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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.06.2019

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No12480 to 12482 of 2005

and

W.M.P.Nos.13658 to 13663 of 2005

1.P.Ramalingam	..Petitioner in W.P.No.12480 of 2005
2.P.Ramasamy	..Petitioner in W.P.No.12481 of 2005
3.V.Gopal	..Petitioner in W.P.No.12482 of 2005

vs

1. State of Tamil Nadu
rep.by its Secretary,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.
 2. Special Tahsildar (Adi-Dravidar)
Perambalur.
 3. The District Collector,
Perambalur
Perambalur District.
- .. Respondents in all W.Ps

Prayer in all Writ Petitions:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, to call for the records of the 3rd respondent herein in order No.Na.Ka.No.25902/I-1/2004 dated 29.09.2004 published in the Perambalur District Gazette dated 12.10.2004 quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.G.Purushothaman
in all W.Ps

For Respondent : Mr.D.Raja, AGP
in all W.Ps

O R D E R

The petitioners have filed the present Writ Petition for issuance of a Writ of Certiorari, to call for the records of the 3rd respondent herein in order No.Na.Ka.No.11080/2008/KE H1,



dated 29.09.2004 published in the Perambalur District Gazette dated 12.10.2004 and quash the same in so far as the petitioner is concerned.

2. The case of the petitioners is that the petitioners are the owners of the land situated in Survey Nos.313-5A, 313-7 and 313-10. The petitioners submitted that initially in the year 1993, a notification was issued under Section 4(1) of the Land Acquisition Act (Central Act I of 1984) on 09.11.1993, in order to acquire the lands for providing house sites to Adi Dravidars of Sokkanatha Puram Village and further submitted that declaration under Section 6 of the said Act was made on 20.12.1994. The said 4(1) notification as well as Section 6 declaration were challenged before this Court in W.P.No.2925 of 1995, on the ground that the provisions of the Central Act 1 of 1894 ceased to apply to any land which is required for the purpose specified in Tamil Nadu Act 31 of 1978 and that such lands shall be acquired only in accordance with the provisions of the said Act, by relying on the judgment of the Hon'ble Supreme Court in State of Tamil Nadu vs. Anandhi Ammal reported in 1995 (1) SCC Page No.519. The said Writ Petition was allowed on 13.10.1995. However, this Court had given liberty to the State Authority to initiate proceedings under the Tamil Nadu Act 31 of 1978, if so desires to acquire the land of the petitioners for providing house sites to the Adi-Dravidars. On 02.06.2004, the District Collector has appointed the second respondent/Special Tahsildar (Adi-Dravidar) as a Special officer, and issued 4(2) notice for conducting an enquiry. Therefore, the second respondent has conducted an enquiry, in which, the petitioners submitted written objections to the second respondent stating that only small extent of lands are available with them and the said lands were later to be used to construct house sites for themselves and except these lands have no other lands. All the writ petitioners sent a representation on 17.08.2004. However, the District Collector without considering the representations made by the petitioners mechanically approved the land acquisition proceedings against the petitioners and appointed as a Special Tahsildar for acquiring the lands from the petitioners. Challenging the same, the present writ petition is filed.

3. The learned Counsel for the petitioners would submit that the land acquisition proceedings initiated in the year 1993 was quashed by this Court by order dated 13.10.1995. The 4(2) notice was issued by the 3rd respondent for providing house sites to the Adi-Dravidars. The learned counsel further stated that the petitioners had only a small extent of lands for their own purpose, except these lands have no other place to the petitioners. Further, the District Authorities have decided to provide house sites for 36 Adi-Dravidar families, out of which,



already 19 families were provided 'Thoguppu Veedugal' under the State Welfare Scheme and 10 families who were not allotted Thoguppu Veedugal are having their own houses. Out of the 36 families, 26 families have their own land with irrigation facilities. The learned counsel drew the attention of this Court to the Full Bench Judgment 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



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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."

4. The learned Additional Government Pleader for the respondents refuted the allegations raised by the petitioner and justified the land acquisition proceedings. The respondents did not file any counter affidavit and they have produced the original files in order to prove the application of mind of the District Collector.



5. On a perusal of the original files and records, it is seen that 4(2) notice was sent to the petitioners on 09.08.2004 and the petitioners sent their objection on 17.08.2004. The main objection made by the petitioners is that they were in possession of only a small extent of lands and the said lands are kept idle so as to construct house for themselves and that except these lands, the petitioners have no other land. Thereafter, the Special Tahsildar made recommendation to the District Collector, overruling objection made by the petitioners on 03.09.2004. After considering the recommendation, the District Collector by his letter dated 29.09.2004, approved the land acquisition proceedings initiated by the Special Tahsildar and directed the District Collector to issue a publication in the District Gazette.

6. The order passed by the District Collector does not reflect the application of mind on his part. In the Full Bench Judgment of this Court (cited supra), it is clearly held that the materials on record should indicate the application of mind. No endorsement is available in the order of the District Collector. Hence, the District Collector mechanically approved the recommendation made by the Special Tahsildar which is contrary to the full Bench decision of this Court. Accordingly, the writ petition stands allowed and the land acquisition proceedings are set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Secretary,
Adi Dravidar & Tribal Welfare Department,
Secretariat, Chennai-600 009.
2. The Special Tahsildar (Adi Dravidar), Perambalur.
3. The District Collector, Perambalur District.

+3cc to Mr.G.Purushothaman, Advocate, S.R.No.51638 to 51640

W.P.Nos.12480 to 12482 of 2005
and

W.M.P.Nos.13658 to 13663 of 2005

CA(CO)
CS/29/08/2019