

(2001) 12 MAD CK 0004

In the Madras High Court

Case No : Writ Petition No. 3156 of 1996

D. Subramanian, S. Dharmarajan, S. Ponkala and
Neelanarayanan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 11-12-2001

Acts Referred:

Harinaj Welfare Scheme Rules, 1979 — Rule 5(1)
Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4,
4(1), 4(2)
Tamil Nadu Land Reforms (Disposal of Surplus Land) Rules, 1965 — Rule 5

Citation : (2001) 12 MAD CK 0004

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

**Advocate : Aruna Ganesh, for the Appellant; D. Malarvizhi, Government
Advocate, for the Respondent**

Judgement

A. Kulasekaran, J.—The petitioners have filed this writ petition for a Writ of certiorarified mandamus calling for the records of the

respondents in connection with the acquisition of their agricultural lands measuring 0.90.5 hectares in Survey No.1697/2A, Gangaikondan Village,

Tirunelveli Taluk and to quash the order of the 2nd respondent passed under Sec. 4 (1) of the Tamil Nadu Acquisition of Lands for Harijan

Welfare Schemes Act 1978 published in Tirunelveli District Gazette No.20 dated 19-10-1995 and consequently to direct the respondents to

forbear from proceeding with the acquisition of their lands.

2. It is the case of the petitioners that originally Mrs. Chellammal, wife of the first petitioner and mother of petitioners 2 and 4 was assigned the

lands to an extent of five acres in Survey No. 1697 part in Gangaikondan Village,

Tirunelveli Taluk. The assignment was made under Rule 5 (vi) of the Tamil Nadu Land Reforms (disposal of surplus lands) Rules 1965. The assignment was made by the order of the authorised officer (land reforms) Tirunelveli dated 07-09-1974. The deed of assignment in Form F has been duly executed. The total consideration was required to be paid in 20 yearly instalments commencing from 1974 and all instalments have been paid. Thereafter, the extent of five acres has been sub-divided as 1697/2. The said Chellammal passed away on 07-11-1984 and after her death, the petitioners/legal representatives have been in possession and enjoyment of the same.

3. The 3rd respondent has issued a notice dated 26-02-1996 in Form III as per Rule 5 (i) of the Act for Harinaj Welfare Scheme Rules 1979.

The said notice was issued in the name of Mrs. Chellammal, who passed away as early as on 07-11-1984. There was no communication or notice issued to the petitioners regarding the proposed acquisition of their lands prior to the said notice dated 26-02-1996. After the said notice only, the

petitioners have come to know that an extent of 0.90.5 hectares (2 Acres and 24 cents) of land was assigned to Mrs. Chellammal, sub-divided as

Survey No. 1696 part which was proposed to be acquired under the Act.

4. The petitioners further stated that the mandatory notice in Form I as per Sec. 4 (2) of the Act was not issued to the petitioners. Later, on

verification, they understand that the notification under Sec. 4 (i) of the Act has been gazetted in the Tirunelveli District Gazette dated 19-10-1995.

5. The learned counsel for the petitioners has stated that the petitioners were seriously prejudiced by the proposed acquisition of their agricultural

lands since the entire proceedings are contrary to law. The learned counsel also canvassed before me that the entire proceedings are vitiated since

the mandatory notice under Sec. 4 (2) of the Act to show cause as to why their lands should not be acquired has not been issued to any of them.

Indeed, the entire proceedings were initiated in the name of Mrs. Chellammal, who passed away as early as on 07-11-1984. The entire

proceedings were continued by the respondents in the name of the dead person. The order of the 2nd respondent under Sec. 4 (i) of the Act

gazetted on 19-10-1995 was also in the name of the deceased Chellammal and the said order was not communicated to any of the petitioners. It

is also stated by the petitioners that with great difficulty, they have obtained the copy of the said order passed by the 2nd respondent. By reason of lack of notice at the material stages of the proceedings, the petitioners were denied of an opportunity to put forth their objections to the proposed acquisition. The learned counsel further argued that they are small farmers and they do not possess any other agricultural land. The extent of five acres of land was assigned to Chellammal as a poor agriculturist as stated above as such the same cannot be acquired. It is also brought to the notice of this Court that there are sufficient lands for the Harijan Colony adjoining Turaiyur Village, but the respondents have not chosen to acquire those lands but resorted to acquire the lands of the petitioners.

6. The learned counsel appearing for the respondents relying on the records relating to the acquisition and argued that the Collector's proceedings

No.U2.90913/95 dated 16-10-1995 and the notification under Sec. 4 (i) of the Act was duly approved and accordingly it was published in the

Tirunelveli Gazette dated 19-10-1995. The award enquiry was conducted on 19-03-1996 for which notice in Form III under Rule 5 (1) of the

Rules 1979 was issued in the name of Chellammal. The notice was received by the first petitioner herein. The first petitioner herein, the husband of

Chellammal appeared and filed his written statement objecting the acquisition proceedings. The award No. 16/1995-1996 was passed on 19-03-

1996 and necessary further action to carry out the changes in the village accounts were taken, notice in form 5 intimating the acquisition of lands

and inviting the awardees to receive the compensation were also sent. The land acquired was also taken possession by the Government on 21-03-

1996.

7. Admittedly, the notice under Sec. 4 (2) of the Act was not served on the petitioners. The order Under Sec. 4 (1) and form III under Rule 5 (1)

were also issued in the name of the dead person. The reason assigned by the respondents for issuance of Form I and III in the name of the

deceased Chellammal was that the patta to the lands stand in her name even after her demise.

8. In short, it is the contention of the learned Government Advocate representing the respondents that the revenue records stand in the name of

Mrs. Chellammal and the petitioners have not transferred the patta in their name

and hence the notice could not be served on the petitioners.

9. The reasons assigned by the respondents for not serving the notice to the petitioners cannot be countenanced in Law. The mandatory notice

contemplated under the Act and Rules was not served on the petitioners before acquiring their lands. The respondents discharging their statutory

function under the Act are bound to ascertain the particulars of the land owners/heirs of the deceased.

10. The learned counsel for the petitioners relied upon a decision (Muthusamy and others Vs. The State of Tamil Nadu represented by Secretary

to Government, Adi Dravidar and Tribal Welfare Department, Madras and another) reported in 1993 MLJ (1) 217. The ratio laid down in the

said case is fully applicable to the facts and circumstances of the case on hand.

11. I feel it is a fit case to quash the acquisition proceedings relating to the land of the petitioners comprised in SurveyNo. 1697/2A, Gangaikondan

Village, Tirunelveli Taluk and accordingly quashed. However, it is open to the respondents to issue a notice afresh in terms of the Act and Rules to

the petitioner, if they are so advised.

12. With the above observations, this writ petition is ordered as prayed for. No costs. Consequently, connected WMP is also closed.