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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.29460 of 2003

and

W.P.M.P.No.35970 of 2003

1. Batthumalai Chettiar (Died)
2. B.Thiyagarajan
3. B.Arangasamy
4. B.Mohanakrishnan
5. Latha
6. B.Anandan
7. B.Sridhar

[P-2 to P-7 are substituted as LRs of deceased P-1 Batthumalai Chettiar as per order dated 27.03.2017 in W.M.P.No.26743/2016 in W.P.No.29460/2003]

... Petitioners

Vs.

1. The District Collector,
Villupuram District,
Villupuram.
2. The Special Tahsildar
(Adi-Dravidar Welfare)
Tindivanam,
Villupuram District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Declaration, declaring that that the acquisition of lands measuring 0.45.5 hectares in Survey No.106/4A (New No.209/9) Kodyiam Village, Tindivanam Taluk, Villupuram District belonging to the petitioner under the provisions of the Tamil Nadu Acquisition of land for Harijan Welfare Scheme Act, 1978 (Act No.31 of 78) and the rules made thereunder in pursuant to the proceedings of the second respondent dated 07.07.2000 made in Na.Ka.No.A/16/99 as approved by the first respondent in proceeding dated .07.2000 made in M1/6977/99 is null and void.



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For Petitioners : Mr.M.Elumalai
for Mr.M.Gnanasekar
For Respondents : Mr.M.R.Gokul Krishnan
Government Advocate

O R D E R

This writ petition is filed to issue a writ of declaration, declaring that that the acquisition of lands measuring 0.45.5 hectares in Survey No.106/4A (New No.209/9) Kodiyaam Village, Tindivanam Taluk, Villupuram District belonging to the petitioner under the provisions of the Tamil Nadu Acquisition of land for Harijan Welfare Scheme Act, 1978 (Act No.31 of 78) (hereinafter referred to 'the Act' for short) and the rules made thereunder in pursuant to the proceedings of the second respondent dated 07.07.2000 made in Na.Ka.No.A/16/99 as approved by the first respondent in proceedings dated .07.2000 made in M1/6977/99, is null and void.

2. The first petitioner had died and his legal heirs have been brought on record as the second to seventh petitioners herein. It is the case of the first petitioner that the land comprised in Survey No.106/4A, New Survey No.209/9 ad-measuring to an extent of 0.45.5 hectares situated in Kodiyaam Village was owned by the him. The said land is adjacent to the existing colony, selected for acquisition to provide house site to the Adi-Dravidars under the Act. Accordingly, the notification was issued under Section 4(2) of the Act in Form No.1. The land owners were called for enquiry which was to be held on 06.07.2000. The first petitioner appeared for enquiry before the second respondent and he raised his objections. Thereafter, statement was recorded from the land owners and the remarks were sent to the first respondent for issuance of notification under Section 4(1) of the Act. The first petitioner raised objections that the Kodiyaam Village already has Harijan Colonies. As such, there is no need for providing house sites to the Harijans. That apart, only the property owned by the first petitioner is an agricultural property, being under the cultivation. However, without considering the objections raised by the first petitioner, the second respondent recommended for declaration under Section 4(1) of the Act. On receipt of the same, the first respondent, by an order dated 14.07.2000, accorded consent for publication of notification under Section 4(1) of the Act. The proceedings of the land acquisition are under challenge in this Writ Petition.

3. The learned counsel for the petitioners raised three grounds: (i) The first petitioner was not served with notice



under Section 4(2) of the Act as contemplated under Section 45 of the Land Acquisition Act. (ii) The first petitioner was not served with any notice as contemplated under Section 7(3) of the Act to determine the compensation. (iii) The second respondent, without even applying his mind, accorded consent for issuance of notification under Section 4(1) of the Act. In support of his contentions, he relied upon the judgement of the Full Bench of this Court reported in (2006) 4 CTC 609 (R.Pari Vs. The Special Tahsildar, Adi Dravidar Welfare, Divakottai (Pasumpon Muthuramalinga Thevar District) and another).

4. The second respondent filed counter affidavit, from which it revealed that houseless Adi-dravidars of Kodyam Village of Tindivanam Taluk have represented for the provision of house site. Therefore, the Government decided to acquire the dry lands quite adjacent to the existing colony and selected the same for acquisition. The first respondent, by his proceedings dated 14.07.2000, has authorised the second respondent to perform his functions under Sections 4(2) and 4(1) (b) of the Act. The notice was published under Section 4(2) of the Act in Form I and the enquiry was conducted at the office of the Village Administrative Officer on 06.07.2000. The land comprised in Old R.S.No.106/4A New R.S.No.209/9A belongs to the first petitioner. The first petitioner appeared for the enquiry and his statement was recorded as objections. After considering the objections raised by the first petitioner, a detailed report was sent to the first respondent for issuance of notification under Section 4(1) of the Act. Accordingly, the first respondent approved and published Section 4(1) notification in the District Gazette on 22.07.2000. Thereafter, the award enquiry was conducted by the second respondent and the award was passed in Award No.8/00-01 dated 06.11.2000. Since the land owners have refused to receive the award amount, it has been deposited in the Civil Court. In fact, the other land owner filed a writ petition before this Court in W.P.No.6550 of 2003 challenging the 4(1) notification and the same was dismissed by this Court on 12.09.2003.

5. The learned Government Advocate appearing for the respondents submitted that the first petitioner was duly served with notice under Section 4(2) of the Act and he had very much attended the enquiry on 06.07.2000 and his statement was duly recorded by the Village Administrative Officer. He raised objections that he is not only the owner of the land, and other brother is also there and they are cultivating the said land. In the subject land, there is a Well and he is drawing water fall from the said Well for irrigation purpose. Therefore, he requested for excluding the land from acquisition. After considering the objections raised by the first petitioner, the second respondent had sent a detailed report about the



objections and the remarks. After considering the objections and remarks sent by the second respondent, the first respondent accorded approval for notification under Section 4(1) of the Act. Therefore, the first respondent applied his mind and on being satisfied with the report sent by the second respondent, he accorded approval for issuance of notification under Section 4(1) of the Act. He also produced the records to show that the statement of the first petitioner and other land owners, were recorded and the same have been part of the report. Thereafter, the land owners including the first petitioner, were duly served with notice under Section 7(3) of the Act for award enquiry. In fact, the first petitioner had appeared and he raised objections with regard to the quantum of compensation and refused to receive the compensation. Therefore, the entire compensation amount has been deposited in the Civil Court. He further submitted that after passing the award, the possession of the property has been taken over by the Government and the beneficiaries have been granted free patta as early as on 28.02.2002 itself. However, the beneficiaries could not enter into the subject property, since this Court granted interim order against the acquisition proceedings.

6. Heard the learned counsel for the petitioners as well as the learned Government Advocate appearing for the respondents.

7. The land comprised in Survey No.106/4A (New No.209/9) situated at Kodyam Village, Tindivanam Taluk, Villupuram District belonged to the first petitioner. On the request made by the Adi-dravidars of Kodyam Village, Tindivanam Taluk, the Government proposed to acquire the land for free house sites to the Adi-dravidars. Therefore, the land adjacent to the existing colony was selected for acquisition and notice was issued under Section 4(1) of the Act. Though the first petitioner raised the ground that he was not served with notice under Section 4(1) of the Act, he appeared before the second respondent for enquiry on 06.07.2000 and he raised objections. The records revealed that his statement was recorded by the Village Administrative Officer during the enquiry conducted by the second respondent. Therefore, no prejudice was caused to the first petitioner for non serving of the notice under Section 4(2) of the Act.

8. Insofar as the approval for issuance of notification under Section 4(1) of the Act is concerned, the learned counsel for the first petitioner relied upon the judgement of the Full Bench of this Court reported in (2006) 4 CTC 609 (R.Pari Vs. The Special Tahsildar, Adi Dravidar Welfare, Divakottai (Pasumpon Muthuramalinga Thevar District) and another), in which it has been held follows:-

"1. The questions referred to the Full Bench for



determination in the context of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) hereinafter referred to as "the Act" are as follows:

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- i) Is it necessary for the Collector to give a personal hearing to the owner in the context of his objections and the remarks of the Tahsildar?
- ii) Is the owner entitled to a copy of the report of the Special Tahsildar or not?
- iii) Should the Collector records his reasons in his order while dealing with the objections of the owner?

41. So far as the first part of the observation regarding the necessity for the District Collector to give second opportunity of hearing is concerned, such aspect has been dealt with while considering question Nos.1 and 2. However, so far as the latter part of the observation laying down the necessity of the District Collector to apply mind to the objection made by the land owners and to indicate the reasons, however brief the reasons may be, must receive our approval without much demur. In view of the power of eminent domain the State obviously cannot be denied such right. However, right to land being a constitutional right recognised under Article 300A of the Constitution, such right can be denied only in accordance with law.

43. In view of the aforesaid discussion, our conclusions are as follows:-

The owner should be furnished with a copy of the report/recommendation of the authorised officer. Thereafter, he should be given two weeks time to make further representation, if any, before the District Collector. It is not necessary for the District Collector to give a further personal hearing or make any further enquiry. However, mere non-furnishing of the report would not have the ipso facto effect 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. The District Collector is expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons, the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and



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the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report/recommendation made by the authorised officer."

9. From the above decision, it is clear that the District Collector has to apply his mind to the objections made by the land owners and indicate the reasons, however brief the reasons may be and he must receive approval without much demur. The District Collector is expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons, the decision of the Collector is not "ipso facto" vitiated and it would always be open to the concerned authority to prove before the Court that such action of the Collector is challenged in respect of such acquisition.

10. In the case on hand, after conducting enquiry, the statement of the respective land owners, were recorded as objections raised by the Village Administrative Officer during the enquiry conducted by the second respondent and the same had sent to the first respondent for approval for issuance of notification under Section 4(1) of the Act.

11. On a perusal of the order dated 14.07.2000, it is clear that the first respondent did not consider the objections raised by the first petitioner in proper and perspective manner. The first respondent merely referred the report submitted by the second respondent and passed the order dated 14.07.2000, thereby accorded approved for publication of notice under Section 4(1) of the Act. On a perusal of the records, it also reveals that the first respondent did not state any of the reason over-ruling the objections raised by the first petitioner as well as did not state any of the reasons to over-rule the objections raised by the first petitioner as well as he did not state any reason to accept the recommendation of the second respondent. Therefore, the above judgment is squarely applicable to the case on hand and on this ground alone, the entire acquisition proceedings are liable to be set aside.

12. Insofar as the another ground raised by the learned counsel for the petitioners that the first petitioner was never served with any notice as contemplated under Section 7(3) of the Act for determination of value of the land, on a perusal of the records, it reveals that the first petitioner was duly served with notice and he appeared for award enquiry. In the award enquiry, he raised objections and refused to receive the compensation and as such, the compensation for the land acquired from the first petitioner was deposited in the Civil Court.



However, the land acquisition proceedings are vitiated for on the ground that the first respondent without applying its mind, mechanically passed the order to publish the notification under Section 4(1) of the Act.

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13. In view of the above discussion, the impugned proceedings are quashed in so far as the petitioners' land alone. Accordingly, this Writ Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

kv

To

1. The District Collector,
Villupuram District,
Villupuram.
2. The Special Tahsildar
(Adi-Dravidar Welfare)
Tindivanam,
Villupuram District.

+1cc to M/s.Gnanasekar, Advocate, S.R.No.50951

+1cc to the Government Pleader, S.R.No.51244

W.P.No.29460 of 2003

KSM(CO)
SU(02/11/2021)