

(2002) 01 MAD CK 0085

In the Madras High Court

Case No : Writ Petition No. 1629 of 1998 and W.M.P. No. 2322 of 1998

A. Dhurvasala

APPELLANT

Vs

The Collector, Vellore District and The Special Tahsildar, Adi
Dravidar Welfare

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) WritLR 852

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : G. Jeremiah, for the Appellant; M. Mahalingam, G.A., for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The above writ petition has been filed praying to issue a Writ of Certiorari to call for the records of the first respondent pertaining to the impugned notice published in the North Arcot Ambedkar District Gazette (Extraordinary), dated 14.3.1997 in respect of S.Nos.12/1, 12/2 and 402/2 situate at Sithambadi village, Arakonam Taluk, Vellore District and quash the same.

2. The case of the petitioner is that in Sithampadi village, there is a lake known as `Sithampadi Periya Eri", which is the source of irrigation for several hundreds of acres; that the lake water is carried through a channel in S.Nos.398,399 and 400 and when an attempt was made to obliterate the channel and convert it into a road, the petitioner objected the same and thereafter filed a writ petition in W.P.No.111 of 1996 before this Court and it is pending; that thereafter the 2nd respondent issued a notice in Form-I under Rule 3(1) stating that his lands along with certain other lands were required for the purpose of forming a link road to Sithampadi Mattu Colony, for which he submitted his objections, but, without giving any reply, suddenly, the second respondent issued a notice in Form-III to

the petitioner on 8.1.1998.

3. Contending that without following the procedures established by law, the second respondent has issued the impugned notification u/s 4(1) of the Land Acquisition Act and further submitting that there is already a road linking the Harijan Colony and as such there was no need to form another road, the petitioner has come forward to file this Writ Petition.

4. During arguments, the learned counsel for the petitioner would submit that under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (Act 31/78), the District Collector or any officer authorised by him in this behalf will have to issue a notice to the owner of the land calling upon him to show-cause as to why it should not be acquired and such cause must be taken into account and orders will have to be passed, before a notification u/s 4(1) of the Act is issued. But, in the present case, the impugned notification has been issued without following the procedures established under the law and would cite a judgment of the Apex Court delivered in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, wherein it has been held:

"Sub-sec.(1) of S. 4 empowers the District Collector, if he is satisfied that it is necessary to acquire some land for the purpose of an Harijan Welfare Scheme, to acquire that land by publishing in the District Gazette a notice to the effect that he has decided to acquire it in pursuance of S. 4. Sub-sec.(2) of S. 4 obliges the District Collector or any Officer authorised by him in this behalf to call upon the owner or any other person who, in the opinion of the District Collector or the Officer so authorised, is interested in such land to show cause why it should not be acquired. By reason of sub-sec.(3) of S. 4, such cause has to be taken into account and orders passed in respect thereof. It is only thereafter that the acquiring authority can arrive at the satisfaction that it is necessary to acquire the land. The provisions of S. 4, therefore, substantially encapsulate the provisions of Ss.4 to 6 of the Land Acquisition Act, the only major difference being that, under the said Act, it is the District Collector and not the State Government (as under Land Acquisition Act) who must be satisfied that the land is required to be acquired. It cannot be said that this is a provision which is unreasonable or arbitrary."

Further submitting that the respondents have not complied with the mandatory requirements prior to issuing the notification u/s 4(1) of the Act, the learned counsel for the petitioner would pray to allow the above writ petition.

5. It is Rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules 1979 (hereinafter called as "Rules") which prescribes the procedure for acquiring the lands whereunder the show cause notice is to be issued in Form I and the notice to be published in District Gazette in Form II.

6. In order to analyse the implications and impact of this provisions of law, it is relevant to extract section 4(1), 4(2) and 4(3) of the Act and Rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules 1979.

"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 pursuance of this section.

(2) Before publishing a notice under sub-section (1), the District Collector in his behalf, shall call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to show cause why it should not be acquired.

3:(a): The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown;

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section(2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report the District Collector may pass such orders as he may deem fit."

"Rule 3. Procedure for Acquiring Land:-

(i): The District Collector or the Officer authorised by him in this 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 (Acknowledgment Due) to the last known address of the owner or any other person interested.

(ii): The District Collector, if, after passing such orders as required by sub-sections (2) and (3) of Section 4 is satisfied that it is necessary to acquire the land, notice in Form II to that effect shall be published in the District Gazette."

7. Thus, the publication of Notification u/s 4(1) by which the Government declares its decision to acquire the particular land for the purpose of any Harijan Welfare Scheme is the base in the process of acquisition. Such publication of notification could only be done complying with the mandatory provisions of law as contemplated under Sections 4(2) and 4(3) of the Act, they being pre-requisites for effecting the publication of notification u/s 4(1) of the Act, lest, the very land acquisition proceeding initiated coupled with the publication of notification u/s 4(1) of the Act would get vitiated.

8. The next question that arises for consideration is as to how the requirements of Sections 4(2) and 4(3) of the Act should be complied with.

9. Section 4(2) of the Act would itself lay that before publishing the notice u/s

4(1) of the Act, the District Collector or any Officer authorised by the District Collector shall call upon the owner or person interested to show cause as to why his land should not be acquired.

10. The procedure as to how the above mentioned show-cause notice shall be served is laid down under Rule 3(1) of the Rules. It is mentioned therein that the said notice has to be issued in accordance with Form-I, sending the notice by registered post (acknowledgment due) to the last known address of the owner or any other person interested.

11. After compliance of Rule 3(i), under Rule 3(iii) of the said Rules, if the District Collector is satisfied that it is necessary to acquire the land, notice in Form-II to that effect shall be published in the District Gazette.

12. So far as the case in hand is concerned, the respondents are not able to produce records regarding compliance of procedures laid down u/s 4(2) of the Act itself, no mention need be necessary for the compliance of the mandatory provisions of Section 4(3)(b) of the Act and therefore the acquisition proceeding as initiated resulting in the publication of notification equally gets vitiated.

13. For all the discussions held above, the entire acquisition proceedings initiated in the above writ petition gets vitiated. However, the respondents are at liberty to initiate fresh proceedings of acquisition of the lands in question in the writ petitions if they so desire.

In result,

(i) The above writ petition is allowed;

(ii) The impugned notice published in the North Arcot Ambedkar District Gazette (Extraordinary) dated 14.3.1997 is quashed only in respect of the lands belonging to the petitioner in S.Nos.12/1, 12/2 and 402/2 of Sithambadi Village, Arakkonam Taluk, Vellore District;

(iii) However, the respondents are at liberty to initiate fresh proceedings of acquisition of the same lands for the purpose mentioned therein strictly adhering the provision of law.

However, in the circumstances of the case, there shall be no order as to costs.

Consequently, connected W.M.P. is closed.