

(2006) 09 MAD CK 0066

In the Madras High Court

Case No : Writ Petition No's. 5921 and 5922 of 1998

A. Abhusaliha and S. Govindaraj

APPELLANT

Vs

The District Collector and The Special Tahsildar (Adi Dravida Welfare)

RESPONDENT

Date of Decision : 21-09-2006

Acts Referred:

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 — Rule 3
Tamil Nadu Land Acquisition Act, 1978 — Section 4(1), 4(2)

Citation : (2006) 09 MAD CK 0066

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : R. Selvakumar, for the Appellant; M. Dhandapani, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Mohan Ram, J.—The case of the petitioner in W.P. No. 5921 of 1998 is as follows:

The petitioner is the owner of the Punja lands comprised in Survey No. 588/2 measuring to an extent of 1.35.0 acres at No. 24 Erranahalli Village,

Palacode Taluk, Dharmapuri District.

2. The case of the petitioner in W.P. No. 5922 of 1998 is as follows:

The petitioner is the owner of the Punja land comprised in Survey No. 587/7 measuring to an extent of 0.21.0 acres at No. 24 Errnahalli village,

Palacode Taluk, Dharmapuri District.

3. It is the case of the petitioners that under a notification dated 20.11.97, issued by the first respondent in Na.Ka. No. 168152/95(Ko-8) u/s 4(1)

of the Tamil Nadu Land Acquisition Act, 1978, (hereinafter referred as the Act)

and published in the Tamil Nadu Government Gazette,

Dharmapuri District, Special publication dated 29.11.97 the petitioners land were sought to be acquired for a public purpose for providing house

sites to Adi Dravidars.

4. The said notification is challenged on the ground that the show cause notice contemplated u/s 4(2) of the Act has not been issued to the

petitioners and since the mandatory statutory requirement has not been complied with, the impugned notification are liable to be quashed.

5. The second respondent has filed a common counter affidavit. In paragraph 3 of the counter affidavit it is stated that the land owners refused to

receive the notice sent u/s 4(2) of the Act and further proceedings followed as per the rules and regulations laid down in the Act and the award

enquiry was conducted on 27.03.98. Though the writ petitioner in W.P. No. 5922/98, S. Govindaraj received the notice, he did not appear for the

enquiry and the writ petitioner in W.P.5921/98, A. Abusaliha refused to receive the notice and then further proceedings are conducted as per the

Act and the 4(1) notification was published as contemplated in the Act.

6. Heard the arguments of the learned Counsel for the petitioners and the respondents.

7. The learned Counsel for the petitioners submitted that the show cause notice contemplated u/s 4(2) of the Act has not been served on the

petitioners. The learned Counsel further submitted though it is stated in the counter affidavit that the show cause notice was refused to be received

by the petitioner, no proof of the same has been filed before the Court. Excepting the above said submission no other submission was made.

8. Per contra, the learned Additional Government Pleader by producing the original files, submitted that the show cause notice was sought to be

personally served on the land owners namely the petitioners in the above writ petitions but the same was refused to be received and hence the

same was served by affixture and therefore the contention of the petitioners are liable to be rejected.

9. The learned Additional Government Pleader further submitted that though a specific averment has been made in the counter affidavit to the effect

that the petitioners refused to receive the show cause notice no reply affidavit has been filed rebutting the same.

10. A perusal of the original files produced by the learned Additional Government Pleader shows that the show cause notice as contemplated

under the Act was sought to be served in person but the petitioners have refused to receive the same and hence the same has been affixed in the

presence of witnesses. Six persons have attested the service of notice by affixture. In view of the same the contention of the learned Counsel for

the petitioners is liable to be rejected.

11. The learned Counsel for the petitioners made one another submission that Rule 3(i) of the The Tamil Nadu Acquisition of Land for Harijan

Welfare Schemes Rules, 1979 (hereinafter referred to as the "Rules") contemplates that the show cause notice shall be sent by registered post

(Acknowledgement Due) but the said procedure has not been followed by the respondents. Rule 3(i) of the Rules above reads as follows:

3. Procedure for Acquiring Land-(i) The District Collector or the Officer authorised by him in his behalf shall serve a show cause notice in Form I

under Sub-section (2) of Section 4 individually on the owner or on all persons interested in the land to be acquired. If the owner or any other

person interested in the land resides elsewhere than where the land is situated, the show cause notice shall be sent by registered post

(Acknowledgement Due) to the last known address of the owner or any other person interested.

12. A reading of the above said provisions shows that Form (1) notice provided under Sub-section (2) of Section 4 of the Act has to be served

individually on the owner or on all persons interested in the land to be acquired and only when the owner or any other person interested in the land

resides elsewhere than where the land is situated, the show cause notice shall be sent by registered post (Acknowledgement Due) to the last

known address of the owner or any other person interested. It is not the case of the petitioners herein that they were residing elsewhere than where

the land is situated. As pointed out, by the learned Additional Government Pleader, the show cause notice was sought to be served personally on

the petitioners herein but the same were refused to be received. Therefore it is not open to the petitioners to raise such untenable contentions. As

pointed out above since requirements of Rule 3(i) of the Rules have been complied with there is absolutely no merit in the contention of the counsel

for the petitioners herein. For the foregoing reasons, the writ petitions fail and accordingly they are dismissed. No costs.