

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.9369 of 2008 and
M.P.Nos.2 and 3 of 2008

1. Kamalanathan
2. Selliammal (Deceased)
3. Mohan Raj
4. Jayalakshmi
5. Pon Perumal Petitioners
(Petitioners 3 to 5 are substituted as
L.Rs. of deceased 2nd petitioner as per Order
dated 02.07.2018)

Vs

1. The District Collector,
Salem District, Collectorate,
Salem-636 001.
2. The Land Acquisition Officer and
Special Tahsildar (Adi Dravidar Welfare),
Attur, Salem District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the notice issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 in Roc.No.22165/2007 (D.7) dated 6.3.2008 as published in the Salem District Gazette Extraordinary Issue No.5 dated 8.3.2008 amended by the Proceedings Roc.No.22165/2007 (D.7) dated 19.3.2008 as published in the Salem District Gazette Extraordinary Issue No.6 dated 24.3.2008 on the file of the 1st respondent herein and quash the same.

For Petitioner : Mr.T.Murugamanickam,
Senior Counsel
for M/s.V.Rajesh

For Respondents : Mr.M.Elumalai
1 and 2 Government Pleader

O R D E R

This Writ Petition has been filed, challenging the impugned notice issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 in Roc.No.22165/2007 (D.7) dated 6.3.2008 as published in the Salem District Gazette Extraordinary Issue No.5 dated 8.3.2008 amended by the Proceedings Roc.No.22165/2007 (D.7) dated 19.3.2008 as published in the Salem District Gazette Extraordinary Issue No.6 dated 24.3.2008 on the file of the 1st respondent herein and to quash the same.

2. Mr.T.Murugamanickam, learned Senior Counsel appearing for the petitioners would submit that the impugned proceedings seeking to acquire 10 Cents of land from the petitioners to make provision for pathway to reach the burial ground to the Malayalis of Malayalapatti Village is violative of the settled principles of natural justice and the mandatory provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 and Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 for the simple reason that the same has been issued against a dead person, namely, the father of the 1st petitioner, namely, Venkatachalam Chetty, who passed away on 9.11.2001, namely, 7 years prior to the impugned notification. This apart, Form I dated 29.1.2008 issued by the 2nd respondent does not set out the purpose of acquisition besides it does not set out the exact location of the lands sought to be acquired by description of boundaries. Therefore, the impugned proceedings are liable to be quashed.

3. The learned Senior Counsel for the petitioner would further submit that this Court in a reported decision in 2006 (4) CTC 609 clearly sets out the procedure for acquisition under the Act stating that the owner of the lands sought to be acquired has to be furnished with a copy of the report of the authorised officer. But, in the present case, the petitioners have submitted their written objections on 07.02.2008 to the 2nd respondent stating that they were not aware of the purpose of acquisition. In spite of having received such written objections, the 2nd respondent herein has not furnished a copy of his report to be submitted to the 1st respondent to the petitioners which would enable the petitioners to make further representation in the matter. Therefore, the rights of the petitioners are greatly prejudiced by this inaction on the part of the 2nd respondent. Further, as stated earlier, since in the Form-I dated 29.1.2008 issued by the 2nd respondent, no purpose for acquisition was mentioned, it goes to the root of the matter that the petitioners are not even able to give a proper objection to the Gazette Notification and other proceedings. Subsequently, the 1st respondent has issued the amended Gazette

Notification without putting the petitioners on notice that amounts to a substantial change in the Notification issued under Section 4(2) of the Act which prejudices the rights of the petitioners herein.

4. Again continuing his arguments, the learned Senior Counsel for the petitioners would also submit that even after the land-in-question is alleged to be acquired for making a provision for pathway to reach the burial ground for Malayalis of Malayalapatti Village, they have to again pass through a river which is a riverbed. Therefore, in spite of the identification of the burial ground, which is situated across the river, the purpose of acquisition would be defeated, if the burial ground is not shifted before the river i.e. in the place without crossing the river. When the acquisition of the petitioners' land is nowhere near the route to this burial ground and the petitioners lands are situated on the southern side of Vasishta River and $\frac{1}{2}$ a km. away, the acquisition of the petitioners' lands would involve crossing the 15 feet deep Vasishta River that would be difficult during rainy season. Therefore, the impugned Gazette Notification is liable to be quashed as it has been passed without application of mind, it is pleaded.

5. A detailed counter affidavit has been filed by the 2nd respondent, namely, the Special Tahsildar, Adi Dravidar Welfare Office, Attur and subsequently a Status Report has also been filed.

6. Mr.M.Elumalai, learned Government Advocate appearing for the respondents 1 and 2 would submit that the allegation made by the petitioners that the revenue authorities attempted to disturb the petitioners possession and enjoyment of the lands-in-question is not correct since the villagers of Malayalapatty and nearest hill tribe people are using S.No.149/1A, 149/1C2, 149/1D2, 149/2A, 149/3A1 and 149/4A as pathway. There is a pathway already existing through those lands. The 1st petitioner and his wife, objecting the acquisition of this land to make provision for pathway to reach the burial ground for Malayalis of Malayalapatty Village have already filed a suit in O.S.No.232/2007 and the same is pending on the file of the District Munsif Court, Attur. However, the Schedule Tribes people are using the said land in Survey No.200, Classification-Road Eastern Side as burial ground subject to the out come of this Writ Petition.

7. The learned Government Advocate for the respondents 1 and 2 would further submit that the 1st petitioner is the owner of 0.33 acres of land in S.F.No.149/1A, 149/2, 149/4 and 149/3A of Malayalapatti Village, Pethanaickenpalayam Taluk, Salem

District. The said land was acquired for providing pathway to reach burial ground for the people belong to Schedule Tribes Community of Malayalaptti Villge after following the Tamil Nadu Land Acquisition (Harijan Welfare) Act, 1978 (Act 31/78) and Tamil Nadu Land Acquisition Rules. Thereafter, Notification under Section 4(1) was issued and notice under Section 4(2) of the Act was also issued to the 1st petitioner and thereafter, award enquiry was also held and finally Award No.5 of 2008 was passed on 28.3.2008 by the then Special Tahsildar (Adi Dravidar Welfare) Attur. An amount of Rs.21,158/- is fixed as compensation as per Tamil Nadu Land Acquisition (Harijan Welfare) Act, 1978 and Tamil Nadu Acquisition Rules. At this stage, the petitioners filed O.S.No.377/2007 on the file of the learned District Munsif, Attur restraining the respondents from in any manner interfering with their possession and enjoyment in the land-in-question and the same is still pending. As there is no other way for making provision for pathway to reach the burial ground for Malayalis of Malayalapatti Village, the impugned notice was issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 in Roc.No.22165/2007 (D.7) dated 6.3.2008 as published in the Salem District Gazette Extraordinary Issue No.5 dated 8.3.2008 amended by the Proceedings Roc.No.22165/2007 (D.7) dated 19.3.2008 as published in the Salem District Gazette Extraordinary Issue No.6 dated 24.3.2008 by the 1st respondent herein.

8. Heard the parties on either side.

9. The 1st petitioner is the owner of 0.33 acres of land situated in Malayalapatty Village, Attur Taluk, Salem District. Since the Malayalis of Malyalapatti Village and the tribal people are unable to reach the burial ground in Malayalaptti village, the Tamil Nadu Government on various representations, have come forward to acquire a small portion of the land for making provision to make pathway to reach the burial ground to the Malayalis of Malayalapatti village. Accordingly, a notification was issued by the District Collector on 08.03.2008. When Form II issued under Rule 3(ii) specifically shows that the Government of Tamil Nadu have come forward to redress the problem of the tribal people residing in Malayalapatty village by making provision for pathway to reach the burial ground for Malayalis of Malayalapatti Village, consequently only, a small extent of 10 cents of land alone has been acquired from the petitioners who are having 5 acres of lands. The objection raised by the petitioners is on the ground that even after acquisition of the land, the tribal people are under compulsion to cross the Vasishta river which is having 15 feet depth and it is very difficult during the rainy season to cross the said river. This objection has no valid reason. The reason being that it is not a perennial river and it is a riverbed and only

during the rainy season, the water comes in the river. But it is not made it clear as to whether the water will be full during the rainy season that would prohibit the villagers to carry any body to the graveyard. Such location of the burial ground for the Malayalis of Malayalapatti Village is in S.No.155/1A of Malayalapatti Village which is situated abutting the Attur-Karumandurai Road and the people of the Malayalapatti Village are using it for a long time subject to the result of the writ petition. Therefore, this Court finds no merit in the Writ Petition.

10. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsi

To

1. The District Collector,
Salem District, Collectorate,
Salem-636 001.
2. The Land Acquisition Officer and
Special Tahsildar (Adi Dravidar Welfare),
Attur, Salem District.

+1cc to M/s.Zeenath Begam, Advocate sr.no.92771
+1cc to Government Pleader sr.no.10252

W.P.No.9369 of 2008

rr(co)
nr 26/02/2019

WEB COPY