

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 09.03.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.21253 of 2004
and
W.P.M.P.No.25656 of 2004

1.P.Anandavalli (Died)

2.Vetharethinam
S/o.P.Anandavalli

3.Dhanusu,
S/o.Anandavalli .. Petitioners
(Petitioners 2 & 3 are substituted as LR's of deceased
P1 - P.Anandavalli, vide order dated 09.09.2019 in
W.M.P.No.26324 of 2018 in W.P.No.21253 of 2004)

-vs-

1.State of Tamilnadu,
Rep., by its Secretary to Government,
Ministry of Adi Dravidar Welfare,
Fort St. George, Chennai-9.

2.The District Collector,
Nagapattinam District,
Nagapattinam.

3.The Special Tahsildar,
(Land Acquisition Officer),

Adi Dravidar Welfare Department,
Sirkazhi, Nagapattinam District.

.. Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
entire records pertaining to the proceedings of the 2nd
respondent in Na.Ka.No.26259/98.K.6 dated 15.09.1998 published
in District Gazette Notification 14 dated 28.09.1998 and quash
the same.

For Petitioners	:	Mr.R.Subramaniam for Mr.V.Sukumar
For Respondents	:	Mr.M.Elumalai, Government Advocate

ORDER

The petitioners have filed this writ petition challenging the land acquisition proceedings initiated by the second respondent/District Collector under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (for brevity "the Act"). The lands have been acquired for the purpose of providing free house site patta to Adi Dravidar people in the locality.

2.The first ground of challenge in this writ petition is by contending that in terms of Rule 3(1) read with Form No.I of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979, notice is required to be issued to the land owner and all persons interested, calling upon them to give their statement of objections and if statement of objections is received within the time permitted, the same should be enquired into and a particular date to be fixed and the venue to be mentioned and the land owner is at liberty to appear in person or represented by pleader and adduce any oral and documentary evidence in support of their objections.

3.The petitioners' case is that though objections were sent by the petitioners, no enquiry was conducted as mentioned in Form No.I and therefore, the entire acquisition proceedings is a nullity. Further, the petitioner (Deceased) had approached the Civil Court, viz., the District Munsif Court, Sirkazhi, and filed a suit and this was a bona fide prosecution before a wrong forum and the suit has been dismissed and the same shall not be put against the petitioners.

4.Further, it is submitted that the petitioner's (Deceased) husband has given vast extent of property, which has been utilised for allotment of free house site patta to Adi Dravidar people in the locality for construction of house and if the lands, which are subject matter of the present acquisition proceedings, are to be taken away, then the petitioners will be left as landless poor. सत्यमेव जयते

5.The learned counsel for the petitioners placed reliance on the decision of the Hon'ble First Bench of this Court in the case of Pari, R. vs. Special Tahsildar, Adi Dravidar Welfare, Devakkottai, 2006 (4) CTC 609 (FB). The said decision is pressed into service to illustrate the procedure that has to be followed by the District Collector or the officer nominated on his behalf after Form I notice is given.

6.It is submitted that the Hon'ble Full Bench has held that the owner should be furnished with copy of the report/recommendation of the authorized officer and thereafter, he should be given two weeks' time to make further

representation, if any, before the District Collector. It has been further held that it is not necessary for the District Collector to give further personal hearing or make any further enquiry. It is submitted that this procedure was not followed by the second respondent/District Collector, which vitiates the entire acquisition proceedings.

7.Further, it is reiterated that because of the present acquisition proceedings, the petitioners will be put to great hardship and whatever meagre extent of agricultural land, which has been left with their holding, will be taken away and they will be put to prejudice.

8.Mr.M.Elumalai, learned Government Advocate by relying upon the counter affidavit and the original files, which are in two volumes submitted that proper procedure has been followed by the respondents while acquiring the lands. It is submitted that the writ petition is clearly barred by delay and laches and liable to be dismissed on the said ground, as it has been filed much after the dismissal of the suit filed by the petitioner (Deceased).

9.Further, it is submitted that the lands in question have been divided into nearly 95 plots and beneficiaries have been selected by the District Collector and 35 of them were granted patta and the remaining could not be granted patta, because of the pendency of this writ petition and the interim orders, which are operating. It is submitted that several of the beneficiaries have been writing representations to various authorities stating that they have been unreasonably denied granting patta.

10.Further, it is submitted by the learned Government Advocate that the Hon'ble Division Bench of this Court has clearly held that a writ petition, challenging acquisition proceedings, should not be entertained after Award has been passed. In this regard, the learned Government Advocate placed reliance on the decision of the Hon'ble Division Bench of this Court in the case of Harshavardhan, S. vs. State of Tamil Nadu, 2005 (3) CTC 691 (DB) and the decision in the case of Executive Engineer and Administrative Officer, Coimbatore Housing Unit vs. Girija Janarthanan and others [W.A.Nos.1241 and 1242 of 2005: dated 25.11.2008].

11.Heard the learned counsels for the parties, perused the materials placed on record as well as the two files relating to the acquisition proceedings.

12.The first and foremost hurdle the petitioners have to cross is to satisfy this Court that this writ petition is maintainable after the Award was passed.

13. On going through the original files, it is seen that two suits were filed, one by the petitioner's (Deceased) husband and the other by the petitioner (Deceased). The suit filed by the petitioner (Deceased) in the year 1999 was dismissed for default in the year 2001 with cost. The suit filed by the petitioner's (Deceased) husband was dismissed on the ground of lack of jurisdiction for the Civil Court to interdict the land acquisition proceedings.

14. To be noted that the suits were filed much after the land acquisition proceedings have reached the stage of passing the Award. The petitioners' case is that notice in Form No. I was issued fixing the date of hearing as 11.05.1998, which happened to be a holiday. However, in the counter affidavit, it is stated that enquiry was conducted on 12.05.1998, which is the next working day, but the petitioner (Deceased) was not put on notice. This is the sheet anchor of the submissions of the learned counsel for the petitioners.

15. On perusal of the original files, it is seen that the first of the representations given by the petitioner (Deceased) is on 03.06.1998, by then, the acquisition proceedings had matured into the stage of passing the Award. Even in the representation, the petitioner (Deceased) does not state about any lack of opportunity or lack of hearing, nor alleges any procedural irregularity on the ground that the report of the Special Tahsildar was not furnished to her and her objections were not called for. In fact, in the objections, the petitioner (Deceased) would state that her husband's property was already given for the very same purpose and it is unreasonable to take the remaining extent by compulsory acquisition. Nowhere in the representation, the petitioner (Deceased) states about any procedural irregularity, which is urged before this Court for the first time. Thus, it appears that the petitioner (Deceased) was not prejudiced by any alleged lack of following procedures. However, from the original files, it is seen that the petitioner (Deceased) and her husband were aware of the acquisition proceedings. The notice, which was sent, was returned by the petitioner (Deceased) as 'unclaimed'. The notice enclosing the Form III notice was returned with an endorsement stating that the 'petitioner (Deceased) does not reside in the said address'. The same notice, which was sent to the petitioner's (Deceased) husband, was returned with an endorsement that 'he will receive only after consulting his advocate'. Ultimately, in the year 1999, suits were filed by the petitioner (Deceased) and her husband, by then the Award was passed, compensation was determined and deposited and much earlier, the lands were divided into plots, beneficiaries were selected and 35 pattas were allotted. After the dismissal of the suits in the year

2001, the petitioner (Deceased) did not do anything for three years and approached this Court and filed this writ petition in the year 2004.

16.The learned Government Advocate is right in his submission that a writ cannot be entertained after the Award was passed, as held by the Hon'ble Division Bench in Harshavardhan, S. (supra). The delay and laches stares in the face of the petitioners and there is no satisfactory explanation, much less any lawful explanation to explain the delay. With regard to the decision in the case of Pari, R. (supra), the Full Bench has pointed out that mere non-furnishing of the report would not have the ipso facto fact 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.

17.This Court, on perusal of the files as well as the averments set out in the counter affidavit, is satisfied that due procedure has been followed. Assuming for the case of argument, the case of the petitioners is to be accepted, no prejudice has been pleaded or established by the petitioners on the ground of non-adherence to the procedure under the provisions of the Act. Therefore, the decision of the Full Bench in Pari, R. (supra) would not render any assistance to the case of the petitioners.

18.Thus, considering the facts and circumstances, this Court is of the view that the acquisition proceedings have been validly held and there are no grounds to interfere with the same.

19.Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

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Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

abr

To

1.The Secretary to Government,
The State of Tamilnadu,
Ministry of Adi Dravidar Welfare,
Fort St. George, Chennai-9.

2.The District Collector,
Nagapattinam District,
Nagapattinam.

3.The Special Tahsildar,
(Land Acquisition Officer),
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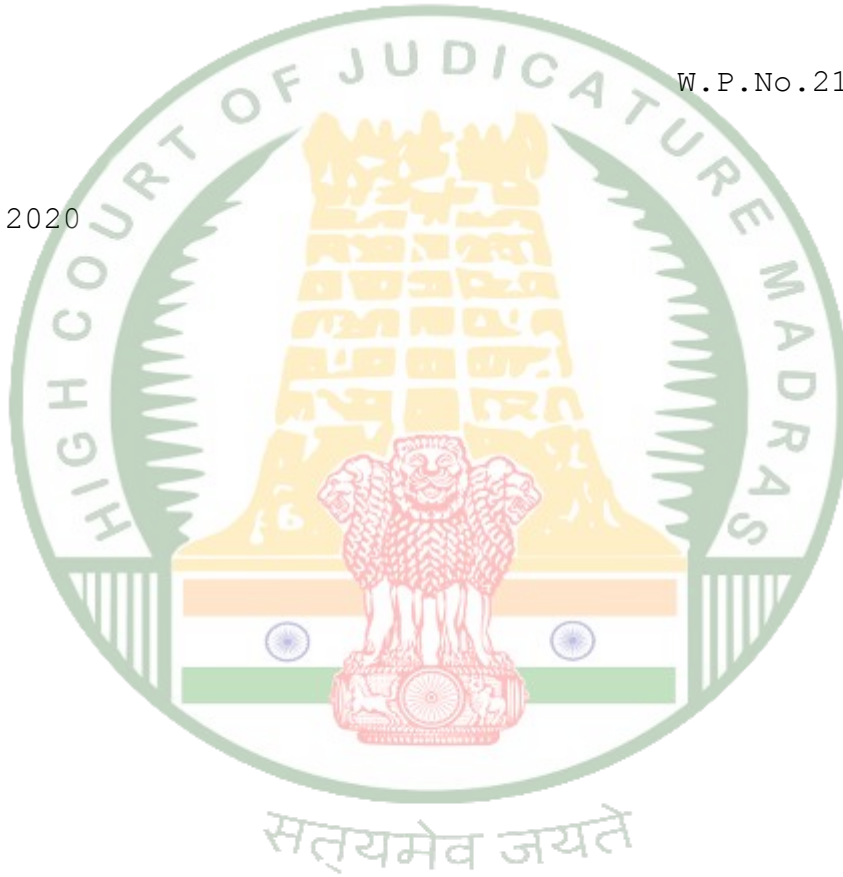
+1 CC To Government Pleader in C.A.Sr.21663/2020

+1 CC To Mr.V.Sukumar, Advocate in C.A.Sr.21318/2020

W.P.No.21253 of 2004

RJI C.O.

MRP 26.05.2020



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