

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.37800 of 2005

1.R.Appulu
2.A.Chandrambal
3.R.Ramadoss

... Petitioners

Vs.

1.The State of Tamil Nadu
rep. by its Secretary to Government
Revenue Department
Secretariat,
Fort St.George
Chennai - 600 009.

2.The District Collector,
Perambalur District,
Perambalur.

3.The Special Tahsildar
Adi-Dravidar Welfare
Ariyalur
Perambalur District.

.... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the file of the second respondent comprised in their proceeding No.Na.Ka.J-2/969/2005 dated 29.08.2005 with regard to the acquisition of petitioners lands under the provisions of Land Acquisition for the Welfare of Adi-Dravidar Act, 1978 (Tamil Nadu Act 31/1978) and quash the same in so far as the petitioner is concerned.

For Petitioners: Mr.J.Selvarajan

For Respondents: Mr.M.Elumalai

Government Advocate

O R D E R

This writ petition arises under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. The Special

Tahsildar issued notice under Section 4 (2) of the Tamil Nadu Land Acquisition Act, 1978 on 27.06.2005 inviting objections from the land owners for acquisition of their lands and Form I notices were issued to the land owners on 29.06.2005 for the enquiry on 14.07.2005 at the Village Administrative Office. After receiving the notice, the land owners appeared for the enquiry held on 14.07.2005 under Section 4(2) of the Tamil Nadu Land Acquisition Act, 1978 and gave their objections.

2.In the present case, the first petitioner Appulu filed objections, the second petitioner Chandra is his wife and the third petitioner Ramadoss/ brother of the first petitioner filed his objections. Their objections were considered by the Special Tahsildar (Land Acquisition) and after considering their objections, the Special Tahsildar forwarded the recommendation to the District Collector for issuance of notification

under Section 4(i) of the Tamil Nadu Land Acquisition Act, 1978. The District Collector after considering the recommendation made by the Special Tahsildar and objections made by the petitioners, over ruled the objection and approved the recommendation of the Special Tahsildar and thereafter, 4 (i) notification was issued. Challenging the same, the writ petition has been filed.

3.The learned counsel for the petitioners would submit that though the Land Acquisition Officer served notice under Section 4(2) of the Tamil Nadu Land Acquisition Act, 1978 and the petitioners filed their objections, their objections were not considered either by the Special Tahsildar or by the District Collector. He would further submit that the non consideration of the objections and non application of mind will vitiate the land acquisition proceedings and would further submit that the District Collector mechanically accepted the recommendation made by the Special Tahsildar.

4.The learned Government Advocate produced the records and filed counter and would submit that Form I notices were issued to the land owners on 29.06.2005 and enquiry was conducted on 14.07.2005 at the Village Administrative Office. After considering the objections,

the District Collector passed the order on 29.08.2005 and the orders of the District Collector were served on the land owners on 09.09.2005. Thereafter, the notification under Section 4(i) of the Tamil Nadu Land Acquisition Act, 1978 was issued and the same was published in the Perambalur District Gazette (Extra-Ordinary) No.20 on 10.09.2005.

5.The learned Government Advocate would further submit that the procedures contemplated under the Act were scrupulously

followed and there was no error on the part of the respondents and subsequently award was also passed.

6. Heard both sides.

7. This Court on perusal of the counter as well as the records finds that the District Collector, Perambalur has granted permission to the Special Tahsildar for conducting enquiry under Section 4(2) of the Tamil Nadu Land Acquisition Act, 1978. Thereafter, Form I notices were issued to the land owners on 29.06.2005 and enquiry was conducted on 14.07.2005 at the Village Administrative Office. Thereafter, the land owners filed their objections. On perusal of files, the objections filed by the first petitioner Appulu is contained in page no.205 of the file, the second petitioner Chandra is his wife and the objection filed by the third petitioner Ramadoss/ brother of the first petitioner is contained in page no.183 of the file. The first petitioner in his objection has categorically stated that major portion of his lands were sold to third parties. The third petitioner in his objection has categorically stated that a portion of his lands were sold to one Gunasekaran. The sale deeds were also annexed with their objections.

8. Further, the Special Tahsildar has discarded their objections and it is found in inner page nos.2 and 3 of page nos.234 and 235 of the file. The Special Tahsildar has not discussed about the objections and has also not discussed about the subsequent purchasers. The District Collector has mechanically approved the recommendation of the Special Tahsildar.

9. The Full Bench 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 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."

10. On a perusal of the above decision makes it clear that 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 is 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. However, in the present case, the District Collector, Perambalur District, granted permission to the Special Tahsildar for conducting enquiry under Section 4(2) of the Tamil Nadu Land Acquisition Act, 1978. Thereafter, Form I notices were issued and enquiry was conducted at the Village Administrative Office and the petitioners filed their objections. However, their objections were not considered in a proper and prospective manner and the Special Tahsildar has omitted to discuss about the subsequent purchasers from the land owners and the District Collector also has mechanically approved the recommendation of the Special Tahsildar.

11. 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.

12.In view of all the above, the writ petition is allowed and the impugned proceedings is quashed in so far as the petitioners are concerned. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government
Revenue Department
Secretariat,
Fort St.George
Chennai - 600 009.

2.The District Collector,
Perambalur District,
Perambalur.

3.The Special Tahsildar
Adi-Dravidar Welfare
Ariyalur
Perambalur District.

+2cc to Mr.J.Selvarajan, Advocate sr.49831
+1cc to Government Pleader sr.50113

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