

(2004) 08 MAD CK 0083

In the Madras High Court

Case No : Writ Petition No. 1390 of 1997

K. Sidhicka Banu

APPELLANT

Vs

The District Collector and The Special Tahsildar, Harijan Welfare

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 10, 11, 12, 14, 4

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 — Rule 3

Citation : (2004) 08 MAD CK 0083

Hon'ble Judges : N. Kannadasan, J

Bench : Single Bench

Advocate : S.B. Fazhuddin Ghouse Mohideen, for the Appellant; M. Hidayathulla Khan, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

N. Kannadasan, J.—The above writ petition is filed challenging the Notification passed under Sec.4(1) of The Tamil Nadu Acquisition of

Land for Harijan Welfare Schemes Act, 1978 (hereinafter called as Act) wherein, the lands pertaining to the petitioner were acquired. The

petitioner is the owner of the lands, which is the subject matter of the 4(1) Notification during 1991.

2. In 1995, the Special Tahsildar (Adi Dravida Welfare), Gudiyatham has issued a Notification under Sec.4(2) of the Act read with Rule 3(i) of

The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 (hereinafter called as Rules). The Notification proceeds to the

effect that the enquiry would take place in his office on 20.12.1995 in respect of various lands along with the lands of the petitioner. The petitioner

has submitted her objection to the Special Tahsildar (ADW). Subsequently, the impugned Notification issued under Sec.4(1) of the Act came to

be passed acquiring the lands of the petitioner.

3. When the matter was taken up for final disposal on 3.8.2004, the learned counsel for the petitioner contended that the respondents have

proceeded with the acquisition proceedings in a hasty manner and there was no application of mind, while acquiring the lands of the petitioner. The

learned counsel further contended that the petitioner and her children are depending upon the income of the lands in question and the lands are

cultivable lands, wherein, mango grove consisting of 325 fruit bearing mango trees and also a coconut thope consisting of 225 coconut trees, which

are at the yielding stage in the above said lands are available. It is also contended that the petitioner has been raising paddy and sugarcane in the

above said lands. The learned counsel further contended that even though objections were sent by the petitioner, there is nothing on record to

show that the same were duly considered by the first respondent, who is the authority to pass orders u/s 4(1) of the Act. The petitioner was

constrained to approach this Court by filing the writ petition in W.P.No.11516/96 and with great difficulty the petitioner was able to secure copy

of the Notification in order to challenge the same.

4. Per Contra, the learned Government Advocate contended that the records would disclose that there was application of mind on the part of the

respondent and the entire procedure was duly followed. The learned Government Advocate sought time to produce relevant files and accordingly,

the matter is taken up today to hear the arguments of the learned Government Advocate. The learned Government Advocate has produced the

entire files for the perusal and contended that the Notification under Sec.4(2) of the Act was served upon the petitioner and even though a date

was fixed for personal hearing, the petitioner has chosen to send the objections by Registered Post. The Special Tahsildar (ADW) has sent his

report on 31.12.1995 and in pursuance of the said report, the first respondent has applied his mind and considered the entire matter and 4(1)

Notification came to be passed.

5. I have considered the rival contentions of both the parties. A perusal of the records disclose that the Special Tahsildar (ADW) while forwarding

his report on 31.12.95, pertaining to the enquiry conducted in respect of the petitioner and other individuals, has overruled the objection submitted

by the petitioner to the effect that the petitioner is not engaged in the direct cultivation of the lands in question and it is always open to her to make

use of the compensation received in pursuance of the acquisition and engage herself with any other business. The said report does not contain

about the subjective satisfaction on his part to proceed with the acquisition by assessing the suitability of the land, location of the land and the

preference of the said land compared to other lands in the nearby area including the Government Poramboke lands. Even otherwise, the above

reasoning of the Special Tahsildar (ADW) finds place in respect of the acquisition initiated for other lands also. The objections were dealt with not

with reference to the individual cases, but by citing a common reason to all the land owners apart from the petitioners.

6. Further, the file does not disclose that there is any subjective satisfaction on the part of the first respondent while passing orders under Sec.4(1)

of the Act. When the acquisition is initiated by the District Collector by authorising any other officer in that regard, Sec.4(3)(b) comes into

operation which reads as follows:

Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer

so authorised 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".

7. The reading of the above provision makes it clear that the District Collector shall ""consider"" the report of the authorised officer and pass final

orders. The file does not disclose any such ""consideration"" as contemplated in the above provision of law. The only material available on record is

the order passed by the District Collector on 24.2.1996 which reads as follows:

Proceedings of the Collector of North Arcot Ambedkar District, Vellore-9

Rc.K10/5209/96 24-2-96

Gudiyatham

Sub:

Ref:

ORDER

The Collector of North Arcot Ambedkar District accepted the recommendations of the Special Tahsildar (ADW), Gudiyatham and directs that the objections of the land owners to the Acquisition be overruled.

2. The Notice u/s 4(i) of The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (T.N. State Act 31/78) received from the

Special Tahsildar(ADW)., Gudiyatham approved and it will be published in the not at all District Gazette.

3. The Assistant Works Manager, Government Branch Press, Viruthachalam is requested to publish the above Notice an extraordinary issue of

North Arcot Ambedkar District Gazette.

4. The entire cost of acquisition will be borne by the Government.

5. The Special Tahsildar (ADW), Gudiyatham is authorised to perform the function of the prescribed authority under Sections,7, 10, 11,12 and 14

of the said Act XXXI of 1978 (Tamil Nadu Act of 1978)".

8. The above report or otherwise called as order is a cyclostyle form, wherein the blanks have been filled up. It also discloses that the first

respondent has merely approved the Notification issued u/s 4(1) of the Act, as found in Paragraph 2 of the said Order. The above communication

cannot be suggested that the matter was considered by the first respondent as contemplated under the above provision of the Act.

9. It is clear violation of the above said provision which has been interpreted by this Court in its decision reported in (2004) 3 M.L.J 129 (Kannian

and another vs The Collector, Salem District Salem and others).

10. The learned Judge while interpreting in the said decision has clearly held that the term ""consider"" is referable to the proper application of mind

on the part of the District Collector concerned. In the instant case, the first respondent has merely approved the report forwarded by the Special

Tahsildar (ADW). There is no independent application of mind on the part of the first respondent.

11. Therefore, I am of the view that the impugned Notification is liable to be quashed.

12. Accordingly, the writ petition is allowed. No costs.