

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.NO.23005 OF 2012

AND

W.M.P.NO.1 OF 2012

Habibunisa

W/o.Late Abdul Khadar

...Petitioner

Vs.

1.The District Collector,
Villupuram District.

2.The Special Thasildar,
Adi Dravidar Welfare Ulundurpet.

...Respondents

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the first respondent in its proceedings No.M5/8418/2001 dated 18.12.2001 published in the Villupuram District gazette on 13.02.2002 and quash the same as illegal, incompetent in so far as the petitioner's land is concerned .

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.M.Elumalai

Additional Government Pleader

ORDER

This writ petition is filed for issuing a writ of Certiorari, to call for the records on the file of the first respondent in its proceedings No.M5/8418/2001 dated 18.12.2001 published in the Villupuram District gazette on 13.02.2002 and quash the same as illegal, incompetent in so far as the petitioner's land is concerned.

2.The petitioner has challenged the notification issued under Section 4(1) of Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (Tamil Nadu Act 31 of 1978) as published on 18.12.2001.

The specific grievance of the petitioner is that the acquisition proceedings has been initiated against the dead

person and no notice was issued to petitioner the notification under Section 4(1) of Act 31 of 1978.

3. In such circumstances, this Court examined the case of respondent as found in the counter affidavit filed by the respondents. In the entire counter affidavit, it is not stated as to when and in what manner the notice under Section 4(2) as contemplated under the Act was served on the petitioner before issuing the notice Section 4(1) of the Act. The relevant paragraph of the counter affidavit is extracted hereunder:-

"I submit that, after following due process in pursuance of the land acquisition Act 31/1978 necessary permission had been obtained from District Collector, Villupuram vide his proceeding No.M5/8418/2001, dated 19.12.2001 and 4(1) notification was published on the Government Gazette on 08.01.2002. The enquiry was fixed at 10.00 A.M on 18.02.2002 in the office of the Village Administrative Officer at Athayur Village and necessary notices in from III was sent to the land owners to appear before the Land Acquisition Officer. Since the land owners refused to receive the notice which was served in person, the notice was sent through RPAD and the same was returned to this office because of non receipt by the lands owners. Hence the notice was affixed on the door of the land owners. It is further submitted that at the time of 4(2) enquiry the objections raised by the land owners and other interested persons were carefully considered and over ruled by the collector. After adhering the due procedures stipulated in the LA Act 31/1978 the award was pronounced in the month of March 2002. After that necessary changes had been carried out in Village and Taluk records and House site Pattas had been issued to 151 Beneficiaries on 28.04.2002 by the then MLA Ulundurpet Constituency. After completion of the entire LA process the petitioner has filed this Writ petition after 11 years, the W.P is liable to be dismissed on the ground of delay and lateness."

It is noticed that in the entire counter affidavit, the respondent has not specifically denied the allegation of the petitioner that no notice was issued to the petitioner.

4. In the absence of the petitioner's name in the notification under Section 4(1) of the Act, it is pointed out by the learned counsel for the petitioner that the petitioner was not served with any notice under Section 4(2) of Act before issuing the notice under Section 4(1) of the Act. Though the name of the petitioner's husband was mentioned in the 4(1)

notification, it is admitted that during the year 1983 the petitioner's husband died. The notification was issued in the name of the petitioner's husband in the year 2001. Eventhough he died long back. The acquisition proceedings in this case were initiated against a dead person.

5.It is to be noted that the petitioner was given a notice earlier when the proceedings were initiated for acquiring the land under the Central Act. Despite the ownership of the petitioner is recognized in the earlier round, fresh proceedings was initiated without showing the petitioner as the owner of the property. This is not proper and nothing short of abuse of power.

6.The learned Additional Government Pleader appearing for the respondents submits that the notice was sent to the petitioner. From the records, it is seen that though notice was sent to the petitioner the same was returned unserved.

7. The entire proceedings are liable to be quashed on the ground that no show cause notice under Section 4(2) of the Act was issued to the petitioner before issuing the impugned notice under Section 4(1) of the Act. Opportunity to show cause is a statutory and mandatory requirement. As per article 300(A) of the Constitution of India, no Citizen can be deprived of his or her right of holding or enjoyment otherwise than by due process of law. The respondent cannot be just allowed to flout the mandatory procedure merely because the land is required for the public purpose for providing house sites to the house less people.

8.The respondents are unable to produce records to show observations of mandatory procedures. The acquisition proceedings were initiated knowing fully well that the petitioner is the owner.

9.Considering the facts and circumstances, the impugned proceeding Vide Ref.No.M5/8418/2001 dated 18.12.2001 published in the Villupuram District gazette on 13.02.2002 is liable to be quashed and this writ petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

tta

Copy to

1.The District Collector,
Villupuram District.

2.The Special Thasildar,
Adi Dravidar Welfare Ulundurpet.

+1cc to Mr.V.Raghavachari, Advocate, SR.No.19296

W.P.No.23005 of 2012
and

W.M.P.No.1 of 2012

SS (CO)
SRG/12/07/2021



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