

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2019

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THE HONOURABLE MR.JUSTICE T.RAJA

Review Application No.211 of 2019
in W.P. No.39124 of 2005

1.Jayarama Reddiar

2.Thulasi

3.Jayanthi

4.M.Govindarajulu

.. Applicants

-vs-

1.The Collector,
Cuddalore District,
Cuddalore.

2.The Special Tahsildar,
(Adi Dravidar Welfare)
Cuddalore.

.. Respondents

Prayer: Review Application filed under Order XLVII Rule 1 of
C.P.C. 1908 to review the order dated 30.09.2019 in W.P.
No.39124 of 2005.

For Applicants : Mr.R.N.Amarnath

For Respondents : Mr.M.Elumalai,
Government Advocate

ORDER

The review application has been filed to review the order dated 30.09.2019 passed in W.P. No.39124 of 2005.

2.Learned counsel appearing for the applicants, briefly explaining the background of the case, would submit that the applicants are the owners of an agricultural land situated at New S.No.14/2B Hec.2.92.5 in Keezhazhinjipattu Village, Cuddalore Taluk, Cuddalore District. By spending Rs.6,00,000/-, the applicants have dug three bore wells and obtained electricity service connection. While so, the property on the North bearing R.S. Nos.14/1 and 14/2A were sought to be acquired under G.O. Ms. No.1009 Social Welfare Department dated 08.04.1988. Therefore, the applicants came to this Court with W.P. No.10687 of 1989 challenging the above said G.O. This Court, by order dated 23.07.1998, accepting the case of the applicants that neither notice nor opportunity was given to the applicants, holding that the principles of natural justice were not followed, allowed the writ petition. Despite the same, the applicants' land was sought to be acquired by issuing notice dated 31.05.2004 under Section 4(2) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act 1978 (hereinafter referred to as

'the Act') by the Special Tahsildar, second respondent and the third petitioner gave a representation to the second respondent objecting to the acquisition proceedings stating that the applicants are depending upon the agricultural income derived from the land. But, without considering the said objection made by the applicants, the first respondent without giving any opportunity of being heard to the applicants, issued a Notification under Section 4(1) of the Act on 15.10.2004 published in Cuddalore District Gazette dated 20.10.2004.

3.Learned counsel appearing for the applicants, referring to the order dated 25.08.2006 passed by the Full Bench of this Court in W.P. Nos.2288 of 1996 etc. batch reported in 2006 (4) CTC 609, would submit that the owner of the land should be furnished with a copy of the report/recommendation of the authorised officer and thereafter, he should be given two weeks' time to make further representation, if any, before the District Collector, but the same has not been done.

4.Subsequently, an Award No.1/2005-06 dated

19.10.2005 was passed and in the said Award, the date of the Notification issued under Section 4(1) of the Act was wrongly mentioned as 16.10.2004 instead of 19.10.2004.

5.Learned counsel appearing for the applicants would further submit that questioning the said Notification dated 31.05.2004 issued under Section 4(2) of the Act by the second respondent, a Writ Petition in W.P. No.39124 of 2005 was filed by the applicants. This Court, by order dated 15.02.2018 has dismissed the writ petition declining to entertain the same on the ground that 4(1) notification has been issued and as against the said order, when the applicants went before the Division Bench of this Court in W.A. No.906 of 2018, by judgment dated 09.07.2018, this Court giving liberty to the applicants to file applications seeking amendment to include the challenge to the Notification under Section 4(1), remitted the matter back to the learned Single Judge for fresh consideration.

6.When the said writ petition was taken up for hearing, it was brought to the notice of this Court that the respondents found it difficult to meet out a huge sum of Rs.3,62,24,852/- as compensation for 7 acres of land and the recommendation made

by the second respondent to the District Adhi Dravidar and Tribal Welfare Officer, Cuddalore dropping the acquisition proceedings with respect to the applicants' land. Therefore, this Court by order dated 30.09.2019 considering the above facts and also the fact that the list of beneficiaries have not been finalised by the respondents, while disposing of the W.P. No.39124 of 2005, directed the first respondent to pass appropriate orders on the said recommendation within a period of six weeks. Learned counsel appearing for the applicants would further submit that when there was a direction issued by this Court to consider the request of the applicants along with the recommendation made by the Tahsildar, the second respondent, the District Collector, the first respondent has sent a letter to the Commissioner on 26.11.2019 seeking opinion with regard to the compensation of the petitioners' land.

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7. Moreover, when the second respondent issued a Notification under Section 4(2) of the Act, if any objection is given by the land owner, the same should be placed before the District Collector, but, the mandatory condition has not been complied with. Similarly, when the first respondent, before issuing Notification under Section 4(1) of the Act, should have

furnished a copy of the same to the applicants, which has also not been done. That shows the non application of mind by both the respondents. Since mechanically the respondents have proceeded to issue the notifications, this Court has clearly held that such approach is unknown to law. Therefore, non compliance of the said provision would vitiate the entire proceedings. Secondly, despite the Tahsildar, realising the heavy burden on the exchequer, made a recommendation to the District Adhi Dravidar and Tribal Welfare Officer, Cuddalore dropping the acquisition proceedings with respect to the applicants' land stating that it will be huge burden to pay the compensation for the land owners, specifically mentioning that the beneficiaries have not been identified, till date neither the applicants have been given the compensation nor the land and only the matter has been unnecessarily prolonged.

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8. Referring to Section 7(3) of the Tamil Nadu Land Acquisition Act, learned counsel appearing for the applicants argued that after holding an enquiry, the prescribed authority shall determine the amount payable under sub-section(1) in a prescribed manner and a copy of the said order shall be

communicated to the owner of such land and every person interested therein. Similarly, as per Section 11 of the said Act, after the amount has been determined, the prescribed authority shall tender payment of the amount to the persons entitled thereto and shall pay it to them. Moreover, as per Section 3(g) of the said Act, "Harijan Welfare Scheme" means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning ground for Harijans or for providing any pathway leading to such dwelling-house, burial or burning ground, or for providing any other amenity for the benefit of Harijans. In this regard, learned counsel appearing for the applicants contended that the above said mandatory provisions have not been complied with by the respondents.

9. In the present case, although an Award was passed on 19.10.2005, after the period of 14 years, the respondents have not even paid a single pie to the applicants till date. Moreover, the respondents neither utilised the land nor paid the compensation to the applicants and as a result, the applicants, who have been eking their livelihood only by cultivating the land in question, have been completely deprived of their livelihood

and they have been put to grave problem without getting any compensation. The respondents, after acquiring the land and preventing the applicants from doing any cultivation in their land, should have paid any compensation to the applicants. It could be further seen that a recommendation has been made by the second respondent to the District Adhi Dravidar and Tribal Welfare Officer, Cuddalore dropping the acquisition proceedings with respect to the applicants' land and only for the purpose of dropping the proceedings by not paying the huge amount of Rs.3,62,24,852/-, the authorities are just shifting the burden from one department to another department. Due to the same, the applicants and their family members are put to grave problem.

10.It is relevant to extract the above provisions as under:

'11.Payment of amount - (1) After the amount has been determined, the prescribed authority shall tender payment of the amount to the persons entitled thereto and shall pay it to them.'

'7(3)The prescribed authority shall, after holding an inquiry in the prescribed manner, determine, by order, the amount payable under sub-section(1). A copy of the

said order shall be communicated to the owner of such land and every person interested therein.'

'3(g) "Harijan Welfare Scheme" means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning ground for Harijans or for providing any pathway leading to such dwelling-house, burial or burning ground, or for providing any other amenity for the benefit of Harijans;'

11.A perusal of the above provisions would show that the respondents are duty bound to comply with the provisions as stated. Therefore, when the applicants obtained the notice under Section 4(2), gave their objections, but the same have not been considered even as per ratio laid down by the Hon'ble Full Bench of this Court in W.P. Nos.2288 of 1996 etc. batch reported in 2006 (4) CTC 609. Secondly, the respondents have not even paid any single pie to the land owners, though the Award was passed on 19.10.2005. Thirdly, the second respondent Tahsildar also had made a recommendation/proposal to the District Adhi Dravidar and Tribal Welfare Tribal to drop the acquisition proceedings stating that it would be highly impossible to pay such a huge amount of Rs.3,62,24,852/- as a

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compensation. Fourthly, when the Special Tasildar, the second respondent himself has decided to drop the Land Acquisition Proceedings on the premise that the respondent cannot pay out the compensation to the land owner, the entire proceedings shall be held lapsed for their own inability to pay the cost of the land to its owner. For all these reasons, this Court finds no impediment or hesitation to allow the Review Application. Hence, the same is allowed.

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27.11.2019

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