

(2006) 08 MAD CK 0160
In the Madras High Court
Case No : W.A. No. 375 of 2004

Jainabi

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 19-08-2006

Acts Referred:

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 11, 14, 15, 16, 23

Citation : (2006) 08 MAD CK 0160

Hon'ble Judges : V. Ramasubramanian, J;D. Murugesan, J

Bench : Division Bench

Advocate : Srinath Sridevan, for the Appellant; K. Balu, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

D. Murugesan, J.—The issue that falls for our consideration in this writ appeal is as to whether the power of the Collector to notify the land u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978) (for short, "the Act") could be either delegated or exercised by any other officer?

2. An extent of 1.13.0 hectares of land in R.S. Nos. 103/2BI, 4, 5, 7A, 8A and 6 was notified u/s 4(1) after compliance of Section 4(2) of the Act for acquisition. The notification reads as under-SOUTH ARCOT VALLALAR DISTRICT GAZETTE EXTRAORDINARY PUBLISHED BY AUTHORITY CUDDALORE JUNE 19, 1996 Aani, Thadhu, Thiruvalluvar Aandu-2027 NOTIFICATION BY THE ADDITIONAL COLLECTOR Notice u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (W2/29286/95) Where as it appears to the Government of Tamil Nadu that the lands specified in the schedule below and situated in the Ruthirasolai hamlet of Lalpet village, Kattumannar Koil, South Arcot Vallalar District are needed for a public purpose of Adidravidar Welfare Scheme to wit for the provision of house sites to the Adidravidar. Notice to that

effect is hereby given to all of whom it may concern in accordance with the provision of Sub-section (1) of Section 4 of the Tamil Nadu Acquisition of Land for Adidraavidars Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978).

And whereas, it has become necessary to acquire immediate possession of the lands specified in the schedule below:

Now, therefore, in exercise of the powers conferred by the Sub-section (1) of the Section 4 of the said Act, the Collector of South Arcot Vallalar District hereby directs that the lands be acquired under the provisions of the said section.

SCHEDULE Kattumannorkoil Taluk Ruthi-rasolai village hamlet of Lalpettai Government dry, R.S. No. 102-2B1, belonging to Jainabi, wife of Syed Ahmed Basha, No. 38, Chinna Afisikara Street, M. Chavadi, Thajavur bounded on the north by R.S. No. 101, 103-1A and 103-1B east by R.S. No. 103-2B2, South by R.S. No. 103-5, and west by R.S. No. 103-2A-0.35.0 hectare.

2. Government dry, R.S. No. 103-4, 103-4 belonging to the same as noted in R.S. No. 102-2B1, bounded on the north by R.S. No. 103-3, east by R.S. No. 103-5, south by R.S. No. 103-7A and west by R.S. No. 104-0.09 hectare.

3. Government dry, R.S. No. 103-5 belonging to the same is noted in R.S. No. 103-2B1 bounded on the north by R.S. No. 103-2A, 2B1, 2B2 east by R.S. No. 102, south by R.S. No. 103-6 and west by R.S. No. 103-3-0.40.0 hectare.

4. Government dry, R.S. No. 103-6, belonging to the same as R.S. No. 103-2B1 bounded on the north by R.S. No. 103-5, east by R.S. No. 102, south by R.S. No. 103-8A and west by R.S. No. 103-4-0.20.9 hectare.

5. Government dry, R.S. No. 103-7A belonging to the same as noted in R.S. No. 103-2B1 bounded on the north by R.S. No. 103-4, 6 east by R.S. No. 103-8A south by R.S. No. 103-7B and west by R.S. No. 104-0.04.0 hectare.

6. Government dry, R.S. No. 105-8A, belonging to the same as noted in R.S. No. 103-2B1 bounded on the north by R.S. No. 103-6 east by R.S. No. 102 south by R.S. No. 102, 8B and west by R.S. No. 103-7A-0.04.5 hectare.

Total 1.13.0 hectare Ramesh Chand Meena Additional Collector of South Arcot Vallalar District Cuddalore 7th June, 1996 The said notification was questioned in the writ petition on the ground that the Appellant/writ Petitioner was not served with the proceedings of the Tahsildar u/s 4(3)(b) of the Act. The said contention was negated by the learned single Judge and consequently, the writ petition was dismissed. Aggrieved by the same, the present writ appeal has been filed.

3. Mr. Srinath Sridevan, the Learned Counsel appearing for the Appellant has submitted that inasmuch as the impugned notification was issued in the name of the Additional Collector, who is not competent to issue the said notification in exercise of the powers u/s 4(1) of the Act, the entire acquisition proceedings are bad. He also submitted that the acquisition proceedings are bad inasmuch as the Appellant was not served with the proceedings of the Tahsildar u/s 4(3)(b) of the

Act.

4. As the Appellant has raised the above legal contention, we heard both the Learned Counsel for the Appellant and the learned Additional Government Pleader for the Respondents.

5. The Act was enacted with the object of providing house sites, pathways, burial grounds or any other amenities for the benefit of Harijans as a socio-economic measure. As the Central Act does not help achieving this object in a short period, the Government thought it necessary to quicken the process of land acquisition by conferring powers to prescribed officers and also for payment of compensation. The notification, which we have extracted above, shows that it was issued by the Additional Collector. Section 4 of the Act reads as follows:

4. 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 publication in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

(2) Before publishing a notice under Sub-section (1), the District Collector or any officer authorized 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 authorized may be interested in such land, to show cause why it should not be acquired.

(3)(a) The District Collector may, where he has himself called upon the owner or other person to show cause under Sub-section (2), pass such orders as he may deem fit on the cause so shown;

(b) Where any officer authorized by the District Collector has called upon the owner or other person to show cause under Sub-section (2), the officer so authorized shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report, the District Collector may pass such orders as he may deem fit.

Sub-section (1) of Section 4 contemplates that 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 publication in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of the said section. A plain reading of the said section shows that the satisfaction must be that of the District Collector and the acquisition is also by the District Collector by publishing a notification in the district gazette. In support of the notification, the learned Additional Government Pleader placed reliance on Section 16 of the Act, which reads as under--"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 Act 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.

By the above section, whatever powers conferred or duty imposed on the Government by the Act, except the power to make rules, by a notification in the Tamil Nadu Government Gazette, may be directed to be exercised or discharged by the District Collector as well. Explanation to the said section includes the District Revenue Officer in the place of the District Collector. In our opinion, the delegation of the functions of the Government under the said section is only in respect of such of those powers conferred or any duty imposed on the Government by the Act and not otherwise. In this regard, Section 3(j) is referable, where the "prescribed authority" is defined as meaning, any authority or officer authorized by the Government in this regard, by notification. As per Section 7, the prescribed authority, after holding enquiry in the prescribed manner, determine the amount payable under Sub-section (1) of Section 7. For the purpose of holding enquiry the prescribed authority can be notified by the Government in terms of Section 3(j) of the Act. In view of the notification, the prescribed authority is entitled to determine the amount u/s 7 and certain matters to be ignored in determining the amount by the prescribed authority is contemplated u/s 8. Any order passed by the prescribed authority is appealable to the Court within such period as may be prescribed. In terms of Section 10, the prescribed authority is entitled to pass orders of apportionment of amount so determined. The payment of the amount is with reference to the amount determined by the prescribed authority u/s 11 of the Act. In terms of Section 14, the prescribed authority may, for the purpose of carrying out the provisions of this Act, by order, require any person to furnish such information in his possession relating to any land which is acquired under the Act and the prescribed authority while holding the enquiry shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure. u/s 15, the Government is entitled to use the land and may direct or cause by notification as may be necessary for carrying out the Harijan Welfare Scheme. Such of those powers conferred on the Government under some of the above provisions can be delegated to the District Collector or the District Revenue Officer for exercising u/s 16 of the Act. Apart from the above power, the Government also is empowered to make rules u/s 23, which, of course, is exempted from the provisions of Section 16. Section 16 should be construed in the light of the power or the duty imposed on the Government under the above provisions. However, u/s 4, there is no such power conferred on the Government to delegate the power to notify the acquisition u/s 4(1) on any officer be that an officer who is higher or lower than the District Collector. The provision is specific inasmuch it confers the power only on the District Collector not only for issue of notification u/s 4(1) but also the satisfaction for the purpose of the Harijan Welfare Scheme as such.

6. However, as per Sub-section (2) of Section 4, before a notification under Sub-section (1) is published, the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person to show cause why the land should not be acquired. By that section, the District Collector is only empowered to delegate his power to any officer only for the purpose of showing cause to the owner or any other person who may be interested in such land to show cause as to the acquisition. Sub-section (3)(a) of Section 4 contemplates that where the District Collector himself has called upon the owner or other person to show cause under Sub-section (2), he may pass orders as he may deem fit on the cause so shown. On the other hand, under Sub-section (3)(b) of Section 4, where the District Collector had authorised any officer to call upon the owner or other person to show cause and the officer so authorised shall make a report containing his recommendations, and the District Collector, after considering such report, may pass such orders as he may deem fit. The satisfaction as to the very Harijan Welfare Scheme and the consequential decision to acquire the land are vested in the District Collector only in terms of Section 4(1) of the Act. The District Collector may authorise any of the officer to call for explanation and conduct enquiry from the owner or any other person aggrieved, and such authorised officer can only make his recommendations to the District Collector and after considering such recommendations, the District Collector has to again satisfy himself as to the acquisition. The issue of notice under Rule 3(ii) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 also contemplates that the District Collector, after passing orders under Sub-sections (2) and (3) of Section 4, is satisfied that it is necessary to acquire the land issue notice in Form II to that effect and that such notice shall be published in the District Gazette. The issue of even a notice in Form II is in the name of the District Collector only.

7. From the above, this Court could draw no other inference except to find that when, the legislature intended that the authority to exercise the power of issue of notice in Form II as well the notice u/s 4(1) shall be the District Collector only, the Government, in exercise of power u/s 16, cannot delegate such power to any other authority. That apart, none of the provisions of the Act even empowers the District Collector to authorise any officer to issue notice u/s 4(1), except an authorised officer for the purpose of holding enquiry under Sub-section (2) of Section 4 of the Act.

8. On the above discussions, we hold that the District Collector is the only competent authority to exercise the power u/s 4(1) of the Act for issue of notification, and such power cannot be delegated to any other officer including the Additional Collector in whose name the notification has been issued. We also hold that the power u/s 16 can be invoked by the Government only in respect of the power conferred or any duty imposed on them and such power cannot be extended by delegating the power of the District Collector to issue the notification u/s 4(1) to the Additional Collector. As we have found merit in the first contention and, on such finding, the notification is liable to be quashed, we

are not inclined to go into the next contention of the Learned Counsel for Appellant relating to the failure on the part of the Respondents to serve the proceedings of the Tahsildar. Accordingly, the writ appeal is allowed and the acquisition proceedings are quashed. No costs. Consequently, W.A.M.P. No. 648 of 2004 is closed.