

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.7452 of 2004
and
W.P.M.P.No. 8821 of 2004

N.Shabir Ahamed ...Petitioner

Vs.

1.The District Collector
Vellore District

2.The Special Tahsildar
Adi Dravidar Welfare
Tirupattur Town,
Vellore District.

3.The Vellore Corporation
Vellore.
(The Commissioner, Ambur Municipality,
is substituted in the place of
Vellore Corporation, Vellore District).

... Respondents

(R3 - Suo moto impleaded vide Court Order
dated 15.03.2018)

Prayer: The writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, to call for the records on the file of the 1st respondent in Proc.K10/53560/2003 and dated 07.01.2004 as published in the Vellore District Gazette dated 20.01.2004 and quash the same as illegal, incompetent.

For Petitioner : Mr.V.Raghavachari
For Respondents : Mr.M.Elumalai, GA

O R D E R

The petitioner has filed this writ petition, seeking to quash the order of the 1st respondent in Proc.K10/53560/2003, dated 07.01.2004, published in the Vellore District Gazette dated 20.01.2004.

2. The case of the petitioner is that he is the owner of the land comprised in T.S.No.2 to an extent of 4.07 acres under registered settlement deed 07.08.1993 and sale deed dated 01.09.1993. The petitioner's land was classified as Special and Hazardous Industrial Zone Lands by the Commissioner, Ambur Municipality. The same is confirmed vide certificate dated 07.11.1996 under ROC.No.8827/95/F 1. The petitioner is in uninterrupted possession of the land, running Tannary as well as maintaining Effluent Treatment Plant. In the said 4.07 acres of land, 2 acres of land is being utilized for running Tannary industry and the remaining extent is utilized for draining the water from the Effluent Treatment Plant. The petitioner also has a well and bore well in the land proposed to be acquired and the water from the said well is utilized for treating the effluent. Therefore, it may not be possible to run the unit at all. The effluent treatment had been initiated pursuant to the orders of the Hon'ble Supreme Court in Vellore Citizen's case.

3. While being so, one Dhanasekaran, the President of Dr.B.R.Ambedkar Social Welfare Seva Sangam had filed a suit in O.S.No. 835 of 1996 seeking for a declaratory relief that the land in S.No.2 should be acquired for the purpose of providing housing sites to the Adi dravidar of Pudumandi and Mangalapuram Villages. The District Collector/defendent in the said suit had filed written statement stating that 6.12 acres or 43,600 sq.ft of land shall cost Rs.1,54,76,256/- for acquisition and that they are not intended to acquire the lands. At this juncture, the petitioner states that the cost valued by the District Collector for 6.12 acres of land has no nexus with the market value. After having lost the suit, the said Dhanasekaran had pursued his remedy before this Court in W.P.No. 5821/1999 and the same was dismissed, by this Court on 25.06.1999.

4. Challenging the said dismissal order, the said Dhanasekaran preferred Writ Appeal in W.A.No.2377 of 1999 before this Court. The Division Bench of this Court had also confirmed the order passed in W.P.No.5821 of 1999, however, directed the petitioner therein to pursue the representation made by him on 01.03.1999 to the 2nd respondent. The respondents therein had failed to appreciate the nature of the orders passed in W.A.No.2377/1999 and had acted in total detriment to the interest of the Villagers. Moreover, misunderstanding the order of this Court as having directed them to acquire the land for the purpose of Harizians, the 2nd respondent had issued 3(1) notification under Section 4(2) of Tamil Nadu Act 31/1978 on 25.03.2002, fixing the date of enquiry on 16.04.2002. The petitioner also filed his objections explaining the fact that the lands are classified as Industrial Zone and the Treatment Plant has been installed for the irrigation purposes and requesting the respondents to drop the acquisition proceedings.

Inspite of all these facts, the then District Collector approved the acquisition proceedings, stating that the acquisition proceedings had been initiated pursuant to the orders of this Court, against which, the present writ petition is filed.

5. The learned counsel appearing for the petitioner submitted that the then Special Tahsildar had also expressed the non-feasibility of acquiring the petitioner's land in his letter dated 07.03.2000. The acquisition proceedings are not in accordance with the rules and hence, the District Collector, Vellore should not have approved the same. The learned counsel further submitted that the 2nd respondent misunderstood the order of this Court in W.P.No. 5821 of 1999 and W.A.No. 2377 of 1999, wherein nowhere the respondent was directed to acquire the lands. Without considering all the above facts, the 1st respondent has approved the acquisition proceeding without application of mind and therefore, he seeks to set aside the proceedings of the 1st respondent.

6. The learned Government Advocate appearing for the respondents did not dispute the contentions made by the petitioner in the affidavit or the submissions made by the learned counsel appearing for the petitioner.

7. In this regard, the Full Bench of this Court has discussed in detail in the case of R.Pari Vs. The Special Tahsildar, Adi Dravidar Welfare, Divakottai (Pasumpon Muthuramalinga Thevar District) and another), reported in (2006) 4 CTC 609. The relevant portion of the order is extracted hereunder:

"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 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.

9. In view of all the above, the writ petition is allowed and the impugned proceeding is quashed in so far as this petitioner is concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

kmm

To

1.The District Collector
Vellore District

2.The Special Tahsildar
Adi Dravidar Welfare
Tirupattur Town,
Vellore District.

3.The Commissioner,
Ambur Municipality.

+1cc to Mr. V.Raghavachari, Advocate, S.R.No. 59524
+1cc to the Government Pleader, S.R.No. 59716

W.P.No.7452 of 2004

PA (CO)
GN (14/10/2019)



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