

(2009) 12 MAD CK 0087

In the Madras High Court

Case No : Writ Petition No. 4168 of 1997

K.A. Ravindran

APPELLANT

Vs

The District Collector and The Special Tahsildar (L and A)

RESPONDENT

Date of Decision : 17-12-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 300A
Land Acquisition Act, 1894 — Section 7(3)

Citation : (2010) 1 CTC 788

Hon'ble Judges : K.K. Sasidharan, J

Bench : Single Bench

Advocate : K.A. Ravindran, Party in Person, for the Appellant; S. Gopinathan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.K. Sasidharan, J.—This Writ Petition is directed against the notification issued by the District Collector, North Arcot Ambedkar District, Vellore u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan welfare schemes Act, 1978 whereby and whereunder, the property of the petitioner was acquired for the Harijan Welfare Scheme.

Background Facts:

The property in S. No. 657/2 in Gudanagaram Village in Parvathipuram, Gudiyatham taluk, measuring an extent of 2.45.6 hectares originally belonged to Thiru. K.P. Arunachalam, father of the petitioner. After his death, the property devolved on his wife and children. The mother of the petitioner and his sisters gave no objection for changing in the name of the petitioner and his brother, Mr. K.A. Soundararajan. Accordingly, the Patta was changed in the name of the petitioner and Mr. Soundararajan and they have been in possession and enjoyment of the property.

2. While the matters stood thus, there was an attempt on the part of the second

respondent to measure a portion of the property. This resulted in the petitioner filing a Suit against the second respondent in O.S. No. 928/1995 before the learned District munsif, Gudiyatham for a decree of payment injunction. The Suit was not subsequently proceeded with. While so, the petitioner received a notice on 21.3.1997 issued by the second respondent in Form IV under Rule 5(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979. The Petitioner and the brother were directed to appear for an enquiry on 24.3.1997 with respect to the determination of compensation. It was in the said circumstances, the petitioner has obtained a copy of 4(1) Notification and filed the Writ Petition.

3. The Petitioner challenges the notification u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, on the following grounds:

(i) The statutory notice given u/s 4(2) of the Act read with Rule 3(1) of the Rules were not given to the land owners and as such, the whole proceeding is void;

(ii) The Patta was transferred in the name of the petitioner and his brother long back and as such, the respondents were well aware of the actual ownership and possession of the property. However for the reasons best known to them, no notice was issued which vitiated the whole proceeding. Enquiry is stated to have been conducted by the second respondent. However, copy of the enquiry report has not been given to the petitioner.

(iii) The report stated to have been submitted by the second respondent was considered by the first respondent before issuing notice u/s 4(1). However, the petitioner was not given an opportunity to submit his views with respect to the report submitted by the second respondent. Therefore, the proceeding is violative of the principles of natural justice.

(iv) There are dry lands available in the locality and as such, it was not prudent to acquire fertile and cultivable lands.

4. In short, the petitioner challenges the notification on the ground of non-issuance of notice u/s 4(2) of the Act; failure to conduct enquiry by the second respondent; failure to furnish the report of second respondent; and failure on the part of the Collector to arrive at a subjective satisfaction in the matter of proceeding with the acquisition after giving notice to the land owners.

5. The second respondent has filed counter in answer to the contentions raised in the Writ Petition. The material portion of the counter reads thus:

The District Collector has decided to acquire the property and accordingly, the second respondent was authorized to issue show cause notice in Form I under Rule 3(1) read with Section 4(2) of the Act. Accordingly, notice was served on the land owners on 5.12.1995 directing them to appear for an enquiry on 4.1.1996. However, none of the land owners appeared for enquiry. In the meantime, they have filed a Suit in O.S. No. 928/1996 against the Government.

The enquiry report was submitted by the second respondent and after accepting the enquiry report, the Collector issued the notification u/s 4(1) and it was published in the Gazette on 4.11.1996. Subsequently, notice in Form III u/s 7(3) of the Land Acquisition Act was issued to the land owners on 8.3.1997. The petitioner along with his brother appeared for enquiry. The award was passed on 24.3.1997. In the meantime, the petitioner has filed this Writ Petition and obtained an order of stay of dispossession.

Submissions:

6. The petitioner who appeared in person, reiterated the contentions raised in the Writ Petition. According to him, the second respondent was obliged to issue notice to the land owners before proceeding with the land acquisition and conducting enquiry in the matter. Though they have stated in the counter that such a notice was issued, no document was produced to show that any such notice was issued to the petitioner or his brother. Therefore, to say that notice was served is an attempt to cover up their failure to follow the statutory provision. The petitioner also contended that the District Collector was obliged to conduct an enquiry after furnishing copy of the report filed by the second respondent to the petitioner. The said procedure has not been followed by the District Collector and as such, the notification is liable to be set aside.

7. The learned Government Pleader would submit that the petitioner was well aware of the land acquisition proceedings as it was only on account of such knowledge he filed the Suit before the Civil Court. The learned counsel after perusing the file and after taking instructions from the second respondent fairly submitted on the petitioner or his brother.

Discussion:

8. The acquisition in question was resorted to under the provisions of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act. The Harijan Welfare Schemes Act is a self-contained code. The District Collector was given the authority to acquire the land on the basis of his subjective satisfaction that the land was required for the purpose of Harijan Welfare Scheme. Unlike the provisions of the Land Acquisition Act, 1894, Act 31 of 1978 gives clear authority to the District Collector to proceed with the acquisition, even without reference to the Government.

9. Section 4(1) of Act 31 of 1978 gives power to the District Collector to acquire the land for the purpose of any of the Harijan Welfare Schemes, in case he was of the opinion that such acquisition was necessary. However before taking a decision to acquire the property, the Collector was required to issue notice under Rule 3(1) giving fifteen days time to the interested parties to submit their objections. Such notice need not be issued by the Collector himself. In case notice has been issued by the Collector himself, he has to consider the objection submitted by the land owners in pursuance of such notice and only after satisfying himself about the necessity to acquire the land, the notification u/s

4(1) could be issued by the Collector. In the event of the Collector delegating the function to an officer authorized by him and the notice under Rule 3(1) was issued by the said officer, the objection submitted by the parties interested in the land against such acquisition, has to be considered by the delegate and he should submit a report to the District Collector. Therefore, in cases wherein enquiry proceedings under Rule 3(1) has been issued by the Collector, enquiry has to be conducted by the Collector and in case of proceedings issued by the delegate of the Collector, enquiry should be conducted by the said authority and a report to the said effect has to be submitted to the District Collector has to apply his mind and only after satisfying himself that the property is required for the purpose of Harijan Welfare Scheme, that the Collector is authorized to issue the notification u/s 4(1) of the Act.

10. The scheme of the Act is very clear that the ultimate authority is only the Collector for the purpose of acquiring the property for the welfare of Harijans and it was only after publication of the notice u/s 4(1) in the District Gazette that the land would vest with the Government free from all encumbrances.

11. The procedure prescribed under Act 31 of 1978 is very stringent in as much as the safeguards available to a land owner in a proceeding initiated under the provisions of the Land Acquisition Act, 1894 is not available in respect of acquisition under Act 31 of 1978. Since the reason for introducing the special enactment was for the purpose of early acquisition of property for the benefit of Adi Dravidars, the lengthy procedure contemplated under the Central Act has not been incorporated under the Special Act. Since the Harijan Welfare Scheme Act permits the District Collector to acquire the property, after resorting to a summary procedure contemplated under the Act, the provisions of the said Act has to be interpreted in a stringent manner. When the statute mandates that a particular thing has to be done in a particular manner, it shall be done in that manner.

12. There is a prescribed procedure under the Harijan Welfare Act to acquire the property. The Act was enacted with the purpose of acquiring property for Harijan Welfare Schemes and the main intention was to avoid delay. Therefore, a summary procedure is contemplated under the Act. Though the procedure is summary in nature, it cannot be said that the Collector could flout the mandatory provisions of the Act. Section 4(3)(b) clearly provides that in case the District Collector has authorized any other officer to issue notice and to conduct the enquiry, such officer has to issue notice to the land owners. The format of the notice is statutorily provided in the Rules. The Collector or his delegate has to issue notice in Format-2 as provided under Rule 3(2) of the Rules. Therefore, notice u/s 4(2) is a mandatory requirement for acquisition of land under the Act. It was not possible for the Collector or his delegate to adopt a short cut method and to defeat the very provision.

13. The Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 prescribes the mode and manner of service of notice under the Act and the Rules

made thereunder. The notice issued u/s 4(2) shall be in Form I and it shall be served on the individual or the owner or on all persons interested in the land to be acquired. Therefore, the Act contains a very specific provision for service of notice.

14. In the subject case, it was the consistent case of the petitioner that no notice was issued u/s 4(2) of the Act before issuing notification u/s 4(1) of the Act. The second respondent had denied the said contention as according to him, notice was served on the land owners on 5.12.1995 fixing the enquiry on 4.1.1996. Therefore, the burden is on the respondents to prove that such notice was served on 5.12.1995 to the petitioner or the other land owners. I have perused the entire file with the assistance of the learned Additional Government Pleader. There is nothing on record to show that notice was served on the petitioner. In fact, the falsity of the case of the second respondent is evident from the very file produced by the second respondent. The file note shows that originally the second respondent has recorded that land owners refused to receive the show cause notice. Subsequently, there was an insertion in the file note whereby, the word "and the notice was served by affixture" was inserted. The insertion was in a different ink.

15. The petitioner is a permanent resident of Madras. Rule 3(1) of the Act clearly provides that in case the owner is residing elsewhere than where the land is situated, the show cause notice shall be sent by Registered Post (Acknowledgement Due) to the last known address of the owner or any other person interested.

16. The second respondent was well aware that the acquired property belongs to the petitioner and his brother. The petitioner is residing elsewhere than where the land is situated. Therefore, they should have sent the notice only by Registered Post. However, the award file does not contain any such issuance of notice. The so called refusal and affixture all appears to have been made up to fill up the lacuna and to overcome the objection raised by the petitioner with respect to non-issuance of notice. Therefore, it is evident that no mandatory notice was issued to the petitioner before conducting enquiry which culminated in issuing the notification u/s 4(1) of the Act.

17. Even if there was affixture, respondents have to see that it was affixed in the presence of responsible witnesses. Such affixture should also contain a report of the Revenue Authorities at least in the rank of Village Administrative Officer. However, there was no such report found in the award file to substantiate the contention taken by the second respondent that there was a refusal, which made the authority to serve notice by affixture. Therefore, the version given by the second respondent with respect to the service of notice is highly improbable.

18. The second respondent was authorized by the District Collector to conduct enquiry. The report of his inquiry was submitted to the District Collector for further action. The District Collector was expected to consider the report for the

purpose of arriving at a conclusion as to whether the property has to be acquired. However, even as per the admitted facts, the report of enquiry was not given to the petitioner. The District Collector has not taken any steps to get the views of the petitioner in respect of the report submitted by the second respondent. Therefore, there was violation of the mandatory provisions of the Harijan Welfare Scheme Act in the matter of acquisition of the property in question.

19. The nature of enquiry to be conducted by the Collector and the various steps to be taken before issuing notification u/s 4(1) were all the subject matter of disputes. Therefore, the matter was referred to the Full Bench.

20. In R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector, the following issues were referred for consideration:

(i) Is it necessary for the Collector to give a personal hearing to the owner in the context of his objections and the remarks of the Tahsildar ?

(ii) Is the owner entitled to a copy of the report of the Special Tahsildar or not ?

(iii) Should the Collector record his reasons in his order while dealing with the objections of the owner ?

Whether the Collector to give a personal hearing in the context of objections/ remarks of Tahsildar:

21. The issue as to whether the Collector has to give personal hearing in the context of objections submitted to the notice issued u/s 4(2) of the Act read with Rule 3(1) and the remarks of the Tahsildar was answered by the Full Bench in the following manner:

36... As already noticed, the statutory provisions contemplate issuance of notice to show cause. The statute does not envisage any embargo regarding the extent and content of natural justice to be followed. Similarly the Rules do not specifically contemplate any such embargo and the Form prescribed under the Rules need not be read as limiting the concept of reasonable opportunity which is implicit in the law relating to acquisition of private property by the State. While the superior right of the State to acquire any property in exercise of the Concept of Eminent Domain cannot be denied, it must be considered that such right can be exercised by the State by following reasonable Principles of Natural Justice. The salutary principles made applicable by the constitution Bench in the matter relating to disciplinary proceedings can also be made applicable to the proceedings for land acquisition under the Act.

37. The desirability of furnishing a copy of the report to enable the land owner to make a further representation to the District Collector does not mean that in every case, where such report has not been furnished, the ultimate order passed by the District Collector deciding to acquire the land is automatically vitiated. The scope for judicial interference in the matter relating to acquisition of land

obviously being very limited, the Court in each is required to find out whether non-furnishing of the report in any way has prejudiced the person concerned. The object of furnishing the report and affording further opportunity to the land owner to make a further representation is obviously to pinpoint any deficiency in the report of the Authorized Officer. If any particular aspect has been highlighted by the land owner and has not been considered by the Authorized Officer, the land owner would get a further opportunity to highlight such aspect before the District Collector. In other words, if the Authorized Officer has considered the relevant aspects indicated by the objector and made his recommendation, merely because a copy of such report is not furnished and no further opportunity is given to the land owner, may not be a ground to quash the land acquisition proceedings. On the other hand, if important aspects, which have been highlighted by the land owner, have been ignored by the Authorized Officer, it may be reasonable to infer non-furnishing of such report and non-offering of opportunity to make further representation might have vitiated the ultimate decision of the District Collector. These are matters to be considered on the basis of the facts and circumstances in each acquisition and it should not be constructed that as a matter of law in every case where copy of the report has not been furnished and opportunity of making further representation had been denied, it is sufficient to quash such acquisition. Ultimately the Court has to judge the prejudice caused to such person by keeping in view the facts and circumstances in particular case.

Necessity to provide copy of the report of the Special Tahsildar

22. The issue as to whether it was necessary to the Collector to give opportunity to the owner to file further representation on the report/recommendation made by the Special Tahsildar was answered by the Full Bench thus:

38 So far as question No 2 is concerned, since it is constructed by us that it is necessary for the Collector to give opportunity to the owner to file further representation on the report/recommendation made by the Authorized Officer, such copy of the report/recommendation is required to be furnished. We also add that in view of the provisions contained in the Right to Information Act, 2005 the owner would be entitled to copy of the report of the authorized office. Should the Collector record his reasons.

23. The Full Bench indicated that the order should contain the Application of mind and the collector has to indicate reasons in a brief manner. The Observation reads thus:

41 However, so far as the latter part of the observation laying down the necessity of the District Collector to apply mind to the objection made by the land owners and to indicate the reasons, however brief the reasons may be, must receive our approval without much demur. In view of the power of eminent domain the State obviously cannot be denied such right. However, right to land being a Constitutional right recognized under Article 300-A of the Constitution, such right

can be denied only in accordance with law which provides for such acquisition of land obviously should stand the test of lack of arbitrariness as otherwise such law may fly in the face of Article 14 and may be Article 21. Even though the substantive right of the State to acquire land cannot be denied, such law providing for acquisition of land should satisfy the Test of Procedural Reasonableness and it is therefore apparent that the authority acquiring such land (in the present case the District Collector) must be satisfied about the necessity to acquire such land and while arriving at such satisfaction, the authority is also required to consider the objections raised by the land owner. The authority must be alive to the requirement of balancing the need of the State as well as peculiar disadvantages to be suffered by the land owner. As observed by the Division Bench even though the authority is not expected to write "reasoned judgment", the materials on record must indicate that the authority has applied its mind. Obviously the magic incantations of the words used in the Act or the Rules would not indicate that mind has been applied and therefore, it is always desirable for the authority to indicate the reasons why such authority is taking a decision to acquire the land and rejecting the objection of the land owner.

... Therefore, in our opinion, the requirement to give reasons, however brief the reasons may be, must be read into the provisions and this requirement is not merely confined to the cases where the Collector is considering the reports submitted by the Authorized Officer, but such requirements is also necessary while the Collector himself is dealing with the matter by holding an enquiry.

24. The Full Bench observed that even though in a given case the order which is communicated to the landlord does not indicate any reason and if the application of mind is reflected in the file even by way of notings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the land owner/objector does not contain any detailed reasons. In short, the Full Bench indicated that the requirement is that the materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and it was not necessary to pass a formal reasoned order as is required in judicial or quasi-judicial proceedings.

25. The Full Bench answered the three questions referred to it for consideration and concluded the reference thus:

43. In view of the aforesaid discussion, our conclusions are as follows:

The owner should be furnished with a copy of the report/recommendation of the Authorised Officer. Thereafter, he should be given two weeks' time to make further representation, if any, before the District Collector. It is not necessary for the District Collector to give a further personal hearing or make any further enquiry. However, mere non-furnishing of the report would not have ipso facto effect of vitiating the proceedings and the question of prejudice to the land owner is required to be considered in each case depending upon the facts and

circumstances. The District Collector is expected to reflect the reasons, but merely because the communication to the land owner does not contain the reasons, the decision of the Collector is not ipso facto vitiated and it would always open to the concerned authority to prove before the Court, if such action of the Collector is challenged, that there has been application of mind and the reasons are available in the relevant records relating to such acquisition. The necessity to record the reasons is applicable where the Collector himself makes the enquiry and also where the Collector takes an appropriate decision on the basis of the report/recommendation made by the Authorized Officer.

26. The petitioner has raised substantial grounds in support of the Writ Petition. The satisfaction arrived at by the Collector is also under dispute. The Collector is very much a party to the Writ Petition. However, for the reasons best known to the Collector, he has not chosen to file counter affidavit. The second respondent who has made entries to appear as if notice was served on the petitioner himself has filed the counter. When the petitioner has alleged that no notice was issued and the Collector has not conducted enquiry in the manner in which it was contemplated under the Act, the Collector was bound to file counter affidavit in answer to the contentions raised in the Writ Petition. Counter filed by the Authorized Officer is not a substitute for the counter to be filed by the District Collector. As per the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978, the primary functionary is only the Collector and not even the Government. It is the subjective satisfaction of the Collector which alone is material. Even if the Government comes to the conclusion to acquire the property, it cannot be said that it was a valid exercise of power. Therefore, I am of the view that the Collector should have filed the counter to defend the proceedings.

27. There was nothing in the counter to suggest that it was only on account of the satisfaction arrived at by the District Collector that the notification u/s 4(1) of the Act was issued. In case the Collector has given a copy of the Enquiry Report to the petitioner so as to enable them to offer their views, it would have been possible for the Collector to consider the matter independently. However, there is no indication in the entire file that there was an independent consideration of the matter by the Collector so as to discharge his function as contemplated under the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978.

28. The mechanical exercise of power by the Collector is writ large. The notification was issued only by the Collector and his signature is found in the notification. The Collector has used a printed format for issuing the notification. The notification was as per Form II under Rule 3(2) of the Rules. The Collector has not even attempted to read the notification and signed the format in a routine manner which makes it appear that the satisfaction was of the Government of Tamil Nadu to acquire the property for the purpose of Harijan Welfare Scheme. Therefore, there was total non-application of mind, besides violation of the mandatory provisions of the Act, which goes to the root of the

matter. In such circumstances, I am constrained to quash the impugned notification with liberty to the District Collector to initiate fresh proceedings depending upon the necessity.

29. The factual matrix projected in the Writ Petition clearly shows that the mandatory provisions of the Act were not followed. In such circumstances, the impugned order is liable to be set aside and accordingly, the same is set aside. In the result, the award dated 25.11.1996 is quashed and the Writ Petition is allowed. No costs.