

(2003) 09 MAD CK 0040

In the Madras High Court

Case No : Writ Petition No. 4008 of 1998

B. Saroja

APPELLANT

Vs

The District Collector and The Special Tahsildar (LA)

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

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

Citation : (2003) 09 MAD CK 0040

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : S. Navaneetha Krishnan, for the Appellant; R. Vijayakumar, GA, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rajan, J.—The petitioner filed the above writ petition praying to issue a writ of Certiorari to call for the records of the first respondent

relating to the notice for acquiring the land bearing S. No. 220/7, measuring to an extent of 0.76.5 hectares, Soorakundu village, Melur Taluk,

Madurai District, published in the Madurai District Gazette No. I, dated 08.12.1997 u/s 4(1) of the Tamil Nadu Land Acquisition of land for

Harijan Welfare Scheme Act, 1978 in so far as it relates to the petitioner's land and quash the same.

2. The case of the petitioner is that she is the owner of the land bearing S. No. 220/7, measuring to an extent of 0.76.5 hectares, Soorakundu

village, Melur Taluk, Madurai District. The land is originally belonged to the family of late A.S.M. Kamatchi Chettiar. In the partition entered into

between the said Kamatchi Chettiar and his three sons, the said landed property

was allotted to the share of one K. Mariappan, the brother of the petitioner's husband. On 30.03.1995, the said K. Mariappan sold the property in question to the petitioner herein and the petitioner is in possession and enjoyment of the same as absolute owner. While so, the first respondent issued notice u/s 4(2) of the Land Acquisition Act to acquire her land under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (Act 31 of 1978). But before acquiring the lands, notice u/s 4(1) of the Act has to be issued and the same has not been served by the respondents to the petitioner. Therefore, the entire proceedings is vitiated. Further the petitioner was residing along with her husband outside the village. No notice was served as required under the rules. Therefore, the writ petition is filed to quash the said proceedings.

3. Counter has been filed by the second respondent denying all the allegations made in the petition, but it is specifically stated as follows:

I submit that the question of issue of show cause notice is not stipulated in the Act 31/78 before the approval and publication of 4(1) Notification regarding the acquisition of land.

Hence, he prays for dismissal of the writ petition.

4. Heard learned counsel for the parties.

5. Learned counsel appearing for the petitioner submitted that notice u/s 4(2) of the Act is mandatory; A show cause notice has to be issued as to

why the land should not be acquired from the owners of the lands thereof; before issuing the notification u/s 4(1). According to this when a person

is not residing in the same village where the property is situated, notice should be served by registered post to the last known address of the land

owner. But in this case, such notice was not served by registered post. Even in the counter it has not been stated that notice has been served on the

petitioner.

6. Learned Government Advocate appearing for the respondents submitted that in the award proceedings the husband of the petitioner appeared

and participated in the enquiry and therefore, her husband knew and aware of the acquisition proceedings and, therefore, there is no infirmity in the

acquisition proceedings. This argument of the learned Government Advocate is not acceptable.

7. When the Rules specifically say that the notice shall be served by registered post on the owner of the land in question, if he is not in the said

village, registered post shall be addressed to the last known address. Inasmuch as the said procedure has not been followed, there was no notice

served on the petitioner. Further, before issuing Section 4(1) notification, show cause notice should have been issued u/s 4(2) of the Act calling for

the objections from the land owner. But admittedly, such show cause notice was not given in this case. The counter proves that the Special

Tahsidlar who is deputed for the said scheme is not aware of the fact that notice u/s 4(2) of the Act 31 of 1978 is necessary. It shows that the

Tahsildar has not followed the provisions of the Act, no further reason is given as to why no such notice as contemplated under the Act was not

given. That means, the Tahsildar was not aware of the provisions of the Act which he was actually exercising. Further, this sort of counters are not

expected to be filed by responsible officers like the Tahsidlar. Counter affidavits shall be filed taking appropriate and utmost care. The officers shall

not forget that they are defending the action of the Government against its own citizen.

8. Considering the fact that no notice has been served u/s 4(2) which is mandatory in nature and also that notice u/s 4(1) has not been served on

the petitioner, the entire proceedings is vitiated and the impugned order is, therefore unenforceable and illegal. Hence, the same is set aside.

9. In the result, the writ petition is allowed as prayed for. No costs.