



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.12701 OF 2012

1.P.Rathnam
2.Kanagambaram

... Petitioners

Vs

1. The District Collector,
Namakkal District.
2. The Land Acquisition Officer
And Special Tahsildar (ADW)
Namakkal.

... Respondents

PRAYER:- Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari to call for the records leading to pass the impugned notice of the 1st respondent under Section 4(1) published in the Namakkal District Gazette Extra Ordinary Issue No.2 at Page No.1 and 2 dated 13.01.2012 and quash the same.

For Petitioners : Mr.C.Jagadish
For Respondents : Mr.M.R.Gokul Krishnan,
Government Advocate

ORDER

This writ petition is filed to issue a Writ of Certiorari to call for the records leading to pass the impugned notice of the 1st respondent under Section 4(1) published in the Namakkal District Gazette Extra Ordinary Issue No.2 at Page No.1 and 2 dated 13.01.2012 and quash the same.

2. The case of the petitioner is that the property comprised in Survey No.281/4B to an extent of 82 cents situated at Thuthakulam Village, Namakkal District is owned by the father



of the first petitioner and husband of the second petitioner herein. While being so, the respondents attempted to lay a road in the subject land in the year 1998 and therefore, the father of the first petitioner filed a suit in O.S.No.207 of 1998 on the file of the Principal District Court, Namakkal for declaration. Some individuals have also filed a suit in O.S.No.469 of 2000 on the file of the Principal District Court, Namakkal for declaration that there was a pathway in Survey No.281/4B to reach their respective properties comprised in Survey No.279.

3. Both the suits were clubbed together and tried together. The suit filed by the first petitioner's father was decreed holding that the respondents and others are not entitled to use the Survey No.281/4B as pathway and the suit filed by other persons in O.S.No.469 of 2000 was dismissed. Aggrieved by the same, some of the defendants have preferred appeal suits in A.S.Nos.26 & 27 of 2003, arraying the respondents herein as respondents 3 and 4. Both the appeal suits were dismissed, confirming the Judgment and Decree passed by the trial Court.

4. While being so, the first petitioner's father died on 14.02.2006 leaving behind the petitioners as his legal heirs. In fact, he also executed a Will in favour of the second petitioner in respect of his properties. They are in possession and enjoying the subject property. While being so, on 24.10.2011 the second respondent came to the subject property along with Government surveyors and forcibly measured the properties in spite of their objections. Therefore, the petitioners issued notice on 27.10.2011 to the respondents and the same was duly received by the respondents on 28.10.2011. In the said notice they also stated that the first petitioner's father died on 14.02.2006.

5. The second respondent issued Form No.1 in ROC (A) No.210 of 2011 dated 04.11.2011 in the name of the father of the first petitioner herein in respect of the property comprised in Survey No.281/4B Thuthakulam Village. In the said notice, the father of the first petitioner was mentioned as the owner of the land and called for his objections in writing under Section 4(2) of the Tamil Nadu Acquisition of the Land for Harijan Welfare Schemes Act, 1978 (hereinafter called "Act"). The said notice dated 04.11.2011 was challenged in W.P.No.29687 of 2011.



However, since the notification issued under Section 4(1) was issued by then, the Court permitted the petitioners to withdraw the writ petition with liberty to file a fresh petition to challenge the 4(1) notification.

WEB COPY

6. The second respondent filed counter and revealed that an extent of 0.08.0 Hectare of land in Survey No.281/4A (Part), 281/4B (Part), 281/5 (Part) were acquired for the provision pathway to the Government, Adi - Dravidar Welfare Hostel, Thuthakulam Village, Namakkal Taluk. After following all the formalities, an Award was passed in Award No.5 of 2011 dated 22.03.2012. The Award inquiry was conducted on 09.03.2012 and land owners had appeared for inquiry and filed their objections. Since a meagre extent of land already being used as pathway was proposed for the acquisition, their objections were over ruled and the Award has been passed.

7. The counter further revealed that on receipt of the notice, the first petitioner appeared for inquiry on 25.11.2011 and on 09.03.2012 and the petitioners have not produced any records to show that the father of the first petitioner died and also the Revenue records were not mutated in their name. Admittedly, the 4(2) notification was issued in the name of the father of the first petitioner who died as early as on 14.02.2006.

8. In this regard, the learned counsel for the petitioners relied upon the Judgment reported in 2007(3) LW 355 The State of Tamil Nadu, represented by the Deputy Secretary to Government, Housing and Urban Development Department, Fort St. George, Madras - 9 and another -vs- A.Kandasay & 13 others as held as follows:

"6. It is the specific case of the respondents that A.T.Rangaswamy Naidu was died even before 1981. That being the case, it is not clear how the authorities could have made an endorsement and recorded that they have in fact served notice on A.T.Rangaswamy Naidu, who was not alive. It is, therefore, obvious that the records have been created to suit the requirements, to show that notice was served on the owner on record. The learned single Judge after perusal of the records observed that in



WEB COPY

page No.756 of the records, the land owner and interested person appeared for enquiry under Section 5-A of the Act and raised their objections. At page No.760, it was noted that A.T.Rangaswamy Naidu did not appear for 5-A enquiry and no evidence was let in to show his ownership. This itself clearly establishes the fact that the authorities at one time recorded that the owners had appeared and at another time there was no appearance. In this context, the learned single Judge observed that the stand of the appellants that they have served the notice on the owners cannot be accepted as they could not have served on a dead person. The grounds in appeal also reiterate that they have served the notice on the person on record which is A.T.Rangaswamy Naidu whose death prior to 1981 as claimed in the writ petition has not been disputed or refuted. It is not surprising to note that the callousness in the acquisition proceedings as mentioned above is not a solitary instance vide (2006)3 M.L.J. 389 (Savithiriammal - v. - State of Tamil Nadu) wherein the acquisition proceedings for the purpose of Ganapathi Neighbourhood Scheme, Phase II, the adjacent area, was set aside by this Court on the ground that notice was issued in the name of dead person.

7. The learned Additional Government Pleader placed reliance on the decision of 2006(4) CTC 757 (Gopalakrishnan, G.S. - v. - Government of Tamil Nadu) and would submit that unless the authorities have been informed about the factum of death, there is no reason for them to make an enquiry and find out who is the actual or real owner. In the above case, the petitioners are owners of the property, who have purchased the land from a person on whose name Notification was issued and who was not alive at the time when the Notification was issued. Paragraph 17 of the judgment summarizes the issue as follows:-

"17. Therefore in our considered opinion, the normal principle that proceedings



WEB COPY

against a dead person are a nullity, cannot be imported to proceedings under the Land Acquisition Act, 1894, unless it is established that the factum of death was brought to the notice of the acquiring authorities at the appropriate stage. Hence, the order of the learned Judge does not call for any interference and the Writ Appeal is dismissed without any order as to costs. Consequently, connected W.A.M.P. is also dismissed."

However, in paragraph 7 of the said judgment, it was noticed by the Division Bench and confirmed the view of the single Judge that Notification under Section 4(1) was issued in the name of a dead person in so far as the claim of writ petitioner Nos.1 and 5 is concerned. The failure on the part of the authorities to provide an opportunity to the writ petitioner Nos.1 and 5 to participate in the enquiry under Section 5-A was found to be in violation of the provisions and therefore, the acquisition proceedings as against the writ petitioners 1 and 5 were not accepted and the proceedings were set aside. It is only in respect of other writ petitioners, who had purchased the property after award enquiry the relief was rejected. Such a situation does not arise in the present case."

9. The Hon'ble Division Bench of this Court held that the Acquisition Proceedings have not been done in a proper manner, as they could not have served notice on a dead person. In the case on hand, admittedly, notice was issued to the father of the first petitioner under Section 4(2) of the Act. In fact, the petitioners already sent legal notice dated 27.10.2011 thereby informing the respondents the fact that the father of the first petitioner died and that he has obtained a decree in his favour against the respondents from using the subject land as a pathway.

10. Even then, the second respondent issued notice on the dead person's name. The petitioners also challenged the notice issued under Section 4(2) of the Act in W.P.No.29687 of 2011 and



it was subsequently withdrawn for the reason that while pending the writ petition, notification under Section 4(1) was issued, however, with liberty to challenge the 4(1) notification. In view of the fact that the father of the first petitioner died, the second respondent ought to have issued notice under Section 4(2) of the Act to the petitioners herein. Without issuing notice under Section 4(2) of the Act to the petitioners, the second respondent should not have issued notice under Section 4(1) of the Act.

11. On this ground alone, the notification issued under Section 4(1) published in the Namakkal District Gazette Extra Ordinary Issue No.2 at Page No.1 and 2 dated 13.01.2012 is vitiated and liable to be quashed.

12. Accordingly, the impugned notice of the first respondent under Section 4(1) published in the Namakkal District Gazette Extra Ordinary Issue No.2 at Page No.1 and 2 dated 13.01.2012 is quashed. However, the second respondent is at liberty to issue fresh notice under Section 4(2) of the Act and proceed in accordance with law.

13. Accordingly, this writ petition is allowed. No order as to costs.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

rna

To

1. The District Collector,
Namakkal District.
2. The Land Acquisition Officer
And Special Tahsildar (ADW)
Namakkal.

+1cc to M/s.C.Jagadish, Advocate, S.R.No.47689

+1cc to the Government Pleader, S.R.No.47493

W.P.No.12701 of 2012

AJS(CO)

RLP(13/10/2021)