



WEB COPY



W.A.No.2380 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.08.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.A.No.2380 of 2013 and
M.P. Nos.1 of 2013 and 1 of 2014

S.Damodaran

... Appellant

vs

1.The Special Tahsildar (ADW),
Gudiyatham.

2.The District Collector
Vellore District.

... Respondents

Prayer: Writ Appeal filed under clause 15 of the Letters Patent Act
against the order dated 01.02.2013 passed in W.P. No.18510 of 2003.

For Appellant : Mr.A.Karthikeyan

For Respondents : Mr.K.V.Sajeev Kumar,
Special Government Pleader

JUDGMENT

[Judgment of this Court was delivered by T.RAJA, J.]

This writ appeal has been filed, challenging the order dated
01.02.2013 passed in W.P. No.18510 of 2003, wherein the learned
Single Judge, while dismissing the above writ petition, has observed
that since the writ petition has been filed by the petitioner after 5



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years of passing the award, the same is not maintainable. Aggrieved by the same, the appellant is before this Court.

2.Learned counsel appearing for the appellant submitted that the lands, comprised in Survey Nos.521 and 523, measuring to the extent of 40 and 100 cents respectively, situated in Serkadu Village, are owned by the appellant, who is a Daily Wager and has been cultivating paddy and sugarcane in the above lands. While so, the appellant, who belongs to Scheduled Caste Community, had received a notice under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (hereinafter referred to as 'the Act') for acquiring his land for the purpose of construction of house sites for Harijan Welfare. After receiving the said notice, the appellant given reply to the respondents. Learned counsel for the appellant further submitted that when Section 4(2) of the Act contemplates that 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 may be interested in such land, to show cause why it should not be acquired, show cause notice should be issued to the appellant before publishing the notice in the District Gazette as per Section 4(1) of the Act, which says that where



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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. Learned counsel for the appellant further submitted that without complying these formalities and without serving notice in Form III as contemplated under the Act, the respondents have taken possession of the land of the appellant, which is highly illegal and against law.

3.Learned counsel for the appellant further submitted that the Government of Tamil Nadu has also issued a Circular in the year 1977, prohibiting the acquisition of the land belonging to the weaker sections/Scheduled Castes and Scheduled Tribes, namely, the Government, vide Memo. No.6300/II.W.X/77-2, Social Welfare, dated 06.07.1977 makes it clear that the lands belonging to the Scheduled Castes and Scheduled Tribes should not be acquired under the Land Acquisition Laws in Tamil Nadu. When the Circular/Memo dated 06.07.1977 prohibits the acquisition of land belonging to the appellant, who belongs to the Scheduled Caste community, the initiation of the land acquisition proceedings under Section 4(1) shall stand lapsed as it is violation of their own Circular dated 06.07.1977.



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4. Arguing further learned counsel for the appellant submitted that when notice in Form - III as contemplated in the Act should have been served upon the appellant, the learned Single Judge ought not to have dismissed the above writ petition on the ground of delay in filing the writ petition. Since the respondents have not even come forward to pay the compensation till date, the respondents be directed to pay the same to the appellant forthwith. Therefore, this appeal deserves to be allowed.

5. In reply, learned Special Government Pleader appearing for the respondents, referring to Section 21 of the Act, submitted that the above Circular/Memo dated 06.07.1977, prohibiting the acquisition of land, belonging to the weaker sections/Scheduled Castes and Scheduled Tribes, has no relevance in the light of Section 21 of the Act, which overrides the above Circular/Memo saying that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom, usage, or contract or decree or order of a Court or other authority. Moreover, when the learned Single Judge, while dismissing the above writ petition filed by the appellant, has observed that after 5 years of passing the award, the petition filed by the



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petitioner is not maintainable, the appellant cannot come to this Court with this Appeal.

6.We find merits on the submission made by the learned Special Government Pleader appearing for the respondents. In this regard, it is relevant to extract Section 21 of the above Act and the Circular/ Memo. No.6300/II.W.X/77-2, Social Welfare, dated 06.07.1977 respectively as under:

'21.Act to override other laws – The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom, usage, or contract or decree or order of a Court or other authority.'

'With a view to speed up the process of land acquisition work for providing house-sites to the houseless Harijan families, instructions have been issued in the past requesting the Collectors to follow them scrupulously at the time of initiating land acquisition proceedings. The following further instructions are issued in regard to exercise the powers by the District Collectors:-

(i)Land belonging to poor persons with meagre land holdings need not, generally, be acquired unless otherwise inevitable for the purpose of maintaining proximity and vicinity to the main village.



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(ii)Lands belonging to Harijans should not be acquired except where it becomes absolutely inevitable. In such cases, the Collectors should obtain the prior permission of the Government for including such lands in the land acquisition proposals.

All Collectors are requested to follow the above instructions strictly.'

7.A perusal of the above Section 21 and the Circular dated 06.07.1977 would show that Section 21 overrides the Circular since the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom, usage, or contract or decree or order of a Court or other authority. Therefore, the contention raised by the appellant that the land acquisition proceedings initiated under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 would stand lapsed in the light of the Circular/Memo has no leg to stand.

8.Learned Special Government Pleader has produced official files to show that the lands, having the extent of 40 and 100 cents in Survey Nos.521 and 523 respectively, situated in Serkadu Village, are owned jointly by 9 persons. When the above lands jointly belonging to 9 persons, notices have been issued to 6 persons, but the appellant



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had refused to receive the same, which could be seen from the official file shown by the learned Special Government Pleader. Therefore, the contention made by the learned counsel for the appellant that the appellant has not been served with notice is far from acceptance.

9. Moreover, only after five years from the date of passing of the Award, the appellant has filed the above writ petition. Since the appellant is not diligent enough to file the writ petition, the learned Single Judge has rightly dismissed the petition on the ground of delay in filing the writ petition. In the meanwhile, the land has been distributed to the landless Harijan people.

10. It could be further seen from the records that the appellant had refused to receive the compensation and the land belonged to him had already been acquired and distributed to 65 landless Harijans, who have also built up their houses on issuance of patta and the compensation amount of Rs.1,42,140/- payable to the appellant has already been deposited into the Sub Court, Vellore on 24.12.1998. Therefore, liberty is given to the appellant to move an application before the Sub Court, Vellore for withdrawal of the said amount.



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11.It is made clear that if any such application is filed by the appellant, the same shall be considered by the Sub Court, Vellore within a period of one week from the date of receipt of a copy of this order and the appellant shall be permitted to withdraw the compensation amount immediately after disposal of the said application.

12.With the above direction and observation, this writ appeal is dismissed. Consequently, connected M.Ps are closed. No costs.

[T.R.,J.] [K.B.,J.]
03.08.2022

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To

- 1.The Special Tahsildar (ADW),
Gudiyatham.
- 2.The District Collector
Vellore District.

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