 in the said notice even prior to expiry of the notice period. The petitioner has also attended the enquiry and stated that he was under a bona fide impression that the respondents herein dropped the acquisition proceedings taking into consideration the objection raised by him. But the first respondent herein in his office proceedings Na.Ka.M.1/5827/99 dated 27.01.2005 overruled all the objections and ordered to issue Gazette Notification under Section 4(1) of the Act. Challenging the same, the present writ petition is filed. सत्यमेव जयते

5. The learned counsel for the petitioners would submit that the first respondent ought not to have published the notification under Section 4(1) of the Act, pending disposal of the writ petition questioning the procedure adopted by the second respondent while rejecting the objection raised by the petitioners. The learned counsel would further submit that the first respondent ought to have furnished the copy of the report submitted by the second respondent to the petitioner before passing orders, but failed to furnish the same.

6. The learned Government Advocate would further submit that the procedures contemplated under the Act were scrupulously

followed and there was no error on the part of the respondents and subsequently, an award was also passed.

7. Heard both sides.

8. This Court, on perusal of the counter affidavit as well as the records finds that the District Collector, Villupuram has granted permission to the Special Tahsildar for conducting an enquiry under Section 4(2) of the Tamil Nadu Land Acquisition Act, 1978. Thereafter, notices were issued to the land owners on 29.06.2005 and an enquiry was conducted on 13.01.2000. Thereafter, the land owners filed their objections. On perusal of records, the objections filed by the petitioner is that he was under a bonafide impression that the respondents herein dropped the acquisition proceedings taking into consideration of the objection raised by the petitioner. Further, the Special Tahsildar has not discussed about the objections submitted by the petitioners and the District Collector has mechanically approved the recommendation of the Special Tahsildar.

9. 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."

10.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 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 that reasons are available in the relevant records relating to such acquisition. However, in the present case, the District Collector, Villupuram, has granted permission to the Special Tahsildar for conducting enquiry under Section 4(2) of the Tamil Nadu Land Acquisition Act, 1978. Thereafter, notices were issued and an enquiry was conducted on 13.01.2000 and the petitioners filed their objections. However, their objections were not considered in a proper and perspective manner and the Special Tahsildar has omitted to discuss with the land owners and the District Collector also has mechanically approved the recommendation of the Special Tahsildar.

11. 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, as to whether the files reflect any endorsement, underlining or any noting by the District Collector. In the present case, this Court has perused the order of the District Collector over-ruling the objections and recommendation and did not find any noting or underlining. The District Collector has signed in black ink. However, all these things are considered only by the Personal Assistant to the District Collector as to whether the said portion has to be marked in Green ink or not. Hence, the files containing the District Collector's order reveals non-application of mind. It is made clear that the order of the District Collector indicates the non application of mind.

11.In view of all the above, the writ petitions are allowed and the impugned proceedings is quashed in so far as the petitioners are concerned. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

ssb

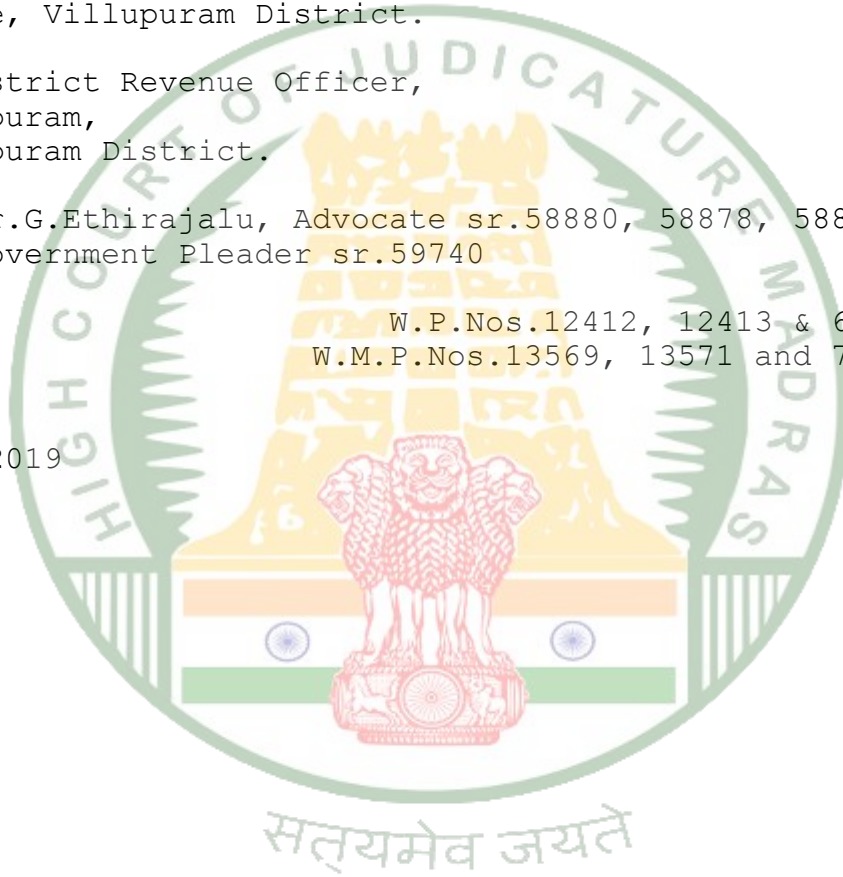
To

1. The District Collector
Villupuram District,
Villupuram.
2. The Special Tahsildar
(Land Acquisition)
Adi Dravidar Welfare,
Gingee, Villupuram District.
3. The District Revenue Officer,
Villupuram,
Villupuram District.

+3cc to Mr.G.Ethirajalu, Advocate sr.58880, 58878, 58879
+1cc to Government Pleader sr.59740

W.P.Nos.12412, 12413 & 6663 of 2005
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