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W.A.No.511 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

W.A.No.511 of 2022

and

C.M.P.No.3681 of 2022

1.The Government of Tamil Nadu,
Represented by the District Collector,
Dharmapuri District,
Dharmapuri.

2.The Land Acquisition Officer and
Special Tahsildar,
(AdiDravidar Welfare)
Dharmapuri.

... Appellants

Vs.

1.Venu
2.Rajalingam
3.Perumal

... Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 14.03.2018 in W.P.No.36632 of 2003 on the file of this Court.



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For Appellants : Mr.A.Selvendran
Special Government Pleader

For R1 : Mr.P.Mani

For R2 and R3 : No appearance

J U D G M E N T

(Judgment was delivered by **S.S. SUNDAR, J.**)

This Writ Appeal is directed against the order of the learned Single Judge, dated 14.03.2018, made in W.P.No.36632 of 2003, allowing the writ petition challenging the acquisition proceedings initiated by the appellants under Section 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978 (hereinafter referred to as “the Act” for brevity).

2.The respondents' father, by name R.Krishnan, was the cultivating tenant in respect of the property comprised in S.No.39/2 and 41, Sivadi Village, Dharmapuri District, which is the subject matter of the writ petition. It is admitted that the respondents' father filed an application to include his



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name as cultivating tenant under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. The learned Special Government Pleader has not filed any document doubting the validity of the proceedings of the Record Officer dated 06.12.1980, including the name of the respondents' father in the Tenancy Records. It is the case of the respondents that their father died and thereafter, the respondents, who are the writ petitioners, are entitled to succeed to the property as cultivating tenants. It is not the case of appellants that the respondents are not cultivating tenants as defined under Under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. A person in possession as a tenant is entitled to be in possession till he is evicted by due process.

3.The property comprised in S.No.39/2 and 41, Sivadi Village, Dharmapuri District, which is the subject matter of the writ petition, was required for a Harijan Welfare Scheme. Therefore, proceedings were initiated under the Act for acquisition. Ultimately, a notification under Section 4(1) of the Act was published in the District Gazette on 26.11.1999. The grievance of the respondents/writ petitioners is that no notice was issued



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to the writ petitioners before issuing a notice under Section 4(1) of the Act.

It is also stated that no notice was also issued to the writ petitioners before passing the Award fixing compensation for the land. Therefore, the respondents filed the writ petition in W.P.No.36632 of 2003 challenging the acquisition proceedings.

4.The learned Single Judge of this Court, holding that the writ petitioners, who are interested, are entitled to notice and that the acquisition proceedings without issuing notice to the tenants is invalid, allowed the writ petition. As against the order of the learned Single Judge allowing the writ petition, the above Writ Appeal is filed.

5.The learned Special Government Pleader appearing for the appellants made the following submissions :

(a) The acquisition proceedings were initiated as against the landlord/owner by issuing a notice for enquiry under Section 4(2) of the Act. Since the writ petitioners have not raised any objection regarding acquisition, it is stated that the acquisition culminated in



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issuance of final notice under Section 4(1) of the Act and determination of compensation for the land.

(b) However, it is admitted that, at no stage of proceedings initiated under the Act, notice was issued to the writ petitioners.

(c) The writ petitioners filed a Civil Suit originally in O.S.No.50 of 2000 on the file of the Additional District Munsif, Dharmapuri, for declaration of their possessory right and consequential reliefs. Since acquisition proceedings can be challenged only before this Court and no suit can be entertained by the Civil Court challenging the acquisition, the suit filed by the writ petitioners was dismissed by judgment and decree dated 24.03.2006. The writ petitioners filed yet another suit in O.S.No.106 of 2019 before the District Munsif Court, Dharmapuri, for permanent injunction, and the said suit was also dismissed relying upon the acquisition proceedings. The learned Special Government Pleader submitted that a writ petition challenging the acquisition proceedings after dismissal of two suits filed by the writ petitioners, is not maintainable.

(d) Notice was duly served on the landlord and therefore, the acquisition



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proceedings is not vitiated merely because the tenant or cultivating tenant is not issued with any notice.

- (e) An Award was passed fixing compensation for the lands acquired and the compensation in entirety was disbursed to the land owner as there was no objection or rival claim.
- (f) The acquisition proceedings were initiated after issuing a local publication and by publishing the notification in conspicuous places of the Village.
- (g) The respondents are not persons interested as their names were not registered in the Revenue records as persons having interest.

6. This Court is unable to accept the contentions of the learned Special Government Pleader appearing for the appellants for the following reasons :

Section 4 of the Act reads as follows :

“4. Power to acquire land — (1) Where 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



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building is defined to include any person claiming or entitled to claim an interest in the amount payable on account of the acquisition of land or building under the Act. Under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 (Act X of 1969), a “tenant” is defined to mean a “cultivating tenant” as defined under Tamil Nadu Cultivating Tenants Protection Act, 1955 (Tamil Nadu Act XXV of 1955). Under Tamil Nadu Cultivating Tenants Protection Act, 1955, a “cultivating tenant” is defined under Section 2(aa) as follows :

“2.Definitions :

(aa) -Cultivating tenant-

(i) means of person who contributes his own physical labour or that of any member of his family in the cultivation of any land belonging to another, under a tenancy agreement, express or implied; and

(ii)includes –

(a) any such person who continues in possession of the land after the determination of the tenancy agreement;

(b) the heir of such person, if the heir contributes his own physical labour or that of any member of his family in the cultivation of such land;

(c) a sub-tenant if he contributes his own physical



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labour or that of any member of his family in the cultivation of such land; or

(d) any such sub-tenant who continues in possession of the land notwithstanding that the person who sublet the land to such sub-tenant ceases to have the right to possession of such land; but

(iii) does not include a mere intermediary or his heir;”

Since the term “tenant” will include the legal heirs of the main tenant and the name of the father of the writ petitioners was included in the Tenancy Records, the writ petitioners, who are in physical possession of the property, are always recognized as persons interested to claim the amount that is payable to the land acquired.

7. In this case, though the writ petitioners approached the Civil Court, on a careful reading of the plaint and the judgment and decree in O.S.No.50 of 2000, it is seen that the issue raised and resolved by the Civil Court is whether the writ petitioners' right to hold the property can be declared, despite the acquisition proceedings initiated under the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978. This Court



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and Hon'ble Supreme Court have time and again held in unequivocal terms that a tenant or a cultivating tenant is a person entitled to get compensation and is a person entitled to receive notice at every stage of the acquisition proceedings. When it is admitted that no notice was issued to the writ petitioners, even though they are in physical possession of the property, this Court need not close the writ petition merely because the acquisition proceedings were initiated against the original owner, as the writ petitioners, who were in possession as tenants, are entitled to a notice for hearing before issuing a notice under Section 4(1).

8. This Court, from the records, is able to see that the appellants have proceeded with acquisition under the Act without issuing notice to the persons, who are in physical possession and whose name are also registered in the Tenancy Records (though names of the writ petitioners are not included, the name of the father of the writ petitioners is found in the Tenancy Records), which will certainly come in the way of the appellants dispensing with the notice to the writ petitioners. The learned Judge has categorically given a finding that no notice was issued to the respondents



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under Section 4(2) of the Act. The respondents, who are in physical possession as cultivating tenants, are entitled to be heard. Failure to issue notice to the tenant who is in physical possession of the property, certainly vitiates the acquisition proceedings.

9. Having regard to the facts established before this Court, as seen from the Revenue records, this Court finds that the whole proceedings under the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978, cannot be sustained, and this Court finds no irregularity in the order passed by the learned Single Judge quashing the acquisition proceedings. Therefore, this Writ Appeal is devoid of merits and accordingly, dismissed.

10. Since it is reported that compensation has now been disbursed to the landlord in entirety, it is open to the appellants to recover the money paid to the owner of the land by way of compensation. Learned counsel appearing for the respondents submitted that possession was not taken from



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the respondents and the respondents are continuing as cultivating tenants by doing agricultural operations in the land. If that is so, liberty is given to the appellants to proceed afresh to acquire the land, after issuing fresh notice to the respondents who are in physical possession, in case they require the land for any Harijan Welfare Scheme. No costs. Consequently, connected miscellaneous petition is closed.

(S.S.S.R., J.) (A.D.M.C., J.)
01.10.2024

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Internet : Yes

Index : Yes / No

Neutral Citation : Yes / No

To

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