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W.P. No. 2152 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2022

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

W.P. No. 2152 of 2013

1. Sengodagounder
2. Saravanan

... Petitioners

Versus

1. The District Collector
Namakkal District
Namakkal.

2. The Special Tahsildar
ADW, Namakkal
Namakkal District.

3. Palanisamy

4. Murugesan

[Respondents 3 & 4 impleaded as per order,
dated 10.07.2014 in M.P.Nos. 3 and 4 of 2013]

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in Na.Ka.No.1590/2012 (T2), dated 25.10.2012 and quash the same.



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For Petitioner : Mr.M.S. Palaniswamy
For RR 1 & 2 : Mr.T.K. Saravanan
Government Advocate
For RR 3 & 4 : Mr.K. Balakrishnan

ORDER

This writ petition has been filed challenging the impugned order in Na.Ka.No.1590/2012 (T2), dated 25.10.2012 passed by the first respondent/District Collector, Namakkal and quash the same.

2. The case of the petitioners is that the petitioners are the owners of the property comprised in S.No.94, Munjanur Village, Tiruchengode Taluk, Namakkal District. The Southern side of the said property is classified as Arunthathiyars burial ground. The Arunthathiyar families are living in the village of Munjanur, and they were using burial ground in S.No.184 also. Their colony is in S.No.189 of the same village. Even though only 69 Arunthathiyar families are living in the village of Munjanur, they have two burial grounds in both Survey Numbers. The petitioners are the owners of the aforesaid property and the said lands were acquired for the public purpose of forming pathway to burial ground from Arunthathiars colony.



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The second respondent issued Form-I, notice dated 29.09.2012 in Roc.No.344/2012 (A), that the land specified in the schedule below and situated at Munjanur Village in Tiruchengode Taluk, Namakkal District, are necessarily to be acquired for the purpose of providing pathway to burial ground sites to the Arunthathiars of Munjanur Village, Tiruchengode Taluk. All persons interested in the land were accordingly directed to lodge their objections before the Land Acquisition Officer and Special Tahsildar (ADW), Namakkal under Sub Section (2) of Section 4 of the (Tamil Nadu Act 33 of 1978) within fifteen days service of the notice. Pursuant to the same, the petitioner made an objection and the second respondent passed the impugned order. Though there is a regular pathway from S.No.189 of the Arunthathiyar colony to S.Nos.184 and 194 of their burial grounds, and in fact, the pathways were converted into Pucca roads about 30 years ago. They demanded a pathway on the Northern side of S.No.190 connecting their colony in S.No.189 to one of their burial grounds in S.No.194. The petitioner has produced the remarks of the then District Collector passed in his ROC.No.8016/99 D2, dated 17.11.1999. In his remarks, the District Collector has noted that a Pucca Panchayat Road is in existence from their colony to the burial ground. The then District Collector has said that the distance is about only 1 km. The Government of Tamil Nadu rejected the



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recommendation of the then District Collector and ordered acquisition. The previous owners of land in S.No.190 Ramasamy and Palanivel challenged the acquisition by way of W.P.N.2840/2001 before this Court. This Court accepted the finding of the District Collector and also the recommendation for dropping of land acquisition and quashed the proceedings vide order dated 15.11.2006. Earlier the petitioner filed O.S.No.60 of 1999 claiming very same relief. The Arunthathiyar Community claimed verbatim the same relief. Having failed in their attempt with regard to S.No.190, they have shifted their claim towards Northwards to the petitioners' survey number. In their written statement, the said Jeganathan/defendant in the suit, claimed that they are using their land as pathway to their burial ground for the past 100 years. The said suit was decreed as prayed for and subsequently, an appeal has been preferred and the finding of the Court below was confirmed. On receipt of Form-I notice, the petitioners have submitted their detailed explanation on 11.10.2012. The first respondent claims that dead bodies will have to be carried for 1 km to the burial ground and pathway along with their land will shorten the distance by half a kilometre. When there is a Pucca road available to reach burial ground, there is no necessity to acquire the petitioner's land for formation of a new road. Challenging the impugned order dated 25.10.2012 passed by the first respondent, the present writ



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petition is filed.

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3. The learned counsel appearing for the petitioners submitted that, pursuant to the impugned notification under section 4(1) of the Land Acquisition Act, 1894, dated 25.10.2012, the Appeal in No.122 of 2008 has been preferred by the defendants on 17.07.2009. Therefore, this writ petitioner is challenging the notification under Section 4(1), dated 21.09.2022.

4. The learned Government Advocate appearing for the respondents 1 and 2 submitted that the other pathway to burial ground which is a Panchayat Road, is far away from the Arunthathiars Colony and that it would be difficult for the Arunthathiars to physically carry the dead body through the Panchayat Road and the acquisition in S.Nos.190/1 A2C and 190/4 is very much essential. It is further submitted that the objection raised by the petitioners were properly considered and all the usual formalities laid down under the Land Acquisition Act, were observed and complied with and hence, there is no reason to quash the notification.



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5. A careful perusal of the materials available on record reveal that notification u/s 4 (1) has been issued for the purpose of acquisition of land for the purpose of creating a pathway for reaching the burial ground for the Arunthathiyar Community. Objections have been called for on the basis of the said notification to which the petitioners and other similarly situated persons have filed objections, which, after consideration have been negatived by the 1st respondent and challenging the same, the present writ petition has been filed.

6. It is to be pointed out that the 1st respondent has complied with the provision of the Land Acquisition Act and negative the objections. If at all the petitioner is aggrieved, the course open to the petitioner is only to challenge the acquisition process by challenging the notification issued u/s. 4 (1) and not overruling of the objections by the 1st respondent. Without challenging the notification issued u/s.4 (1) challenging the impugned order is not sustainable and in the said backdrop, the writ petition filed by the petitioner is not maintainable.



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7. For the reason aforesaid, this writ petition is dismissed granting liberty to the petitioner to challenge the notification issued u/s.4 (1) of the Act. The interim stay already granted by this Court is extended for a period of two weeks from the date of receipt of a copy of this order to enable the petitioner to challenge the notification. No costs.

11.10.2022

Index : Yes / No

Speaking order : Yes / No
msm

To

1.The District Collector
Namakkal District
Namakkal.

2. The Special Tahsildar
ADW, Namakkal
Namakkal District.



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M.DHANDAPANI, J.

msm

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