

In the High Court of Judicature at Madras

Dated : 29.4.2019

Coram

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Writ Appeal No.1558 of 2019 & CMP.No.10693 of 2019

T.Gomathi

...Appellant

Vs

1.The Secretary to Government,
Adi Dravidar Welfare Department,
Fort.St.George, Chennai-9.

2.The District Collector, Tiruvannamalai.

3.The Special Tahsildar, Adi Dravidar
Welfare, Polur, Tiruvannamali Dist.

...Respondents

APPEAL under Clause 15 of the Letters Patent to set aside the order dated 27.7.2018 made in W.P.No.9855 of 2009.

Prayer in W.P.No.9855 of 2009:

Writ Petition filed under Article 226 of the Constitution of India Praying for issuance of a Writ of certiorarified calling for the records comprised in the proceedings under section 4(1) of the Tamil Nadu Acquisition of Land for Harijans Welfare Scheme Act 1978 by the 2nd respondent in No.K-1/4890/2009 dt.26.2.2009 as published in the Thiruvannamalai District Gazette (Special Publication dt.6.3.2009) and quash the same.

For Appellant : Mr.P.Satheeshkumar

For Respondents : Mr.R.P.Prathap Singh, GA

Judgment was delivered by T.S.SIVAGNANAM, J

We have heard Mr.P.Satheeshkumar, learned counsel for the appellant and Mr.R.P.Prathap Singh, learned Government Advocate accepting notice for the respondents. With consent, the writ appeal itself is taken up for final disposal.

2. This appeal is directed against the order dated 27.7.2018 passed by the learned Single Judge in W.P.No.9855 of 2009.

3. The appellant filed the said writ petition in the year 2009 seeking to quash the land acquisition proceedings initiated under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Act, 1978 (for brevity, the Act) pursuant to a Notification published by the District Collector, Tiruvannamalai - the second respondent herein dated 26.2.2009.

4. The first ground that the appellant raised in the said writ petition was that she was not given a hearing as mandated under Section 4(2) of the Act. The second ground was that the land acquired for providing house to adi dravida people is not suitable, as it situates exactly opposite to a burial ground. Apart from the above two contentions, it is contended by the appellant that she purchased the land in question out of hard earned money for the purpose of putting up a rice mill and that there is also another adi dravida colony approximately 1.5 Km from the proposed site.

5. The said writ petition was entertained and an order of interim stay was granted on 03.6.2010. However, no counter was filed. When the stay petition came up for hearing again on 19.8.2010, a learned Single Judge of this Court made the interim order absolute. The said writ petition was pending and the case was not heard and even at that time, counter affidavit was not filed. From a reading of the impugned order, there is no indication to show that the respondents produced original files before the learned Single Judge. However, they never disputed the contention raised by the appellant that no opportunity of hearing was granted to her in accordance with Section 4(2) of the Act.

6. The only submission made by the learned Government Advocate before the learned Single Judge was that all the formalities as required under the Act had been complied with. Form I notice was issued on 28.7.2008 and it was received by the appellant on 04.8.2008. The contents of the notice was published by beating tom tom and by affixture in the notice board of the Village Administrative Officer. It was further contended that an enquiry was conducted under Section 4(1) of the Act on 12.8.2009 at 10.30 am and the appellant appeared and submitted her objections. The learned Government Advocate pointed out five objections raised by the appellant. With regard to suitability of the land, the respondents herein appeared to have not taken a specific stand except stating that it was half a kilometer from the adi dravidar colony.

7. The appellant's contention was that a burial ground was located exactly opposite to the land proposed to be acquired.

8. In this regard, a field measurement book is produced and the proposed land is delineated in yellow colour and the burial ground is shown in blue colour, which is opposite to the proposed land to be acquired. The suitability of the land should be examined, as it is more than ten years

since the award was passed. Hence, we are of the view that the matter should be remanded to the District Collector for a fresh consideration.

9. Accordingly, the writ appeal is allowed, the impugned order is set aside and the matter is remanded to the second respondent - District Collector to consider the suitability of the land and the objections raised by the appellant commencing from the stage of Section 4(2) of the Act and after giving an opportunity of personal hearing to the appellant or her authorized representative, fresh orders shall be passed. In the light of the order of remand, it is necessary that the District Collector has to pass a fresh award in accordance with law. Therefore, we are constrained to quash the award dated 30.3.2009 and it is open to the respondents to re-appropriate the amount, which has been deposited by them in the Sub-Treasury Office, Polur. The above exercise shall be concluded within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, the connected CMP is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government, Adi Dravidar Welfare Department,

Fort.St.George, Chennai-9.

2.The District Collector, Tiruvannamalai.

3.The Special Tahsildar, Adi Dravidar Welfare, Polur, Tiruvannamali Dist.

+1cc to Mr.P.Satheeshkumar , Advocate SR.No. 41818

+1 cc to Government Pleader Sr.No. 42519

WA.No.1558 of 2019 &

CMP.No.10693 of 2019

ssv (CO)

A.SK (27/06/2019)