(2003) 07 MAD CK 0207

In the Madras High Court

Case No : Writ Petition No''s. 6307 and 6308 of 1998

Annavu Chettiar and Thasil Chettiar APPELLANT

Vs

The District Revenue Officer RESPONDENT

Date of Decision : 15-07-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2004) 4 CTC 501 : (2004) 1 LW 271

Hon'ble Judges : P.K. Misra, J

Bench : Single Bench

Advocate : D. Narayanan, for Radha Gopalan, for the Appellant; S. Gomathinayagam, Special Government Pleader for Raniselvam, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned counsel appearing for the parties.

2. The petitioners have prayed for quashing the proceedings in Na.Ka.Em5/29142/96 dated 03.04.1998, acquiring the petitioners'' nanja wet land in RS. No. 52/2B (0.05.0 Ha.) in Elandurai Village of Tirukoilur taluk, in purported exercise of power u/s 4(1) of the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Act, 1978 hereinafter called as ''the State Act''. Though several contentions have been raised by the learned counsel appearing for the petitioners, it is not necessary to notice all such contentions, as in my opinion, the contention relating to lack of jurisdiction of the District Revenue Officer to exercise power u/s 4(1) of the State Act is well founded.

Section 4(1) is extracted hereunder:

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.

3. It is not disputed that in the present case, the notification was issued by the District Revenue Officer, Villupuram. The contention of the petitioner is to the effect that u/s 4(1) of the State Act, the statutory power has been conferred on the District Collector to come to necessary conclusion regarding acquisition of any land under the State Act, and as such the power cannot be exercised by the District Revenue Officer.

4. In support of the aforesaid contention, the learned counsel for the petitioner has cited a decision in The Land Acquisition Officer and Special Tahsildar (LA), Adi Dravida Welfare, Coimbatore and and another Vs. R. Manickammal and others reported in 2002 (2) CTC 1 . The observation made in the said decision is to the effect;

".........A decision to acquire a land by the Collector has to be exercised only by the Collector by application of his mind independently and the Legislature did not provide any power of delegation............ It is well settled law that when the Legislature did not name any other authority for the exercise of powers and names only a particular authority, only that particular authority has to exercise the power and nobody else."

5. The learned counsel appearing for the respondent on the other hand submitted that unlike the Land Acquisition Act,1894, hereinafter referred to as "The Central Act", the expression Collector has not been defined in the present ''State Act'' and therefore, the meaning of the word Collector as defined in the General Clauses Act, according to which the Collector means Chief Revenue Officer of the District may be adopted. It has been therefore, submitted that the District Revenue Officer is also a Chief Revenue Officer of the District and therefore it can be said that the District Revenue Officer being the Collector can also exercise power u/s 4(1) of the State Act.

6. Even though such a contention may be attractive on the face of it, on closer scrutiny, the contention is not acceptable.

Section 16 of the State Act is to the following effect:

"16. Delegation of functions - The Government may, by notification in the Tamil Nadu Government Gazette, direct that any power conferred or any duty imposed on them by this court except the power to make rules, shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised or discharged also by the District Collector.

Explanation - For the purpose of this section "District Collector" shall include the District Revenue Officer."

7. From the explanation to section 16, it is apparent for the purpose of the said section, the expression District Collector shall include District Revenue Officer. Section 16 empowers the Government to delegate any power conferred or any duty imposed on the Government by ''the State Act'' to the District Collector by notification. It is to be noticed that power u/s 4 has to be exercised by the

District Collector and not by the Government. In other words, the power to issue notification for acquisition of land is a statutory power conferred on the District Collector and it is not a power which has been reserved to the State Government and therefore such power cannot be delegated.

8. In the decision of the Supreme Court in State of Tamil Nadu and Others Vs. Ananthi Ammal and Others, , which has been fairly brought to my notice by the learned Special Government Pleader, it was observed:

"The provision of Section 4, therefore, substantially encapsulate the provisions of Sections 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."

9. The learned Special Government Pleader also placed reliance in Abdul Husein Tayabali and Others Vs. State of Gujarat and Others, . The aforesaid decision was under ''the Central Act'', where the expression Collector has been defined to include many other Officers and therefore, the decision has to be understood in the said context.

10. On analysis of the relevant provisions and the various decisions, it is apparent that the power u/s 4 is the statutory power which is vested with the District Collector has to be exercised by him and there is no scope for delegating such power u/s 16 as this is not a power vested with the Government. More over, the very explanation itself in section 16 makes it clear that the expression "District Collector" includes District Revenue Officer for the purpose of this section. By necessary by implication this negatives the contention that for the purpose of section 4, the District Collector shall also include the District Revenue Officer. If such would have been the intention of the Government, the provision could easily have been made indicating that for the purpose of entire Act, the expression District Collector shall include District Revenue Officer and there was no point in incorporating such explanation in Section 16 only which relates to delegation of power conferred or duty imposed on the Government (except the rule making power) on the District Collector.

11. The view taken by me receives support from the unreported decision dated 08.11.2002 in WP. No. 3810 and 3816 of 1996 which was fairly brought to my notice by the learned Special Government Pleader. In the aforesaid decision, it was indicated that the expression District Collector u/s 4 would not include the Additional Collector. It was further held:-

"The Power which can be delegated u/s 16 is the power given to the Government and not the power vested in the District Collector u/s 4.

12. For the aforesaid reasons, without going in to the other questions raised, I allow the writ petitions. There shall be no order as to costs.

