



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.13111 of 2009

1.Murugesan
2.Gurusamy

... Petitioners

Vs.

1. The District Collector,
Land Acquisition Authority
under Harijan Welfare Scheme
Act 31/1978 Ariyalur.

2. The Special Tahsildar,
Harijan Welfare Department,
Ariyalur District,
Ariyalur.

... Respondents

Prayer:

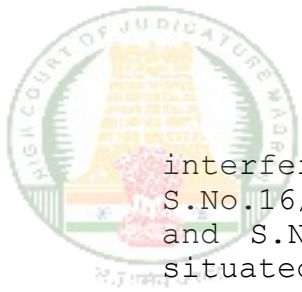
Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent in Na.Ka.A/491/05 dated 17.1.2006 quash the same and forbear the respondents from interfering or acquiring the petitioners lands namely in S.No.16/13 of 24 Aers extent which belong to first petitioner and S.No.16/8A1 of 12 Aers which belong to second petitioner situated in Periyavalayam Village, Udayarpalayam Taluk.

For Petitioners : M/s.Durga
for M/s.P.Solomon Francis

For Respondents : Mr.R.Vigneswaran
Government Advocate

O R D E R

The petitioners have filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent in Na.Ka.A/491/05 dated 17.01.2006, quash the same and forbear the respondents from



interfering or acquiring the petitioners lands namely in S.No.16/13 of 24 Aers extent which belong to first petitioner and S.No.16/8A1 of 12 Aers which belong to second petitioner situated in Periyavalayam Village, Udayarpalayam Taluk.

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2.The case of the petitioners is that the first petitioner belongs to Weaver Community and the second petitioner belongs to Vanniyar Community and they are in possession of the respective subject lands. According to the petitioners, they are very poor and they eke their livelihood from the income derived from the said lands, however, their lands are sought to be acquired by the respondents. Hence, the petitioners have filed this writ petition.

3.The learned counsel appearing for the petitioners submitted that though the petitioners are in possession of the respective subject lands, their lands are sought to be acquired for the purpose of providing house-sites for the downtrodden people, for which, the petitioners made their objections. In their objections they had stated that they are doing agriculture in the said lands and eking their livelihood out of the same and that they have no other land. They have also stated in their objections that there are more than 20 acres of Punja land available very near to the Harijan colony. However, without considering their objections, the second respondent recommended for acquisition of land, which is not sustainable one. The learned counsel further submitted that the issue involved in the present writ petition is squarely covered by the decision of the Full Bench of this Court reported in (2007) 2 MLJ 706 (R.Pari Vs. The Special Tahsildar, Adi Dravidar Welfare, Divakottai (Pasumpon Muthuramalinga Thevar District) and another).

4.The learned Government Advocate appearing for the respondents submitted that the objections made by the petitioners were duly recorded and considered by the second respondent and thereafter recommendation was forwarded to the first respondent. Hence, the impugned order warrants no interference.

5.Heard the arguments advanced on either side and perused the materials placed on record.

6.The facts in the present case is not in dispute. Admittedly, the petitioners lands are sought to be acquired for the purpose of providing free house - sites to the downtrodden community. The moot question that arise for consideration in this petition is as to whether the impugned order has been passed with application of mind.

7.This Court perused the objections made by the petitioners



from the relevant file. The first petitioner in his objection has stated that he has four daughters and one son and except the subject land, he has no other land. The second petitioner has also raised similar ground in his objections. Apart from this both the petitioners have stated that there are more than 20 acres of Punja land available very near to the Harijan colony. However, without acquiring the said lands, the respondents are in the process of acquiring the petitioners lands.

8.This Court perused the recommendation made by the second respondent. The said recommendation did not reveal the ground in the objections that there are more than 20 acres of Punja land available very near to the Harijan colony. However, the first respondent without considering the objections raised by the petitioners, mechanically passed the order in terms of the recommendation made by the second respondent, which is clear non application of mind.

9.For better appreciation, the relevant portion of the decision of the Full Bench of this Court reported in (2007) 2 MLJ 706 (R.Pari Vs. The Special Tahsildar, Adi Dravidar Welfare, Divakottai (Pasumpon Muthuramalinga Thevar District) and another), is extracted hereunder:

"42.However, it is necessary to enter a small caveat. The observation made by the Division bench or the judge regarding requirement to indicate reason while passing the order has to be understood in the context of non-application of mind. Even though in a given case the order which is communicated to the land owner does not indicate any reason why the objection has been rejected, if the application of mind is reflected in the file even by way of nothings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the land owner/objector does not contain any detailed reasons. The requirement is that the materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and not passing of a formal reasoned order as is required in judicial or quasi-judicial proceedings. The function obviously being administrative in nature, it is futile to expect furnishing of detailed reasons in the order which is communicated to the person. It is necessary to enter such



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caveat lest it may be construed that in every case, where the order of rejection communicated to the land owner does not contain the reasons, the proceeding stands vitiated. Ultimately the court is required to find out in each case whether there has been application of mind. Therefore, the brief reasons, which are contemplated, can be given either in the file in the shape of nothings, endorsements, etc., or even can be reflected in the order. But, mere non-reflection of reasons in the order communicated or in the notice published in the Gazette, would not be sufficient to hold that there has been non-application of mind and the question as to whether there has been application of mind or non-application is required to be considered on the basis of the return filed and. the relevant file to be produced before the Court.

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 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."

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10. Perusal of the above decision makes it clear that in each case this Court has to find out the application of mind. Even the endorsement or any noting in the file could be termed as application of mind. However, in the present case, the recommendation made by the second respondent to the first respondent did not contain the objection made by the petitioners and the second respondent on his own, made recommendation without considering the original objections made by the petitioners and the first respondent accepted the recommendation made by the second respondent and over ruled the objections made by the petitioners which is clear case of non application of mind.

11. In view of the above, this writ petition is allowed. The impugned order passed by the second respondent dated 17.01.2006 is hereby set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Land Acquisition Authority
under Harijan Welfare Scheme
Act 31/1978 Ariyalur.
2. The Special Tahsildar,
Harijan Welfare Department,
Ariyalur District,
Ariyalur.

+1cc to M/s.S.Jimraj Milton, Advocate, S.R.No.17621
+1cc to the Government Pleader, S.R.No.17819

W.P.No.13111 of 2009

JPL (CO)
SU (30/03/2022)