

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. No.28752 of 2010 &
M.P.No.2 of 2010 & WMP No.2850 of 2018

R.Venkatamuni

... Petitioner

Vs

1. The District Collector,
Vellore District,
Vellore.

2. The Special Tahsildar (ADW),
Gudiyatham Taluk,
Gudiyatham,
Vellore District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the entire records and quash the land acquisition proceedings initiated by the 1st respondent in respect of premises land comprised in S.No.31/2 of Pichanur Village, Gudiyatham, by its notification number K.10/50533/2000, dated 03.07.2002.

For Petitioner : Mr.D.Rajagopal
For Respondents : Mr.M.Elumalai,
Govt. Advocate

सत्यमेव जयते
O R D E R

This Writ Petition has been filed challenging the impugned order of the 1st respondent in respect of premises land comprised in S.No.31/2 of Pichanur Village, Gudiyatham, by its notification number K.10/50533/2000, dated 03.07.2002.

2. The case of the petitioner is that the petitioner is the owner of the land bearing S.No.31 of Pichanoor Village with an extent of 1.53.0 hectare. Among Survey No.31, there is a subdivision in Survey No.31/2. In Survey No.31/2, the 1st respondent initiated land acquisition proceedings to acquire the land to wit the house sites of Adidraavidars and Arundhadhiyar's of Rajipatti Village and issued a 4(1) notification on

03.07.2002. it is further submitted that the petitioner is carrying stone quarry work, after obtaining valid lease and permit from the District Collector in his land in Survey No.31, with an extent of 1.53.00 hectare, apart from stone quarry work, in the same boundary, i.e. in respect of 31/2, the petitioner is doing small level agricultural work. While that being so, the respondents herein without following mandatory procedure, had initiated acquisition proceedings. The second respondent issued a 4(2) notice to the petitioner. Thereafter, the petitioner made an objection before the Tahsildar. In the said objection, he has clearly stated the said land is needed for him and in the same boundary, he is carrying out the stone quarry work. Apart from that adjacent to stone quarry, if the beneficiaries construct the houses, he will not be able to carry out the mining work. However, without considering the objection, the second respondent recommended for acquisition of the land to the District Collector and the District Collector contrary to the decision of the Full Bench of this Court and issued under Section 4(1) notification dated 03.07.2002, to the petitioner, without application of mind. Challenging the acquisition proceedings initiated against the petitioner, the present writ petition has been filed.

3. Mr.D.Rajagopal, learned counsel appearing for the petitioner would submit that the respondents did not comply the mandatory procedure under Section 4(3)(b) of the Act, in which the Act clearly says "Where any officer authorized by the District Collector has called upon the owner or other person to show cause under sub-section(2), the officer so authorized shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report, the District Collector may pass such orders as he may deem fit". In the present case on hand, without application of mind, the first respondent/District Collector mechanically passed the impugned order, which is unsustainable one.

4. The learned counsel had further placed reliance upon the decision of the Full Bench of this Court reported in (2006) 4 CTC 609 (R.Pari Vs. The Special Tahsildar, Adi Dravidar Welfare, Divakottai (Pasumpon Muthuramalinga Thevar District) and another) and the relevant portion of paragraphs 42 and 43 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 R. Pari vs The Special Tahsildar, Adi ... on 25 August, 2006 Indian Kanoon- <http://indiankanoon.org/doc/1964016/18> 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."

5. On perusal of the records, it is seen that the petitioner has made an objection, which is found in original file in page No.61 and the recommendations of the Tahsildar found in the original file in page No.131 and thereafter, the District Gazette was published on 22.06.2001. This Court perused the entire files of the District Collector ordered for approving recommendations of Tahsildar. It is further revealed that according to the petitioner, without considering his objections, the impugned notification dated 03.07.2002, has been passed in cyclostyle form, without application of mind.

6. Meanwhile, Mr.M.Elumalai, learned Government Advocate appearing for the State would submit that the very same issue was already challenged before this Court and this Court has dismissed the Writ Petition No.428 of 2004 vide its order dated 23.03.2004. As against the order of dismissal in the writ petition, a Writ Appeal was preferred before the Division Bench of this Court in W.A.No.920 of 2009 and the said appeal was dismissed on 08.07.2009. Hence, the said issue was already settled by the Division Bench, which cannot be interfered with.

7. On perusal of entire files reveals that it is contrary to the decision of Hon'ble Full Bench of this Court and without application of mind, the first respondent District Collector has approved the recommendations of the 2nd respondent as well as the objections of the petitioner and passed the impugned order in a cyclostyle form. Hence, I have no hesitation to allow this Writ Petition. Accordingly, this Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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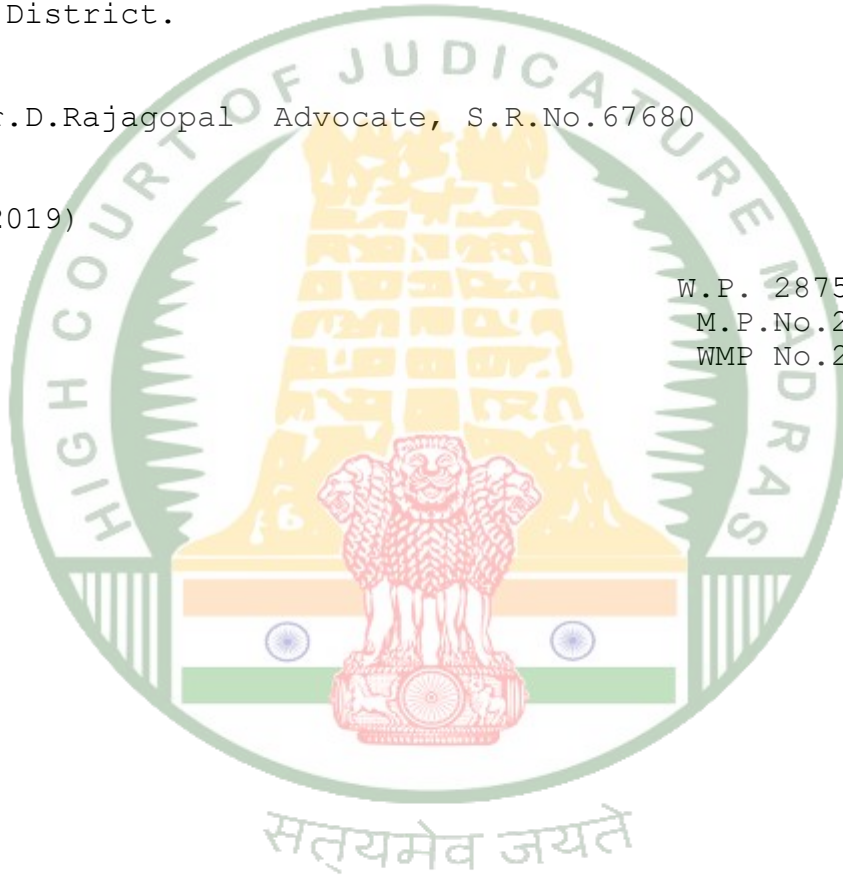
1.The District Collector,
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Vellore.

2.The Special Tahsildar (ADW),
Gudiyatham Taluk,
Gudiyatham,
Vellore District.

+1cc to Mr.D.Rajagopal Advocate, S.R.No.67680

NRL (CO)
CB (25/09/2019)

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