

(2008) 03 MAD CK 0110
In the Madras High Court
Case No : Writ Petition No. 15335 of 1998

A. Kaliyappan

APPELLANT

Vs

District Collector and Special Tahsildar (Adi Dravidar Welfare)

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

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

Citation : (2008) 4 MLJ 81 : (2008) WritLR 632

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : C. Selvaraju for S. Mani, for the Appellant; D. Geetha, Addl. Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—This writ petition is filed challenging the notification issued by the first respondent, District Collector, Salem u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (in short, "Act 31/78") in respect of the land to an extent of 1.19.0 hectares comprised in Survey Nos. 64/2B2, 67/1B and 67/2 in Athanoorpatty Village, Vazhapadi Taluk, Salem District.

2. According to the petitioner, the property was sold to one Raja Chettiar in the year 1980, from whom he borrowed money and the sale was effected as indemnity for the loan and after the amount was repaid, it was by a registered document, resale was effected on 8.6.1995. The patta was transferred by the Revenue Department on 12.4.1996. Adangal and chitta also disclose that the petitioner is in possession of the above said property. It is, by communication dated 20.8.1998, the petitioner was directed to hand over possession before 7.9.1998 and thereafter, he came to know that land acquisition proceedings were initiated against his property under the Act 31/78. According to the petitioner, no

notice was given to him u/s 4(2) of the said Act. There are other poramboke lands available which can be utilised and converted as house sites for the people of Adi Dravida community. The petitioner has grown more than 300 mango trees which are standing on the land and as owner of the land, the petitioner should have been served with a notice.

3. The second respondent has filed a counter affidavit. It is the case of the second respondent that the Revenue records in respect of the property show that the property was registered in the name of one Raja Chettiar son of Kumaralinga Chettiar as per patta No. 281. Form No. 1 as per Act 31/78 was sent by the second respondent on 18.10.1995 and the same was served by affixture and tom-tom was also made in the village and notice was affixed at various places including the Office of the Estate Manager, Salem, Commissioner Office, Panchayat Union, Vazhapady, Police Station, Vazhapady, Sub Registrar Office, Vazhapady. The notice was also affixed in conspicuous places in the village by the Village Administrative Officer. The land owner Raja Chettiar or his heirs did not appear and raise any objection, however, the writ petitioner has sent an objection on 4.12.1995, but failed to produce his legal entity or title or ownership over the property. Along with recommendations, the objection raised by the writ petitioner was sent by the second respondent to the District Collector on 20.2.1996. The District Collector has overruled the objection and issued Section 4(1) notification on 7.3.1996, which was published in the Government Gazette on 11.3.1996 in Form No. III and notice was also issued on 25.9.1997, which was received by the petitioner as interested person. The award enquiry was conducted and award was also passed on 29.10.1997 and after the passing of award, the writ petition was filed in the year 1998. It is reported that the land stands in the name of Raja Chettiar as per patta to whom notice was served. Therefore, according to the second respondent, the procedure contemplated under the Act 31/78 has been fully followed.

4. Mr. C. Selvaraju, learned senior counsel for the petitioner submits that inasmuch as in the year 1995 itself reconveyance deed was executed by Raja Chettiar in favour of the petitioner under a registered sale deed and the patta also stands in the name of the petitioner, it was the duty of the second respondent to give notice to the petitioner who is the owner of the property as per Section 3(h) of the Act 31/78. Therefore, according to him, the entire land acquisition proceedings are vitiated.

5. On the other hand, it is the contention of the learned Additional Government Advocate that as per the Revenue Records, the property stands in the name of Raja Chettiar to whom notice u/s 4(2) of the Act was sent by the second respondent and opportunity has been given to the owner but he has failed to appear and therefore, the entire proceedings are valid. She has also produced the files relating to the land acquisition proceedings.

6. It is seen that the second respondent has issued notice dated 18.10.1995, in Form No. I as required u/s 4(2) of the Act 31/78. It is further seen that the said

notice was addressed to Raja Chettiar son of Kumaralinga Chettiar. The above said Form No. I fixing the enquiry on 1.12.1995 was affixed in the village with the certificate issued by the Village Administrative Officer and signed by various residents. It is also seen that in November, 1995 the said notice u/s 4(2) was affixed in Estate Manager's Office, Commissioner Office, Panchayat Union, Vazhapady, Police Station, Vazhapady, Sub Registrar Office, Vazhapady.

7. A reference to the file shows that the writ petitioner A. Kaliappan son of Annamalai Gounder has sent his objection dated 2.12.1995, one day after the date of enquiry stated by the second respondent in his notice u/s 4(2) of the Act. The said objection of the petitioner is available at page No. 95 of the file. The second respondent, following the procedure u/s 4(3)(b) of the Act 31/78, has submitted his report in Roc. No. 2570/95/A, dated 20.2.1996 to the first respondent, District Collector, Salem wherein he has also enclosed the objections raised by the petitioner dated 2.12.1995. It is further seen that the petitioner has raised another detailed objection on 4.12.1995 and the same has also been considered by the second respondent in his report dated 20.2.1996 and after considering the report, the first respondent has issued the impugned notification. It is also seen that an award notice has been issued and the petitioner as interested person has received the same and ultimately, an award came to be passed on 29.10.1997 in Award No. 4/97-98 and the present writ petition was filed by the petitioner on 21.9.1998, nearly one year after the date of passing of the award.

8. A perusal of the records shows that it is not as if the petitioner was not aware of the acquisition proceedings. It is seen that he has sent objection on 2.12.1995 and the enquiry was fixed by the second respondent on 1.12.1995. The fact that in his report dated 20.2.1996 addressed to the first respondent, District Collector, the second respondent considered the objection raised by the petitioner shows that the petitioner has been given sufficient opportunity in this case. As I have elicited above, the second respondent, along with his report, also enclosed two objections raised by the petitioner, one on 2.12.1995 and the other on 4.12.1995 and the first respondent, having considered the objections, issued the impugned notification and the same was served on the petitioner in Form No. 3, dated 25.9.1997. However, the petitioner has filed the writ petition only in September, 1998. Hence, on the ground of laches, the writ petition is liable to be dismissed, applying the ratio laid down by the Supreme Court in *Tej Kaur and Others, etc. Vs. State of Punjab and Others*, , as followed by the Hon''ble First Bench of this Court in *Ramalingam and Others Vs. The State of Tamil Nadu and Others*, and *S. Harshavardhan and Another Vs. State of Tamil Nadu and Others*, .

9. Further, the contention of the learned senior counsel for the petitioner that where the petitioner raised his objection on the next day of the enquiry viz., 2.12.1995, when the second respondent, Special Tahsildar submitted his report to the first respondent, it is obligatory on the part of the second respondent to give fresh notice to the petitioner being the owner and person interested and the

second respondent should have conducted a fresh enquiry, is totally misconceived and untenable. The purpose of giving notice u/s 4(2) of the Act 31/78 read with Rule 3(1) is to give opportunity to the owner or person interested to raise objection about the proposal for acquisition.

10. On the factual matrix of this case, it is seen that the Revenue records stand in the name of one Raja Chettiar to whom notice has been served and in fact, it is the case of the petitioner as it is seen from his representation that the said Raja Chettiar died long back and he got the property reconveyed in his name in the year 1995 itself. Further, it is seen that there is no mutation of records in favour of the petitioner. In such circumstances, there was no necessity on the part of the second respondent to give notice to the petitioner since the petitioner's name was not found in the records when 4(2) notification was issued and ownership stood in the name of one Raja Chettiar, in respect of whom steps have been taken to serve notice. In the factual context as I have stated above, when the petitioner has raised objection on 2.12.1995 even one day after the date of enquiry, the second respondent has taken note of the objection, which only shows the fairness of the second respondent in proceeding with the acquisition proceedings and it cannot be stated that the acquisition was done without notice to the petitioner.

11. It is true that the term "owner" is defined in Section 3(h) of the Act as under:

3(h) "owner" includes any person, who is receiving or is entitled to receive the rent of any land or building, whether on his own account or on behalf of himself and others or as an agent, trustee, executor, administrator, receiver or guardian or who would so receive the rent or be entitled to receive the rent, if the land or building were let to a tenant.

However, unless and until in the Revenue records, the names are changed by mutation, the respondents cannot be expected to presume that some other person will be the owner of the property as the original owner died. In this regard it is relevant to extract Section 4(2) of the Act, which reads thus:

Section 4. Power to acquire land.

(1) xxxx

(2) Before publishing a notice under Sub-section (1), the District Collector or any officer authorised by the District Collector in this 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.

Therefore, what is required u/s 4(2) of the Act 31/78 is that prima facie the authority must be satisfied in calling upon the owner or any person interested under Rule 3(i) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 (in short, "the Rules"), to enable the service by registered post and only in cases where the owner or person interested resides elsewhere,

the show-cause notice by registered post is to be given. But in the present case, when the records stood in the name of Raja Chettiar, there was no necessity for invoking Rule 3(i) of the Rules by the Land Acquisition authority. In this regard it is relevant to extract Rule 3(i) of the Rules, which reads as under.

3. Procedure for Acquiring Land.-(i) The District Collector or 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 (Acknowledgement Due) to the last known address of the owner or any other person interested.

However, in this case, the second respondent has conducted enquiry by giving notice and therefore, the second respondent has followed the procedure under Rule 3(b) of the Land Acquisition (Tamil Nadu) Rules, which is as follows:

Rule 3. Hearing of objections.-

(a) ...

(b) If any objections are received from a person interested in the land and within the time prescribed in Sub-section (1) of Section 5-A, the Collector shall fix a date of hearing the objections and give notice thereof to the objector as well as to the department or Company requiring the land where such department is not the Revenue Department. Copies of the objections shall also be forwarded to such department or company. The department or company may file on or before the date fixed by the Collector a statement by way of answer to the objections and may also depute a representative to attend the enquiry.

12. In view of the fact that the objections raised by the petitioner dated 2.12.1995 and 4.12.1995 were considered by the second respondent when he submitted his report to the District Collector, I do not see any illegality in the procedure followed by the respondents in completing the acquisition proceedings in the present case. In view of the same, the writ petition fails and the same is dismissed.