



W.A(MD)No.989 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 11.04.2023

DELIVERED ON : 08.06.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
and
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

**W.A(MD)No.989 of 2022
and
C.M.P(MD)No.7976 of 2022**

Thirumani Dharmaraj

... Appellant/Writ Petitioner

-VS-

- 1.The State of Tamil Nadu,
Rep. by its Secretary,
Public Works Department,
Fort St. George,
Chennai.
- 2.The District Collector,
District Collectorate,
7A, PSP Nagar,
Korampallam,
Tuticorin District.
- 3.The Special Tahsildar,
Kennedian Channel,
Flood Drainage Project,
Sathankulam,
Tuticorin District.



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4.The District Forest Officer,
Thoothukudi Division,
Collector Complex,
Korampallam,
Tuticorin District.

... Respondents/Respondents

PRAYER: Appeal filed under Clause 15 of Letters Patent, against the order made in W.P(MD)No.15913 of 2021 dated 05.08.2022.

For Appellant : Mr.M.Mahaboob Athiff

For Respondents : Mr.R.Baskaran,
Additional Advocate General, assisted by
Mr.S.P.Maharajan,
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by R.SUBRAMANIAN, J.]

Aggrieved by the dismissal of the writ petition, challenge in which was to the land acquisition proceedings initiated under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the appellant/writ petitioner is on appeal.

2. An extent of about 5.02.00 hectares of land was sought to be acquired for the purpose of providing a channel for carriage of flood waters from Kannadian Channel by the District Collector of Tuticorin on



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08.10.2020 purportedly under Section 11(1) of the 2013 Act. A publication as required under the said Section was also made in Vernacular and English News Papers. The said notification was published in the Tuticorin District Gazette. The appellant submitted his objections. In the entire extent of 5.02.00 hectares of land that was sought to be acquired, 2.52.00 hectares belonged to the appellant. The appellant along with others challenged the said notification issued by the District Collector on 13.10.2020, published in the District Gazette on 08.12.2020, mainly on the ground that publication of the notification under Section 11(1) of the 2013 Act in the District Gazette, would not amount to proper compliance with the requirements of the said provision. Reliance was also placed on Rule 13 of the Rules enacted by the Government of Tamil Nadu under Section 109 of the Act and Sub-section 39 of Section 3 of the General Clauses Act, 1897, which defines the term "Official Gazette" in support of the said contention.

3. The said writ petition was resisted by the respondents contending that the judgment in **A.S.Periasamy vs. State of Tamil Nadu** reported in **2004 (2) CTC 406**, reliance on which was placed by the appellant herein, would not apply since it was rendered under the Land Acquisition Act, 1894 and since the definition of the term “appropriate Government” under the said enactment was different from the definition of the term



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“appropriate Government” under the 2013 Act. Since the term “appropriate Government” has been defined to include the District Collector, according to the respondents, the term “Official Gazette” should also be read as “including the District Gazette”.

4. This contention on the part of the respondents found favour with the Writ Court paving way for this appeal by the appellant. The question that would arise in the case on hand is as to whether the term “Official Gazette” could be read as “including the District Gazette” merely because the District Collector is deemed to be the appropriate Government in certain cases under the 2013 Act. It will be helpful to refer the statutory provisions before we proceed further.

5. Section 3(ee) of the Land Acquisition Act, 1894, defines “appropriate Government” as follows:

“The expression “appropriate Government” means, in relating to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government.”

6. Section 4 of the Land Acquisition Act, 1894, requires the preliminary notification to be published in the official gazette. The same



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reads as follows:

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“4.Publication of preliminary notification and powers of officers thereupon.-(1) Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification to that effect shall be published in the Official Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification).”

7. The term “appropriate Government” is not defined under either the 1894 Act or the 2013 Act. Therefore, one has to necessarily fall back upon the definition of the term of “Official Gazette” in General Clauses Act, 1897. Sub-section 39 of Section 3 of the General Clauses Act, 1897, which defines the term “Official Gazette” reads as follows:

“official Gazette” or “Gazette” shall mean the Gazette of India or the Official Gazette of a State.



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8. The Writ Court while accepting the reasonings of the Hon'ble Single Judge who decided the case in **A.S.Periasami vs. State of Tamil Nadu**, chose to draw a distinction on the basis of the definition of the term “appropriate Government” under Section 3(e) of the 2013 Act, which reads as follows:

“-appropriate Government? means,— (i) in relation to acquisition of land situated within the territory of, a State, the State Government;

(ii) in relation to acquisition of land situated within a Union territory (except Puducherry), the Central Government;

(iii) in relation to acquisition of land situated within the Union territory of Puducherry, the Government of Union territory of Puducherry;

(iv) in relation to acquisition of land for public purpose in more than one State, the Central Government, in consultation with the concerned State Governments or Union territories; and

(v) in relation to the acquisition of land for the purpose of the Union as may be specified by notification, the Central Government:

Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;”(emphasis supplied)



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9. In **A.S.Periasami vs. State of Tamil Nadu**, similar question arose as to whether publication of a notification under Section 4(1) of Land Acquisition Act, 1894, in the District Gazette, would be a proper initiation of the proceedings under the said Act. Hon'ble Mr.Justice P.K.MISRA, after elaborately analysing the issue on hand, held that publication of such notification in the District Gazette would not be a proper initiation of the proceedings. This conclusion of the learned Single Judge is sought to be distinguished by the Writ Court in the case on hand on the basis of an expanded definition of the term “appropriate Government”.

10. Section 11(1) of the 2013 Act, which reads as follows,

“11.Publication of preliminary notification and power of officers thereupon -(1) Whenever, it appears to be appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (hereinafter referred to as preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas shall be published in the following manner, namely:-

(a) in the Official Gazette; (emphasis supplied)

(b) in two daily newspapers circulating in the locality of such area of which one shall be in the regional language;

(c)in the local language in the Panchayat, Municipality or



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Municipal Corporation, as the case may be and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil;

(d) uploaded on the website of the appropriate Government;

(e) in the effected areas, in such manner as may be prescribed.

requires the notification issued by the appropriate Government shall be published in the Official Gazette. "Official Gazette" as defined under the General Clauses Act, 1897. Insofar as the State of Tamil Nadu is concerned, it would mean only the Fort St. George Gazette and nothing else. The mere fact that the District Collector in certain cases is empowered to issue a notification or deemed to be the 'appropriate Government', by itself will not enable the publication of a notification in the District Gazette. Even under the 1894 Act, by virtue of a Tamil Nadu amendment brought in, in the year 1997, the District Collector was empowered to issue notifications under Section 4(1) of the said Act in respect of certain lands.

11. A reading of Section 3(e) of the 2013 Act, would show that appropriate Government has been defined to be the State Government and the proviso enacts a deeming provision enabling the District Collector



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deemed to be the appropriate Government in respect of lands not exceeding certain extent that is to be prescribed. That by itself in our considered opinion will not enable the District Collector to publish notification under Section 11 of the 2013 Act in the District Gazette. The legislation is very carefully drafted. It only incorporates a deeming proviso.

12. At the risk of repetition, the proviso to Section 3(e) of the 2013 Act, is extracted hereunder:

“Provided that in respect of a public purpose in a District for an area not exceeding such as may be notified by the appropriate Government, the Collector of such District shall be deemed to be the appropriate Government;”

13. The proviso enables the appropriate Government/State Government to notify the maximum extent of land up to which the District Collector could be empowered to issue a notification and in such cases, the District Collector would be deemed to be the appropriate Government. If the State Government notifies an extent of land as infinite, the District Collector would be able to issue a notification in respect of any extent of land and he would be the appropriate Government and such notification would be published in the District Gazette. If we look at the intendment of the legislation, the object sought to be achieved by authorizing the District



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Collector to issue notification in respect of a certain extent of land and deeming him as “appropriate Government” in respect of that extent of land, is only for the purposes of convenience and not to alter the requirements of Section 11 of the 2013 Act. The Parliament must be deemed to be aware of the effect of usage of the term “Official Gazette” in Section 11 of the 2013 Act. The fact that the term “Official Gazette” was intended to be the Fort St. George Gazette, is clear from Rule 13(3) of the Rules framed by the State Government. The very Rule 13(3), clearly prescribes that preliminary notification should be published in the Tamil Nadu Government Gazette. Even if “Official Gazette” could be construed including the District Gazette, the term “Tamil Nadu Government Gazette” at no stretch of imagination would include Tuticorin District Gazette. Therefore, the intendment of the Parliament as well as the Legislature is that publication of the notification under Section 11 of the 2013 Act should be made in the State Gazette and not the District Gazette.

14. Though a reference is made to Rule 13(3) of the Rules framed by the State, we do not find any discussion by the Writ Court with reference to Rule 13. The Writ Court has chosen to refer to certain judgments rendered under the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. Section 7 of the said Act, deals with the publication of the orders of the District Magistrate made under the



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provisions of the Act and the right involved in those cases is not a constitutional right. When we are dealing with the legislation which provides for acquisition of land subject to payment of compensation which has the effect of limiting a constitutional right assured under Article 300(A) of the Constitution of India, the Court will have to essentially require the strict compliance with the procedure contemplated under the Act. Condonation of any deviation therefrom would infringe a right guaranteed by the Constitution of India. We are unable to subscribe to the views of the Andhra Pradesh High Court in W.P.No.7308 of 1984 dated 20.04.1984 (B.Gopal Reddy vs. The State of Andhra Pradesh), wherein it was held that the term “Official Gazette” would include “District Gazette” even under Section 4(1) of the Land Acquisition Act, 1894. The judgment of the learned Single Judge of this Court in A.S.Periasami's case, has more persuasive value than the judgment of the Andhra Pradesh High Court. The Writ Court has also observed that a look at the Tuticorin District Gazette shows that it bears the emblem of the State Government. Therefore, it can be construed as “Official Gazette”.

15. Again with great respect to the Writ Court, we are unable to agree with the said view. The Writ Court has lost sight of the fact that a publication in the Fort St. George Gazette, would amount to publication all over the State whereas publication in the District Gazette is limited to the particular District.



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16. When the legislature has used the term “Official Gazette” in Section 11(1) of the 2013 Act and the Rules framed by the State indicate that publication should be made in the Tamil Nadu Government Gazette, we do not think that we could uphold the interpretation of the Writ Court that the term “ Official Gazette” will include the concerned District Gazette also.

17. We find that the Writ Court has invoked the theory of prejudice and knowledge of the owner of the land about the acquisition proceedings. We are afraid that prejudice theory or the source of knowledge cannot be a ground to reject a challenge to the land acquisition proceedings. These are ex-proprietary legislations which require strict adherence to. Even a minor deviation from the established procedure would result in the acquisition being rendered illegal.

18. This Court in *Periaswamy -Vs - The Special Tahsildar (Adi Dravidam Welfare) Vridhachalam and another* reported in *AIR 1984 Madras 142* , had held that omission of the word “Harijan” in a notification issued for acquisition of land under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, would be fatal to the entire acquisition. Hon'ble Mr.Justice Mohan, who authored the judgment referred to the poetic words of Franklin, which read as follows:



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*“For want of a nail, the shoe was lost;
For want of a shoe, the horse was lost;
For want of a horse, the rider was lost;
For want of a rider, the battle was lost;
For want of a battle, the kingdom was lost.*

And all for the want of a horse, shoe nail

— Franklin (Poor Richard's Almanac for 1758)”

to impress upon the need for strict adherence with the provisions of the Statute. All objections to land acquisition proceedings can only be technical. The Courts cannot throw out objections on the ground that they are technical and uphold acquisition proceedings which do not comply with the mandate of law. In **A.S.Periasami's case** also, this Court had dealt with the arguments of prejudice and held that absence of prejudice cannot be a ground to sustain the land acquisition proceedings which are otherwise defective. It was also pointed out that the State Act namely the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, provides for publication of the preliminary notification in the District Gazette. The Government of Tamil Nadu chose to amend the Central Land Acquisition Act in the year 1997 empowering the District Collectors to issue preliminary notifications under Section 4(1) of the Land Acquisition Act, 1894 and even while doing so, the legislature never thought it fit to amend the expression “Official Gazette” occurring in Section 4(1) of the



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said Act. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, was enacted in 2013 and the Parliament chose to retain the term “Official Gazette”. The State Government framed Rules in the year 2017 and it chose to use the term “Tamil Nadu Government Gazette”. The legislation's intendment therefore is manifest to the fact that the publication shall be made in the “Official Gazette” of the State and not in the “District Gazette”. We are therefore, unable to sustain the conclusions of the Writ Court. The writ appeal therefore succeeds. The order of the Writ Court is set aside. The writ petition stands allowed and the proceedings initiated by the second respondent District Collector, Tuticorin District under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, will stand quashed. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.] [L.V.G., J.]

08.06.2023

NCC :Yes
Index :Yes
PM



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