



W.P(MD)No.25364 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 30.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.25364 of 2022

and

W.M.P(MD)Nos.19446 & 19447 of 2022

Stalin Arockiaraj

... Petitioner

v.

1.The State represented by

The Secretary to Government,

Adi Dravidar and Tribal Welfare

(LA.2) Department,

St.George Fort, Secretariat, Chennai – 600 009.

2.The Commissioner, Adi Dravidar Welfare,

Ezhilgam, Chepauk, Chennai – 5.

3.The Special Commissioner and Commissioner

for Land Administration,

Ezhigam, Chepauk, Chennai – 5.

4.The District Collector, Sivagangai District,

Sivagangai.

5.The Special Tahsildar (ADW),

Office of the Collectorate, Sivagangai.

6.The Tahsildar (Revenue),

Kalaiyarkoil, Sivagangai.

... Respondents



W.P(MD)No.25364 of 2022

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records comprised in Letter No. 12617/Ni.A2 (1) / 2010-35 on the file of the Principal Secretary to Government (ADW) / first respondent dated 22.06.2022 which was culminated into passing of impugned order in Na.Ka.No.A/W174/2010 on the file of the District Collector / Respondent no. 4 dated 13.10.2022 and quash the same and consequently direct the respondents to accept the offer of the Petitioner for exchanging equal extent of land comprised in S.No. 45/2A in lieu of the acquired land in S.No. 46/4C, measuring an extent of 0.92.0 hectares in Somanathamangalam Village, Kalaiyarkoil Taluk, Sivagangai District.

For Petitioner : Mr.V.Ayyadurai, Senior Counsel
for Mr.Muthugeethayan

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by Mr.A.K.Manikkam
Special Government Pleader

ORDER

Heard the learned Senior Counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Special Government Pleader appearing for the respondents.

2.The writ petitioner is the Chairman/Managing Trustee of an educational Institution. Part of the lands owned by the Institution are comprised in Survey No.46/4C measuring an extent of 0.92.0 hectares in



W.P(MD)No.25364 of 2022

Somanathamangalam Village, Kalaiyarkoil Taluk, Sivagangai District.

Proceedings were initiated under Tamil Nadu Act 31 of 1978. The notification was issued on 17.09.1996 followed by the proceedings dated 23.01.1997. Thiru.V.Michael, father of the writ petitioner herein filed W.P.No.1946 of 1997 challenging the acquisition proceedings. It was noted that on 20.05.1991, Thiru.V.Micheal had executed a settlement deed in favour of the writ petitioner / Stalin Arokiaraj and that therefore he may not have the *locus standi* to even maintain the writ petition. In that view of the matter, the writ petition was dismissed on 03.02.2005. Aggrieved by the same, the petitioner herein filed W.A.No.903 of 2005. The Hon'ble Division Bench vide order dated 01.04.2009 confirmed the decision of the learned Single Judge. The petitioner escalated the matter to the Apex Court and again it was in vain. Vide order dated 13.05.2009, Special Leave to Appeal (Civil) No.11372 of 2009 was dismissed. Since the matter was dismissed at the SLP stage itself without grant of leave, the petitioner filed Review Application No.95 of 2009. Before the Hon'ble Division Bench, the petitioner made an offer. Recording the said offer, the Review Application was dismissed as withdrawn in the following terms:

“10. The submission of Mr.R.Krishnamoorthi, learned senior counsel is that the petitioner may be given liberty to workout his remedy in challenging the acquisition proceedings. In our opinion, the request of the learned senior counsel can be



WEB COPY



W.P(MD)No.25364 of 2022

accepted. Accordingly, the review application is dismissed as withdrawn with liberty preserved for Mr.M.Stalin Arockiaraj to workout his remedy in questioning the acquisition proceedings in accordance with law. In case if such challenge is made, the pendency of the proceedings in regard to the challenge to the land acquisition proceedings could be excluded.

11. As regard to the further request of the learned senior counsel, it is always open to either Mr.M.Stalin Arockiaraj or the educational institution to approach the Government with an offer for providing alternate land in lieu of the land already acquired and if such a representation is made, it will be open to the respondents or the Government, as the case may be, to consider the same on merits.

With the aforesaid liberty and subject to the rights of both the petitioner and the State being preserved, the review application is dismissed as withdrawn. Consequently, M.P.No.1 of 2009 is also dismissed. No costs.”

3.The petitioner had two courses of action open to him:

a)Challenging the acquisition proceedings & b) Offer land in exchange

The petitioner chose the second option. He submitted a representation dated 15.09.2009 offering to give the lands comprised in Survey No.45/2A in the



W.P(MD)No.25364 of 2022

same Village to the same extent. Interestingly, the lands offered in exchange are situated just in front of the land acquired. A public road belonging to the highways runs in-between. The said offer was taken up for consideration. The Government vide communication dated 22.06.2022 informed the District Collector that there is no provision under the relevant statute for exchanging an acquired land. The Government went to the extent of rejecting the petitioner's request. Pursuant to the stand taken by the Government, the District Collector, Sivagangai issued the impugned communication dated 13.10.2022. The petitioner was called upon to hand over the acquired land within 15 days. Challenging both the communications, the present writ petition came to be filed.

4.The learned Senior counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the orders impugned in the writ petition and grant relief as prayed for.

5.The respondents have filed counter affidavit and the learned Additional Advocate General took me through its contents. He submitted that the impugned communications do not call for interference. He took me through the statutory scheme set out in the Tamil Nadu Act 31 of 1978. He pointed out



W.P(MD)No.25364 of 2022

that this was a special enactment intended to fast track the acquisition process for the benefit of persons belonging to Scheduled Castes. He pointed out that once the relevant notifications have been published, the acquired land would vest in Government free from all encumbrances. He drew my attention to Section 5 of the Act. He also pointed out that the Government has the duty to put the acquired land to use for the purposes mentioned in the statute and that there is absolutely no scope for conceding the petitioner's request. He pressed for dismissal of the writ petition.

6.I carefully considered the rival contentions and went through the materials on record. The primary reason for rejecting the petitioner's request was because of lack of any provision providing for exchange of the acquired land in the relevant statute. It is true that the Tamil Nadu Act 31 of 1978 does not have any provision similar or corresponding to Section 101 of the Central Act 30 of 2013 or Section 48(A) of the Land Acquisition Act, 1894. At the same time, I must also note that this Act does not contain any prohibition against exchange of acquired lands. I proceed on the premise that the legislation is silent on this issue. My attention is drawn to the decision of the Hon'ble Apex Court reported in **2021 2 SCC 209 (Union of India & Others Vs G.S.Chatha Rice Mills & Others)**. The Hon'ble Apex Court in the said decision observed that when the legislature enacts a law, “every conceivable



W.P(MD)No.25364 of 2022

eventuality which may arise in the future may not be present to the mind of the lawmaker. Legislative silence creates spaces for creativity. Between interstices of legislative spaces and silences, the law is shaped by the robust application of common sense”. The facts obtaining in the present case cannot be lost sight of. Even when the acquisition proceedings were initiated, the Institution in question was very much running a Teachers’ Training College. The Institution has been functioning right from 1984. The acquisition proceedings were put to challenge but the challenge was not repelled on merits but purely on a technical ground. On the ground of *locus standi*, the writ petition was dismissed. Though the said decision of the learned single Judge was confirmed, the Hon’ble Division Bench gave liberty to the writ petitioner either to offer land in exchange or challenge the acquisition proceedings. The petitioner wisely chose to offer land in exchange instead of mounting a challenge to the acquisition proceedings. The representation given by the petitioner was on the strength of the liberty granted by the Hon’ble Division Bench. Of course, the Hon’ble Division Bench did not issue any positive mandate to the Government to accept the exchange. The Government was free to consider the offer and even reject it. However, the Government was obliged to consider the offer on merits. In other words, the petitioner’s offer could have been rejected only if what was offered did not fulfil the object for which the acquisition proceedings



W.P(MD)No.25364 of 2022

were originally initiated. If the petitioner had offered lands unsuitable for use by the eventual beneficiaries such an offer deserved outright rejection. The only question before the Government was one of equivalence. Whether the land offered by way of exchange is similar and possesses the advantages of the land already acquired alone had to be considered. The petitioner's offer could have been rejected only on merits and not on the ground of want of provision in the relevant statute. The reason set out in the impugned communication of the Government as well as the District Collector is not only unsustainable but also flies in the face of the order passed by the Hon'ble Division Bench. I have no hesitation to interfere in the matter. A counsel claiming to represent the beneficiaries appeared before this Court on the last occasion and stated that they have no objection to take the land offered by the petitioner. It is not in dispute that the land offered by the petitioner is situated virtually opposite to the land already acquired.

7.The learned Senior Counsel pointed out that the land offered in exchange is situated contiguous to the existing habitation of the persons belonging to the scheduled caste. The Hon'ble Division Bench gave liberty to the petitioner to question the acquisition notification, but the petitioner wisely did not do so but instead opted to offer land in exchange. The Government has been spared the trouble of defending the challenge. One should not forget that



W.P(MD)No.25364 of 2022

the earlier challenge by the petitioner's father in the year 1997 ended only in the year 2009. In such matters, the authorities must look at the broad picture.

8.In this view of the matter, the order impugned and the communication in question are set aside. This writ petition is allowed. The respondents are directed to accept the offer made by the writ petitioner in exchange of the acquired lands and issue appropriate proceedings as expeditiously as possible. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

30.01.2023

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

MGA

To

1.The Secretary to Government,
Adi Dravidar and Tribal Welfare
(LA.2) Department,
St.George Fort,
Secretariat, Chennai – 600 009.



WEB COPY



W.P(MD)No.25364 of 2022

G.R.SWAMINATHAN, J.

MGA

- 2.The Commissioner,
Adi Dravidar Welfare,
Ezhilgam,
Chepauk, Chennai – 5.
- 3.The Special Commissioner and Commissioner
for Land Administration,
Ezhigam,
Chepauk, Chennai – 5.
- 4.The District Collector,
Sivagangai District,
Sivagangai.
- 5.The Special Tahsildar (ADW),
Office of the Collectorate,
Sivagangai.
- 6.The Tahsildar (Revenue),
Kalaiyarkoil,
Sivagangai.

W.P(MD)No.25364 of 2022

and

W.M.P(MD)Nos.19446 & 19447 of 2022

30.01.2023