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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2021

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THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.No.690 of 2019

N.Venkatesh

.. Appellant/Petitioner

Versus

1.State of Tamil Nadu,
Rep. By the Collector,
Villupuram District.

.. 1st Respondent/1st Respondent

2.The Special Tahsildar,
Adi Dravidar Welfare, Ulundurpet.

.. 2nd Respondent/2nd Respondent

Prayer: Writ Appeal has been filed under Section 15 of Letter of Patent against the order dated 29.01.2019 passed in W.P.No.9608 of 2004 by the learned Single Judge.

Prayer in W.P.No.9608 of 2004: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari, to call for the records of the Gazette notification of the 1st respondent dated 27.12.2003 in M1.58289/2001 read with the proceedings of the second Respondent dated 26.2.2004 in A1774/2000 in so far as it relates to the property in survey No.358/1B 0.02.5, 359/1B, 0.01.5 and 359/3B 0.01.0 of Senthamangalam Village, Ulundurpet Taluk and quash the same.

For Appellant

: Mr.T.Mohan for
M/s.Sundar Narayan

For Respondents

: Mr.T.Arunkumar, GA



JUDGMENT

(Judgment of the Court was delivered by T.RAJA, J.)

The present appeal is directed against the impugned order passed by the learned Single Judge in W.P.No.9608 of 2004, dated 29.01.2019, in and by which, the prayer of the appellant to quash the Gazettee Notification issued by the State Government in proceedings No.M1.58289/2001, dated 27.12.2003, read with the proceedings of the second respondent/the Special Tahsildar, Adi Dravidar Welfare, Ulundurpet, in A1774/2000, dated 26.02.2004 relating to the property in Survey No.358/1B 0.02.5, 359/1B 0.01.5 and 359/3B 0.01.0 of Senthamangalam Village, Ulundurpet Taluk, was refused.

2. Mr.T.Mohan, learned counsel appearing for the appellant argued that the appellant is the absolute owner of the property in Survey Nos.358/1B having an extent of 0.02.5; 359/1B having an extent of 0.01.5; and 359/3B having an extent of 0.01.0 of Senthamangalam Village, Ulundurpet Taluk. These lands were acquired by Deed of Exchange dated 08.04.2002 by the appellant along with one Mr.Ramalingam. As the appellant had earlier purchased these properties given in exchange from Ramalingam under a registered sale deed dated 23.09.1999, patta has been changed in the name of the appellant. Thereafter, he started enjoying the land in question by obtaining bank loan and constructing an office and a residential building, and after the construction, the appellant had also established a saw-mill and rice-mill.

3. When the matter stands as above, the appellant was served with a notice under Section 12(2) of the Land Acquisition Act on 24.03.2004 by the second respondent indicating the amount of compensation as Rs.6,312/-, besides stating that the said land was acquired for the purpose of allotting free house sites to the poor landless Adi Dravida people residing in that locality. Therefore, it is contended that since no notice was served and enquiry was not conducted as contemplated under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (31 of 1978) (in short "the Act"), the impugned notification stipulating acquisition of land bearing S.No.359/3B, is in violation of the provisions of the Act.



4. Mr.T.Mohan, learned counsel for the appellant, soliciting our notice to the counter affidavit filed by the second respondent admitting non-issuance of notice, argued that even the Village Administrative Officer has certified that notice could not be served on the appellant as he was living in Trichy. It is further argued that when the land belonging to the appellant was sought to be acquired, without even serving notice citing reasons for acquisition and calling for an explanation from the appellant as to why his land should not be acquired, they cannot all of a sudden issue notice under Section 12(2) of the Land Acquisition Act, because, that is not the procedure for acquisition of the land. When the respondent acquired the land for any public purpose, an obligation is cast on them to find out whether the land in question is liable to be acquired. If for any reason, the land in question is cultivable land or wet land or yielding agricultural produce, G.O.Ms.No.257, Revenue Department, dated 15.02.1983, protects the land acquisition authority not to acquire any such land as it would be gross wastage to the national economy.

5. Continuing further, it is submitted that the land of the appellant's sister is contiguous to his land and when the said land being wet land/agricultural land was acquired, his sister filed W.P.No.2423 of 2004 challenging the said acquisition on the ground that the District Collector has ignored the mandatory provision given in G.O.Ms.No.257, Revenue Department, dated 15.02.1983, protecting the agricultural lands of the small farmers from acquisition. Learned Single Judge, by order dated 20.03.2018, while quashing the impugned notification therein, remitted the back to the District Collector for fresh consideration. In the case on hand, the appellant was not served with notice so as to enable him to put-forth his defence as to the applicability of G.O.Ms.No.257, Revenue Department, dated 15.02.1983, and G.O.Ms.No.2078, Revenue Department, dated 27.12.1984, protecting agricultural lands from the acquisition. Therefore, he pleaded, as the claim of his sister is pending, the present matter may also be remitted back to the District Collector, Villupuram, to pass appropriate orders after taking note of the aforesaid two Government Orders protecting agricultural lands from acquisition.

6. Mr.T.Arun Kumar, learned Government Advocate appearing for the respondents submitted that when the land in question



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along with other lands were acquired, similarly placed persons came to this Court raising similar objections and they were all considered by this Court and finally, identical prayer made in W.P.No.2383 of 2004 was dismissed on 09.08.2006 and again one more writ petition in W.P.No.12534 of 2010 seeking the same relief was also dismissed on 16.07.2018. Therefore, when an identical prayer was already dismissed, it is not open to the appellant to come to the Court taking a plea that no notice was served upon him. On the other hand, when the appellant's father appeared on behalf of his sister, his father could have convinced the Tahsildar while participating in the enquiry. Therefore, when the father of the appellant took part in the enquiry on behalf of his sister, it is not going make any difference saying that he was not served with notice. With these submissions, he pleaded, the impugned order passed by the learned Single Judge does not call for interference.

7. We are unable to find any justification in the above said submissions of the learned Government Advocate. Firstly, the land in question along with adjacent lands were acquired by the Special Tahsildar, Adi Dravidar Welfare, Ulundurpet, vide proceedings dated 26.02.2004 under Section 4(1) of the Act for houseless Adidraavidars of Sendamangalam Village, Ulundrupet Taluk, Villupuram District. The only grievance of the appellant is that he came to know about the acquisition of his land bearing S.Nos.358/1B, 359/1B and 359/3B only on receipt of the notice under Section 12(2) of the Land Acquisition Act on 26.02.2004 determining the compensation to the tune of Rs.6312/- and therefore, non-issuance of notice before the acquisition of the land in question is against Section 4(2) of the Act, which expressly states that the District Collector shall serve a notice in Form-I individually on the owner of the land to show-cause as to why such land should not be acquired. In this context, for better appreciation, Section 4 of the Act is extracted below:-

4. Power to acquire land.- (1) Where the District Collector is satisfied that, for the purpose of any Harijan Welfare Scheme, it is necessary to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.



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(2) Before publishing a notice under sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised maybe interested in such land, to show cause why it should not be acquired.

From the above said provision, it is crystal clear that the District Collector, before publishing a notice under sub-section (1), shall issue notice calling upon the owner of the land in question to show-cause as to why such land should not be acquired. In this case, as admitted in the counter affidavit filed by the second respondent in the writ proceedings, it is not in dispute that the appellant was not served with notice as certified by the Village Administrative Officer of the Village concerned. Therefore, such an act of the authorities in not adhering to the mandatory provisions of sub-sections (1) and (2) of Section 4 of the Act before acquisition of land in question is untenable.

8. As a matter of fact, the Government itself had issued G.O.Ms.No.257, Revenue Department, dated 15.02.1983, and G.O.Ms.No.2078, Revenue Department, dated 27.12.1984 protecting wet land/cultivable land from acquisition. Therefore, as stated above, notice under Section 4(2) of the Act ought to have been issued to the appellant calling for an explanation as to whether such land is wet land or dry land. However, in the present case, such a procedure has not been followed.

9. Secondly, the very same gazette Notification was challenged by his sister-Sasikala for acquisition of her land in W.P.No.2423 of 2004 taking a stand that the land belonging to her is agricultural land and therefore, mandate of Government Orders in G.O.Ms.No.257, Revenue Department, dated 15.02.1983, and G.O.Ms.No.2078, Revenue Department, 27.12.1984 protecting agricultural land from acquisition, has to be followed. This Court, by order dated 20.03.2018, taking note of the fact that the District Collector has not applied the above said two Government Orders, remanded the matter back to the said Authority, with a direction to consider her claim afresh after applying the above said two Government Orders.



10. Therefore, looking at the case of the appellant as narrated above, admittedly, as no notice was served on him as per Section 4(2) of the Act, we hereby remand the matter back to the first respondent/District Collector, Villurpuram, who shall first issue notice under Section 4(2) of the Act to the appellant and then take a decision afresh after applying G.O.Ms.No.257, Revenue Department, dated 15.02.1983, and G.O.Ms.No.2078, Revenue Department, dated 27.12.1984, in accordance with law, within a period of eight weeks from the date of receipt of a copy of this judgment.

With the above directions, the writ petition stands disposed of. No Costs.

Sd/-
Assistant Registrar (CS-V)

// True Copy //

Sub Assistant Registrar

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To

1.The District Collector,
Villupuram District.

2.The Special Tahsildar,
Adi Dravidar Welfare, Ulundurpet.

+1CC to Mr.Sundar Narayan, Advocate, SR.No. 41252

+1CC to The Government Pleader, SR.No. 41488

W.A.No.690 of 2019

BS(CO)
B.VC (27/09/2021)