

(2009) 11 MAD CK 0144

In the Madras High Court

Case No : Writ Petition No's. 17569 to 17573 of 2009 and M.P. No's. 1, 1, 1, 1, 1, 2, 2 and 2 of 2009

J. Mohan and Others

APPELLANT

Vs

District Collector and District Employment Exchange Officer

RESPONDENT

Date of Decision : 06-11-2009

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 4(1), 4(2)

Citation : (2009) 11 MAD CK 0144

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C. Selvaraj, SC for S. Mani, for the Appellant; R. Neelakantan, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—These petitioners have filed five writ petitions, seeking to challenge a common order of the first respondent District Collector, Namakkal, dated 18.8.2009, wherein and by which "Priority Certificates" granted for getting employment in the State Government given by the Special Tahsildar (Adi Dravidar Welfare), Namakkal in respect of 27 persons including the petitioners were cancelled. It was further ordered that if they had registered in the employment exchange for being sponsored to get employments, they shall be restored to their original seniority. If they had obtained employments on the basis of the cancelled priority certificates, steps must be taken to cancel their appointments also. The District Employment Officer, Namakkal was directed to take appropriate ssteps.

2. Pending those writ petitions, this Court granted an order of status quo on 27.08.2009. The said order came to be continued until further orders. On notice from this Court, counter affidavits have been filed by the first respondent, justifying the impugned order.

3. It is the case of the writ petitioners that the petitioners were unemployed graduates. They purchased lands in Survey Nos. 264/A1 and 263/1D in N.Pudupatti village, Namakkal Taluk to an extent of 3 acres in favour of 16 persons and in Vittamanayakkanpatti village in survey No. 48/1A to an extent of 1.68 acres in the name of 13 persons on consideration. Most of them purchased 20 cents, 15 cents and 12 cents as the case may be.

4. It is the case of the petitioners that it was a good investment as the lands were situated near a town. They were also trying to make layouts and sell it. It was stated that after the purchase of those lands, they were served with notices in respect of land acquisition proceedings initiated under the Tamil Nadu Act 31/78, which is meant for acquiring lands for Adi Dravidar Welfare schemes. The petitioners felt that if they hand over their lands, they will be treated as priority candidates for getting employment. They have also registered their names in the employment exchange. Such priority certificates may be utilized for future Government employment. After the acquisition of their lands, they also got priority certificates from the Special Tahsildar, Adi Dravidar Welfare vide his proceedings, dated 26.10.2007.

5. However, the Government came to know that such large scale purchases of small extent of lands by urbanites was only with a view to secure Government employment and such lands were purchased knowing they are going to be acquired for public purpose and thereafter, they wanted to get certificates from the acquisition authorities was the game plan of these petitioners. The Revenue Divisional Officers of Namakkal and Tiruchengode informed the Government vide their proceedings, dated 4.8.2009 and 5.8.2009 that certificates granted by the Special Tahsildar (Adi Dravidar Welfare), Namakkal (by name one Mrs. P. Shanthi), were illegal and contrary to the orders of the Government in G.O.Ms. No. 188, P&AR Department, dated 28.12.1976 and G.O.Ms. No. 324, Revenue, dated 18.03.1986. On the basis of the said recommendations, it was decided that the attempts made by the petitioners by purchasing lands on temporary basis, that too which are to be notified for land acquisition and thereafter to get undue advantage from the employment exchange by getting registered as priority candidates will affect the life of large number of youth and also deprive of their chances of getting employment. It is on this ground, the impugned order came to be passed.

6. The impugned order is attacked on the ground that the petitioners had bona fide purchased the lands. Subsequently, they were appointed as Secondary Grade Teachers on 29.2.2008. There was no illegality in their obtaining priority certificates as they had actually purchased lands, which were also acquired through acquisition proceedings. No opportunity was given before the cancellation of their certificates.

7. In the counter affidavits filed by the first respondent, a reference was made to G.O.Ms. No. 188, P&AR Department, dated 28.12.1976, wherein it was stated that members of the family (including SC and ST), whose lands were acquired for

Government purposes as well as for the projects of Public Sector Undertakings subject to condition that preference should be given to those who are dependent for their livelihood primarily or wholly on the lands acquired and from among them, who may be eligible for employment. Subsequently, the State Government had also issued G.O.Ms. No. 324, Revenue, dated 18.3.1986, stating that even in respect of Government companies in respect of those land losers, they should provide employment without reference to employment exchange at least to one member of each of the displaced family. The displaced family will include owners of lands or cultivating tenants and that certificate from the Revenue authority not below the rank of Taluk Tahsildar must be obtained to the effect that the acquired land was the only major source of sustenance of that family. Large number of persons have entered into such illegal tie-ups and have purchased lands only with a view to secure priority certificates and that lands were purchased as an investment for future employments.

8. The Revenue Divisional Officers of Namakkal and Tiruchengode were requested to sent factual reports on those allegations, by the District Collector. It was found that the Special Tahsildar (Adi Dravidar Welfare) had given certificates as if the petitioners have lost substantial income due to the land acquisition proceedings contrary to the fact that it was the conspiracy by a group of persons from urban/rural areas, so that they can have benefit by getting employment. Their modus operandi was to see that the places where the acquisition of lands are to be made and thereafter, shell out a fancy price to the land owners and have their names included in the Revenue records. After getting nexus with the acquisition staff, express their willingness to part with the lands for a public purpose. Once the acquisition process are over, they succeed in getting priority certificates by concealing their real financial/social status and get their names included in such priority list. This was a clear abuse of the order issued by the State Government.

9. It is seen that the petitioners have jointly purchased the lands. In fact in para 9 of the counter affidavit, the social status of each of the writ petitioners were given. In the first case (J. Mohan), it was stated that he was working in a Poultry farm and also owns land in Sunkarampatty village which stands in the name of his father. Similarly, the second writ petitioner (N. Saravanakumkar) was the son of a retired school teacher and owns a terraced house in Bodinaickanpatty village, Namakkal Taluk worth about Rs. 4 lakhs and that he was not depending upon the acquired land. The third writ petitioner V. Arulmurugan was having his wife earning monthly salary. The fourth writ petitioner A. Parthasarathy was not a person who is eligible to get priority certificate. The fifth writ petitioner R. Tamilarasi owns 2 houses in Periapatty village within Namakkal Municipality worth about Rs. 20 lakhs and her husband owns a fleet of lorries having substantial income. Her mother-in-law owns a land in the same village worth about Rs. 20 lakhs.

10. When these facts were found out by the respective Revenue Divisional

Officers, their certificates were cancelled. It was also stated that the writ petitioners were given opportunities by the RDO on 1.8.2009 and the petitioners had appeared in person and gave their statements regarding the purchase of the property and the purpose behind it. They had also signed statements to that effect. Therefore, the allegation that no opportunity was given to them was clearly false. The interpretation placed by the petitioners that they are eligible to get priority certificates was erroneous. The intention of the Government is to give an opportunity to the real owner of the land. When the petitioner had other means of livelihood, the application of the Government's Order was not available to them. The learned Government Advocate also produced a copy of the reports sent by the RDOs.

11. Mr. C. Selvaraj, learned Senior Counsel appearing for the petitioners submitted that no opportunity was given before the cancellation of priority certificates and that the factum of acquisition of their lands were not disputed.

12. In the present case, the petitioners themselves have admitted that they were living in the Town and with a view to invest in real estate, they had purchased certain lands. The lands were purchased on 22.5.2007 and the final notification u/s 4(1) of the Land Acquisition Act in respect of Pudupatty village under the Tamil Nadu Act 31/78 itself was made on 31.8.2007. It published in the District Gazette on 6.9.2007. Before the issuance of the final notification u/s 4(1), the land owners must have been served with notices u/s 4(2) of the Act. Even before that, the proposals would have come to the knowledge of these persons, who are familiar with the working of the department. Therefore, it was certain that the petitioners purchased those bits of land not with a view to invest in the real estate, but with a view to become land losers by virtue of the future land acquisition. They had in advance invested in the land and agreed for its acquisition, so that they can get priority certificates. If the priority certificate is the basis for getting an employment, then the certificates must confirm to the Government's Order.

13. In this case, the relevant Government Order is G.O.Ms. No. 188, P&AR Department, dated 28.12.1976. In the annexure to the said G.O., priority for employment through employment exchange has been prescribed. In sub paragraph 4 under Group II, it has been stated as follows:

1.(iv)Members of the family (including members of Scheduled Caste/Scheduled Tribes) whose lands have been acquired for Government purposes as well as for the projects of the Public Sector Undertakings subject to the condition that preference should be given to those who are dependent for their livelihood primarily or wholly on the lands acquired and from among them to members of the Scheduled Castes and scheduled Tribes who may be eligible for employment.

14. Certainly, such is not the present case. As to how the Special Tahsildar (Adi Dravidar Welfare) could have arrived at such sweeping conclusion without verifying the background of the petitioners and could have granted such

certificates is not known. It is not as if the State is precluded from conducting any enquiry as to the genuineness of such certificates especially when there is large scale distribution of priority certificates and consequent appointments being obtained.

15. The Supreme Court vide its judgment in *Calcutta Port Trust Vs. Deba Prosad Bag, Satya Ranjan Kutty, Maradhan Jana, Sachindra Nath Maity, Akshoy Kumar Giri and Asmoke Kumar Naity*, , dealt with the importance of a Screening Committee when claims for employment on the land loser category are received. It is necessary to extract the following passage found in paragraph 13 of the said judgment which is as follows:

13. ...Certainly, some person or authority will have to examine the correctness and bona fides of those who claim to be uprooted persons. It is appropriate that such examination is done by a Screening Committee. Such a screening would ensure elimination of bogus claims. It is a wholesome principle which requires to be adopted in this case. Therefore, we modify the order under appeal and direct that the cases of the respondents will be considered by the Screening Committee.

16. The Supreme Court once again vide its judgment in *South-Eastern Coalfields Ltd. v. Prem Kumar Sharma* reported in (2007) 14 SCC 508, struck a note of caution in the grant of such appointments. In paragraphs 6 to 9 it was held as follows:

6. The guidelines which are undisputedly applicable read as follows:

The Government had earlier constituted a committee to consider evolution of uniform guidelines for providing employment to land-losers. The Committee had submitted its report and the same has now been accepted by the Government subject to one amendment vide Letter No. 55011/14/83-PIR/CP dated 17-11-1984. Copy enclosed. The approved uniform guideline is annexed with this letter. You are requested to kindly ensure that these guidelines are implemented in your company.

7. In the approved recommendations of the Committee constituted by the Government of India, Ministry of Energy, Department of Coal evolving uniform guidelines for employment to the land-losers, it has been inter alia stated as follows:

(i) The standard norm should be one employment for 3 acres of non-irrigated land and 2 acres of irrigated land. The practice ECL should be brought on a par with the practice in the other 3 companies.

(ii) However, if the land-loser being considered for employment is a matriculate or above, the norm may be reduced to 2 acres per person if he opts to join initially as an apprentice for a period of 2 years during which he may be paid a fixed stipend per month. His regulation will subsequently be governed by the normal rules of the Company.

(iii) For the purpose of employment the unit will be landowner/raiyat whose title appears in the record-of-rights of the particular village and will include his direct linear dependent.

(iv) The Committee deliberated on the point whether employment to land-loser should be accepted as a compulsory obligation of the management of the Coal Company, irrespective of the requirement of manpower. The Committee recommends that wherever possible, effort should be made to offer increased amount of compensation to the land-losers with a view to content the manpower unless the Company has the requirement of personnel in a particular category within the sanctioned strength of the manpower.

8. A bare perusal of the recommendations and the guidelines make the position clear that acquired area should be 3 acres of non-irrigated land or 2 acres of irrigated land. Because the acquired area is much less under the recommendations/guidelines, the respondent was not entitled to any relief. The other question is as to whether Respondent 1 was entitled to be appointed on the ground that some others have been appointed.

9. The concept of equality as envisaged under Article 14 of the Constitution of India is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals the others cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly, wrong judgment passed in favour of one individual does not entitle others to claim similar benefits.

17. Even the subsequent G.O. issued by the Government guaranteeing one job for one family of land losers vide G.O.Ms. No. 656, Labour and Employment Department, dated 29.6.1978 in respect of Public Sector Undertakings came to be considered by a Division Bench of this Court presided by P. Sathasivam, J (as he then was) in Pon Muthu Nadar and Muthu Vs. State of Tamilnadu and Others, . In construing the said G.O., the Division Bench in paragraph 14 has held as follows:

14. ...as per the Government Order referred above, the burden is on the Appointing Authority concerned of the Public Sector Undertaking to decide as to whether the land acquired was the major source of sustenance for the family displaced due to acquisition....

18. If it is seen in the light of the above, the impugned order passed by the District Collector does not suffer from any illegality or infirmity. Accordingly, all the writ petitions will stand dismissed. However, there will be no order as to costs. Consequently, connected MPs also stand dismissed.