

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.01.2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.30142 of 2018
&
W.M.P.Nos.35175 & 35176 of 2018
and
Writ Petition No.33132 of 2018
&
W.M.P.Nos.38426 & 38427 of 2018

W.P.No.30142 of 2018

1.N.Raju Padayachi
2.R.Maniammal

...Petitioners

-Vs-

1.The District Collector,
Perambalur District,
Perambalur.

2.The Special Tahsildar,
(Land Acquisition),
Adi Dravidar Welfare,
Perambalur District.

3.The Revenue Divisional Officer,
Perambalur,
Perambalur District 621212.

4.The District Adi-Dravidar / ST Welfare Officer,
Perambalur,
Perambalur District 621212.

... Respondents

Prayer in Writ Petition No.30142 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondents from manner forming a road to reach the burial ground without issuing any notice in terms of Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act through the petitioners land

comprised in S.Nos.39/1, 39/3, 40/2, 40/3, 48/1A, 48/1C and 48/E measuring an extent of 0.04.5, 0.07.0, 0.03.0, 0.03.0, 0.0.5, 0.04.0 and 0.01.5 Ares respectively in all together an extent of 0.24.5 Ares or 1.25 Acres situated at Nannai East Village, Kunnam Taluk, Perambalur District.

W.P.No.33132 of 2018

1.N.Raju Padayachi
2.R.Maniammal

... Petitioners

-Versus-

The Special Tahsildar,
(Land Acquisition),
Adi Dravidar Welfare, Perambalur,
Perambalur District.

... Respondent

Prayer in Writ Petition No.33132 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order made in Na.Ka.A1/544/2004 dated 30.11.2018 in Form-I under Rule 3(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act by the respondent and consequently forbear the respondent and the other third parties in any manner forming a road to reach the burial ground through the petitioners land comprised in S.Nos.39/1, 39/3, 40/2, 40/3, 48/1A, 48/1C and 48/E measuring an extent of 0.04.5, 0.07.0, 0.03.0, 0.03.0, 0.0.5, 0.04.0 and 0.01.5 Ares respectively in all together an extent of 0.24.5 Ares or 1.25 Acres situated at Nannai East Village, Kunnam Taluk, Perambalur District.

For Petitioner(s) : Mr.G.Ethirajulu for
petitioners in both
the Writ Petitions

For Respondent(s) : Mr.C.Thirumaran,
Spl. Govt. Pleader for
R1 to R4 in
W.P.No.30142 of 2018
and respondent in
W.P.No.33132 of 2018

COMMON ORDER

Challenging the notification issued under Section 4(2) of the Tamil Nadu Land Acquisition for Harijan Welfare Scheme Act, [hereinafter called as "the Act"], the petitioners are before this court with W.P.No.33132 of 2018 and the other writ petition

in W.P.No.30142 of 2018 has been filed seeking to forbearing the respondents from forming a road on a portion of the land of the petitioners to reach the burial ground at Nannai East Village, Kunnam Taluk in Perambalur District.

2. The lands of the petitioners were sought to be acquired for forming a pathway for the burial ground for Adi Dravida people and the petitioners initiated several legal proceedings challenging the validity of the land acquisition proceedings. Earlier this court, by order dated 15.02.2018 in W.P.No.15647 of 2012 and W.P.No.5124 of 2016, set aside a notification issued under Section 4(1) of the Act and directed the respondent to issue a fresh notice under Section 4(2) of the Act and permitted to the petitioners to participate in the enquiry. The grievance of the petitioners is that despite a specific direction from this court, without issuing any notice whatsoever, the respondents are now taking steps to take possession of the land by removing the standing crops.

3. Earlier, the petitioners filed the writ petition in W.P.No.30142 of 2018 seeking a direction to the respondents not to interfere with the his possession without issuing a notice under Section 4(2) of the Act and this court while entertaining the writ petition has granted an order of interim injunction. Thereafter, a notice under Section 4(2) of the act has been issued. Therefore, the writ petition in W.P.No.33132 of 2018 came to be filed challenging the notification issued under Section 4(2) of the Act.

4. The learned counsel for the petitioners would submit that the respondents are deliberately taking action to acquire the petitioners' land; there is an alternative pucca thar road is available to reach the burial round and there is no necessity to acquire the petitioners' land. According to learned counsel, the petitioners apprehend that even if the petitioners raise any objection, in the enquiry the authorities would not consider the same. But, on the other, the learned Special Government Pleader appearing for the respondents submitted that what was issued to the petitioners is only a notice under Section 4(2) of the Act pursuant to the order of this court dated 15.12.2018, therefore, it is always open to him to approach the authorities concerned and raise their objection and it is for the authorities to decide either to proceed further under Section 4(1) of the Act or to drop the acquisition proceedings and the petitioners cannot challenge the notice issued under Section 4(2) of the Act.

5. I have considered the rival submissions and perused the records carefully.

6. What was under challenge in W.P.No.33132 of 2018 is only a notice under Section 4(2) of the Act pursuant to the order of this court referred to supra and the above order was passed on the writ petition filed by the petitioners. Hence, now, it is not open to them to challenge the same. In the above circumstances, the petitioners are directed to their objections, if any, before the 2nd respondent within a period of two weeks from the date of receipt of a copy of this order and on receipt of such objection, the 2nd respondent shall consider the objections of the petitioners and conduct an enquiry by giving an opportunity of personal hearing to the petitioners and thereafter submit his report to the 1st respondent to pass appropriate orders on merits and in accordance with law. Until such final order is passed under Section 4(1) of the Act, the respondent shall not disturb the possession of the petitioners.

7. In the result, (i) Writ Petition No.33132 of 2018:- This writ petition is disposed of with the above directions. No costs. Consequently, connected WMPs are closed.

(ii) Writ Petition No.30142 of 2018:- This writ petition is dismissed as infructuous. No costs. Consequently, connected WMPs are closed.

kmk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Perambalur District, Perambalur.

2.The Special Tahsildar, (Land Acquisition),
Adi Dravidar Welfare, Perambalur District.

3.The Revenue Divisional Officer,
Perambalur, Perambalur District - 621212.

4.The District Adi-Dravidar
/ST Welfare Officer, Perambalur,
Perambalur District 621212.

+lcc to Mr.G.Ethirajulu, Advocate, SR.No.5736

+lcc to The Govt.Pleader, Vide SR.NO.6018

W.P.Nos.30142 and 33132 of 2018

Kak(12/03/2019)