

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.9608 of 2004
and
W.P.M.P.No.11231 of 2004
and
W.V.M.P.No.1392 of 2005

N.Venkatesh

..Petitioner

Vs

1. State of Tamil Nadu
rep.by the Collector
Villupuram District.
2. The Special Tahsildar
Adi Dravidar Welfare
Ulundurpet

..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, to call for the records of the Gazette Notification of the 1st Respondent dated 27.12.2003 in M1.58289/2001 read with the proceedings of the second respondent dated 26.02.2004 in A1774/2000 in so far as it relates to the property in survey no.358/1B 0.02.5, 359/1B 0.01.5 and 359/3B 0.01.0 of Senthamangalam village, Ulundurpet Taluk and quash the same.

For Petitioner : M/s.R.Sunil Kumar
For Mr.R.Sundar Narayan

For Respondents: Mr.M.Elumalai,
Government Advocate for R1 & R2

O R D E R

The Notice issued under Section 12(2) of the Land Acquisition Act is under challenge in the present writ petition. On account of the subsequent amendment of prayer, the 4(1) Notification issued by the competent authority is also under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner vehemently contended that the procedures as contemplated under the Land Acquisition Act had not been followed for the purpose of acquiring the land belongs to the writ petitioner. The petitioner is the absolute owner of the property in survey no.358/1B 0.02.5, 359/1B 0.01.5 and 359/3B 0.01.0 of Senthamangalam Village, Ulundurpet Taluk. The petitioner acquired the said property through a deed of exchange dated 08.04.2002 along with one Mr.Ramalingam. The petitioner has earlier purchased the property given in exchange by him from the same Mr.Ramalingam under a registered sale deed dated 23.9.1999. Pursuant to the sale, the patta also had been changed in the name of the writ petitioner. The petitioner obtained a bank loan and constructed an office and a residential building in his property. Construction has been completed, the petitioner has established a saw mill and rice mill also in that locality. The petitioner was served with a notice under Section 12(2) Notification dated 24.03.2004 from the second respondent, setting out the amount of compensation as Rs.6,312/-. The land was acquired for the purpose of allotting free house sites to the poor landless Adi Dravida people of that locality.

3.The contention of the petitioner is that no notice was served on the writ petitioner and enquiry had not been conducted as contemplated under the Act. This apart, the Notification impugned stipulates one Survey Number namely S.No.359/3B only and the Survey Nos.358/1B, 359/1B has not been notified in the official investigation. Therefore, the acquisition itself is in violation of the provisions of the Act. In view of the non-adherence of the mandatory provisions and in view of the fact that the Survey Numbers had not been notified in the Notification, the petitioner seeks quashing of the entire notification with reference to his property.

4.The learned counsel appearing on behalf of the respondents disputed the contentions raised on behalf of the writ petitioners by stating that on the representations from the landless and houseless poor Adi Dravida people of Sendamangalam village, Ulundurpet Taluk of Villupuram District for the provision of free house site patta, the village was inspected by the then special Tahsildar(ADW), Ulundurpet. On inspection, it was found that the residents of the present Adi Dravidar colony are living in congestion, unhygienic condition and it was felt that necessary free house site patta has to be provided to the people. Further, inspection revealed that there are no suitable Poramboke or Government lands available in a compact block to provide house site to 143 families, who are in need. Hence, it was decided to acquire private patta lands to an extent of 3.42.5 hectares on payment of compensation according to the prevailing market rate. Necessary proposals have been sent to the Collector and administrative sanction was accorded by the

Collector in M5/18248/2001 dated 26.12.2002. The following lands are proposed for acquisition:

RS.NO.	Classification	Extend
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358/1	Govt.Dry	0.58.5
359/1A	Govt.Dry	0.23.5
359/2A	Govt.Dry	0.04.5
359/3B	Govt.Dry	0.21.5
359/4	Govt.Dry	1.07.5
359/6	Govt.Dry	0.56.5
359/7	Govt.Dry	0.09.0
359/8	Govt.Dry	0.61.5
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	Total	3.42.5
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5. These lands form a compact block and abutting the road which is running to Kalathur Villag. This local fund road connect the Chennai-Trichy National Highway. The Adi Dravidar people of Sendamangalam willing to put houses in the lands for provided house site. The habitation is very much comfortable to reach remote villages in the eastern side.

6. Notice of enquiry under Section 4(2) of the Act 31/78 has been published in the village and in the local Government office inviting the land owners concerned to appear for enquiry on 22.01.2003 and put forth their objection if any for the proposed acquisition. The enquiry has been conducted as scheduled and the objection have been recorded and submitted to the Collector. The Collector after careful consideration of objections raised by the land owners has over ruled the objections and ordered the publication of a notification under section 4(2) of the TN L.A Act 31/78 in the District Gazette in M5/18248/2001, dated 23.12.2003. Accordingly, a notification was published in the Villupuram District Gazette Extra ordinary issue No.11 dated 27.12.2003. The contents of the notification have been published in the village on 09.02.2004 and the land owners have been informed to participate in the award enquiry on 25.02.2004. In the mean time, the valuation proposals have been got approved in the Villupuram Collector's reference No.M5/18248/2001 dated 24.02.2004. The rate has been fixed at Rs.44,444/- per acre or Rs.1,09,777/- per hectare. At the time of preliminary enquiry, the following lands stands registered in the name of the

following Pattadars as per village accounts of Sendamangalam village, Ulundurpet taluk:

R.S.No	Extend(in hect)	Patta No.and Name	
358/1	0.58.5	460, Sasikala	D/o
Natarajan and others			
359/1A	0.23.5	1931, Ramalinga Padayachi	S/o
Rajamanicka Padayachi and others			
359/3B	0.21.5	-do-	

7.The petitioner name does not find place in the village accounts in the above pattadars. The petitioner's sister Tmt.Sasikala W/o Saravanan is the owner and pattadar of land in R.S.No.358/1, 0.58.5 hectare. The petitioner might have got partition and purchased or by exchanging the mentioned property but the village accounts did not speak to that effect. Hence, we have followed the village accounts. The award enquiry was conducted on 25.02.2004. After the award enquiry, the petitioner has filed writ petition in the high Court at Chennai.

8.Necessary notices in the Form I rule 3(1) under Section 4 (2) of the TN Act 31/78 have been served to the land owner except the petitioner, who is residing at Trichy. Thiru.Natarajan F/o Petitioner appeared for the 4(2) enquiry at 11.00 A.M on 22.01.2003 in the office of the village administrative officer, Sendamangalam village on behalf of Tmt.Sasikala owner of the property in an extent of 0.58.5 hectares in RS.No.358/1. Thiru.Ramlinga Padayachi S/o. Rajamanicka padayachi appeared for the enquiry in an extent of 0.23.5 out of 0.37.5 hectare and an extent of 0.21.5 hectares out of 0.25.5 hectares. But as per the taluk, 8A/134/1414 dated 09.11.2005 sub division was made detailed below:

RS.No.	Extent(in hect)	Name of the Pattader
Patta No.		
358/1B	0.02.5	Venkatesan
2525		
359/1B	0.15.5	Venkatesan
2525		
359/3B	0.05.0	Venkatesan
2525		

9.As per the award No.3/2003-2004 dated 25.02.2004, the following lands have been acquired for the purpose of providing house site among the extent of 3.42.5 hectares in Sendamangalam village:

RS.No.	Extent(in hect)	Name of the Pattader
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358/1B	0.02.5	Venkatesan S/o Natarajan
359/1B	0.01.5	Venkatesan S/o Natarajan
359/3B	0.01.5	Venkatesan S/o Natarajan

10.Formally Special Tahsildar(ADW) inspected the above acquisition fields on 27.11.2013 with the special Revenue Inspector (ADW) and Special Deputy surveyor(ADW). The total extent in RS.No.359/1 is 0.37.5 hectares. Out of the above extent, sub division was made as 359/1A and 359/1B. The extent of RS.No.359/1A is 0.22.0 hectares owned to Ramalingam S/o.Rajamanickam as per patta No.1931. Though it is Joint patta in the names of Kaliyan, Ramalingam sons of Rajamanickam and Ramamoorthi S/o Ranganathan, the entire land is owned to Ramalingam S/o. Rajamanickam only.

11.The total of extent of RS.No.359/1B is 0.15.5 hectares and as per patta no.2525 it is owned to Venkatesh S/o Natarjan. Out of the above extent, an extent of 0.01.5 hectare is acquired for providing house site and the remaining 0.14.0 hectare is used by the petitioner and his father. A terraced house was constructed in the land, the backyard of the house is used as thottam. From the hosue, A cart track is running up to the local. At the entrance of the cart tract from the local fund road, there is an iron gate available.

12.On both sides of the gate, a compound wall constructed at breath of 10 feet and a height of 5 feet which involved in the acquisition field. RS.No.359/1B and a thorny fencing is the acquisition field. On the ridge of the RS.No.359/3B and 359/1B teak wood Margosa, Coconut trees and miscellaneous trees are available. There is no rice mill or saw mill available in the acquisition field. The block gram has been cultivated and teak wood trees are available in RS.No.358/1B.

13.At the time of passing of award, the above said land was in the name of the petitioner, hence ,the 12(2) notice under

Section 4(2) of the Tamilnadu Land Acquisition Act 31/78 was served to the petitioner to receive the compensation amount. But, at the 4(2) enquiry, the above land was stood in the name of Ramalingam and sasikala. Hence, there was not necessity to serve Form I, Rule 3(1) under Section 4(2) of the Tamilnadu Land Acquisition Act 31/78. The compensation amount was fixed on prevailing market rate of the Village. According to the Land acquisition act, sales statistics will be gathered from the sub registrar office concerned for prior one year from the date of publication of the District Gazette. The valuation is fixed on the basis of the sale occurred very nearer to the acquisition field/ hence everything was followed according to the act laid down in the L.A.act.

14.The 4(2) enquiry will be conducted by the land acquisition officer (Spl.Tahsildar ADW) authorized by the collector. It will not be conducted by the collector. As already stated at the time of 4(2) enquiry the property was not seen in the name of the petitioner in the village account.

15.At the time of 4(2) enquiry and 4(1) proposal submitted for the publication in the District Gazette, the property was in the name of the vendor. The petitioner has not taken any action regarding patta transfer in favor of his name. The RS.No.358/1 was published in the District Gazette(Extra ordinary) No.11 dated 27.12.2003 and the RS.359/1B was subsequently subdivided and necessary notice under section 12(2) of Tamilnadu I.A. Act 31/78 was served to the petitioner to receive the compensation amount for the above said property.

16.There was no superstructures available in the said property. The notices in the form I, Rule 3(1) under section 4 (2) of Tamilnadu LA Act 31/78 was served on the owners. The petitioner's father Thiru.Natarajan appeared for enquiry on 22.01.2003 on behalf of Tmt.Sasikala sister of the petitioner and objected the acquisition. The petitioner and his father natarajan, His sister Sasikala are residing as joint family at Trichy. Further, the petitioner Thiru.Venkatesh has sent a notice to the Collector of Villupuram - 1, the land acquisition officer, ADW Department, Villupuram - 2 and the special Tahsildar ADW, Ulundurpet - 3 through L.N.A.P.Neelamegavannan, advocate and Notary public, Villupuram, against the land in RS.No.358/1, 1.00 acre and 359/3, 0.56 acre in Sendamangalam village on 15.12.2000. So, it is very wonder that he came to know the L.A proceedings at the time of serving of 12(2) notice on 24.03.2004 Thiru.Natarajan, after attending the 4(2) enquiry at Sendamangalam village on 22.01.2003, the family could have discussed regarding the acquisition proceedings of their property.

17.The Special Tahsildar, (ADW) namely Smt.D.Jayalakshmi, Ulundurpet Taluk, Villupuram, who is present before this Court along with the files, clarified that the acquired land had been allotted in favour of 211 beneficiaries and the respective allottees had taken possession of the land except few persons and constructed residential houses in their allotted plot. Few persons have to take possession of the land and they are unable to take possession in view of the threat caused by the writ petitioners.

18.The learned Government Advocate brought to the notice of this Court that the petitioner being a prominent person in that locality is preventing the beneficiaries from taking possession of the allotted land.

19.However, this Court is of the considered opinion that the Special Tahsildar and the officials concerned are duty bound to initiate appropriate action to take possession of the land and in favour of the some of the allottees, enabling them to construct residential houses in the allotted places. Once, the land is acquired, the land vest with the Government.

20.In the present case on hand, the land acquisition proceedings were concluded and the acquired land was allotted in favour of 211 beneficiaries and most of the beneficiaries had already taken possession of the land and few beneficiaries are yet to take possession on account of these issues. In view of the fact that the interim stay was granted in the present writ petition, the authorities were unable to initiate action to take possession from the writ petitioner.

21.The land was acquired for the welfare of the poor landless Adi Dravida people of that locality. The beneficiaries are about 211 families, who all are poor Adi Dravida houseless people. Such welfare schemes are to be implemented by the State and the very purpose and object of the Act is to ensure that the social justice has enunciated in the Constitution is being implemented in a phased manner by the State. Equality amongst the citizen is the Constitutional perspective and directive. Large scale in equalities will create restlessness in the society. If large number of citizens are in a poverty line and few are continuing as richer, the said position will certainly cause an imbalance and create restlessness in the minds of the larger sector. One of the constitutional perspectives is to ensure to remove all such initiatives. With this object, acquisition laws are enacted. While, acquiring the private property, the State is assessing the income and other aspects of the person, who is owning in the land. At the first instance,

the State has to prefer the Poramboke land or the Government land. If any suitable Government lands are available, then they have to acquire lands from the private persons. Even at the time of initiation of acquisition proceedings, the competent authorities are bound to assess the income and other aspects of all such private persons.

22. Admittedly, the writ petitioner is running a Saw Mill and having sources of income. Thus, there is no infirmity in respect of the decision taken by the competent authorities to acquire the private land from the writ petitioner with reference to the grounds raised in the present writ petition that no notice has been issued to the writ petitioner.

23. On a perusal of the entire counter affidavit filed by the respondents, the father of the writ petitioner participated in the enquiry proceedings though the writ petitioner admits the same. It is pleaded that the father of the writ petitioner participated with reference to some other survey number and not in connection with the survey number referred in the present writ petition, no notice has been issued. Though such a ground has been raised, the learned Government Advocate clarified the position by stating that after initiation of land acquisition proceedings and after issuance of Notification, the land was sub-divided and therefore, inclusion of those survey Numbers may not be relevant as far as the present acquisition proceedings are concerned. The Notification was issued before effecting the Sub Division and therefore, the notification covered the entire locality and the ground raised has no relevance at all. When the original notification contains the survey number, including the entire locality and further Sub Division may not have any impact, so as to affect the land acquisition proceedings initiated in respect of the entire portion of the land.

24. The learned Government Advocate brought to the notice of this Court that in respect of the very same acquisition proceedings in the same locality, the other 3 writ petitions were filed by the other owners in W.P.No.12534/2010 dated 16.07.2018, W.P.No.15123 of 2005 dated 14.06.2005 and W.P.No.2383 of 2004 dated 09.08.2006 and the writ petitions were also dismissed by this Hon'ble Court.

25. In view of the fact that the land acquisition proceedings were concluded long back and 211 beneficiaries are provided with an allotment, out of which, major portion of the allottees have constructed residential building in that locality, the writ petitioner has not established any ground for the purpose of considering the relief as such sought for in the present writ

petition. The respondents are bound to take possession of the entire property and allot the beneficiaries, enjoy the portion and the land allotted in their favour as per the allotment order.

26. With these observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Collector
Villupuram District.

2. The Special Tahsildar
Adi Dravidar Welfare
Ulundurpet

+1cc to Mr. Sundar Narayan, Advocate, S.R.No.6993

+1cc to the Government Pleader, S.R.No.8207

W.P.No.9608 of 2004

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