



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM

THE HON'BLE Mr. JUSTICE M.DHANDAPANI, J.

W.P.No.37819 of 2005

1. Krishnan
2. Natesan

..Petitioners

Vs

1.The District Collector,
Vellore District.

2.The Special Tahsildar
(Adi Dravida Welfare)
Vellore

..Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari or any other writ or order or direction in the nature of writ, calling for the records relating to the notification issued by the first respondent as published in the North Arcot Ambedkar District Gazette No.3 dated 14/3/1997 and quash the same in so far as the lands belonging to the first petitioner to an extent of 0.00.5 hectares and 0.04.0 hectares in S.No.160/2C and 160/3B respectively and the second petitioner to an extent of 0.06.5 hectares and 0.01.5 hectares in S.No.160/2B and 160/3A respectively situated at Virupatchipuram Village, Vellore Taluk.

For Petitioners : Mr. R.N. Amarnath

For Respondents : Mr. J. Ramesh, AGP

O R D E R

Heard learned counsel for the petitioners and learned Additional Government Pleader appearing for the respondents.

2. The first petitioner is the owner of the land to the extent of 0.00.5 hectares and 0.04.0 hectares in S.No.160/2C and 160/3B respectively and the second respondent is the owner of the land to the extent of 0.06.5 hectares and 0.0105 hectares in 160/2B and 160/3A respectively. The petitioners being owner of the properties were in possession and enjoyment of the same.



WEB COPY

While being so, staff of the second respondent came to the petitioners lands and made enquiry with regard to the person in occupation and interested in the lands. On enquiry, the petitioners came to know that their lands were subjected to acquisition proceedings under the Harijan Welfare Scheme Act 31/78. After coming to know about the acquisition proceeding, the petitioners made further enquiry in the office of the second respondent from where they came to know that the 1st respondent had issued a notification under section 4(1) of the Act in North Arcot Ambedkar District Gazette No.3 dated 14.03.1997. The petitioner further categorically averred that they did not receive any notice under Form I under Rule 3(1) of the Rules framed under the Act and without any notice the land was acquired and the second respondent erroneously recommended the acquisition proceedings to the District Collector and the District Collector without application of mind issued the impugned notification, against which the Present Writ Petition is filed.

3. Learned counsel for the petitioners submitted that the petitioners' case is covered decision of the Full Bench of this Court reported in 2006 (4) CTC page 609 in the case of R. Pari Vs. The Special Tahsildar Adidravidar Welfare, Devakottai, and relied upon paragraphs 42 and 43, 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 objections has been rejected, if the application of mind is reflected in the file even by way of nothings and endorsement, 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



WEB COPY

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 proceedings 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 authorized 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



WEB COPY

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 authorized officer.

All the writ writ petitions are now required to be placed before the Single Judge."

4. Learned counsel for the petitioner would contend as per section 4(2) of the Act, it is mandatory on the part of the respondent to issue notice to the land owner or interested person to file their objections. Thereafter, the second respondent would have recommended for acquisition to the District Collector. After such recommendation, the District Collector would have applied his mind and assessed as to whether the objections raised by the land owner are tenable or not. But, without application of mind, and following the due procedure, the authorities have conducted the acquisition proceedings which are untenable.

5. Per contra, learned Additional Government Pleader would make his submissions on the basis of the file placed before this Court.

6. On perusal of the records it is revealed that the case was filed by the petitioner in the year 2005 and even if no counter was filed however the Collector records were produced before this Court, would not show that there was service of notice on the petitioners under section 4(2) of the Act and Rule 3(1) of the Rules. Further, this Court also perused the decision of the District Collector which shows that by simply accepting the recommendation made by the Tahsildar, the District Collector has passed the routine order. This Court is not able to find any application of mind by the District Collector while accepting the recommendation made by the Tahsildar. The Full Bench of this Court has categorically held that the materials on record must indicate the application of mind to the relevant facts and circumstances of the case and there need not be an usual formal order. In quasi judicial proceedings though the opinion of the District Collector is obviously administrative in nature, however, the District Collector expressed his opinion in the file by marking some portion and underlining some portion. However, the file produced before this Court did not indicate



any application of mind of the District Collector. Therefore, it is apparent that this matter is clearly covered by the Full Bench decision of this Court, Hence, this Writ Petition is allowed. However, liberty is granted to the District Collector, if so advised to proceed further if the land required for any public purpose. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrn

To

1. The District Collector,
Vellore District.

2. The Special Tahsildar
(Adi Dravida Welfare)
Vellore

+1 cc to M/s.R.N.Amarnath, Advocate, S.R.No.49176

+1 cc to the Government Pleader, S.R.No.50142, 50112

W.P.No.37819 of 2005

PPA(CO)
SSM(31/07/2019).