

(2006) 11 MAD CK 0121

In the Madras High Court

Case No : Writ Appeal No. 365 of 2005 and WAMP No. 650 of 2005

Loganathan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4(1), 4(2), 4(3)

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

Citation : (2007) WritLR 432

Hon'ble Judges : S. Tamilvanan, J; P. Sathasivam, J

Bench : Division Bench

Advocate : T.R. Rajagopalan, S.C. for K. Surendranath, for the Appellant; A. Edwin Prabhakaran, Government Advocate, for the Respondent

Judgement

P. Sathasivam, J.—The above writ appeal is directed against the order dated 04.02.2005 made in W.P. No. 3879 of 1997, in and by which, the learned single Judge upheld the acquisition proceedings initiated under Act 31 of 1978 and dismissed the writ petition.

2. Heard the learned Senior Counsel for the appellant as well as the learned Government Advocate for the respondents.

3. For convenience, we shall refer the parties as arrayed in the writ petition. According to the petitioner, the third respondent without serving a show cause notice as required u/s 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 31/78(hereinafter referred to as "the Act") read with Rule 3 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, proceeded to acquire his land for providing house sites to Adi Dravidars of Nandimangalam village. When he was not given an opportunity, he approached this Court by way of writ petition, which ended in direction to the authorities to consider his objections and pass appropriate orders in accordance with law, particularly, the provisions of Section 4 (3) of the Act. Thereafter, the third

respondent issued Form-I notice dated 19.01.1996 informing the petitioner that an extent of 0.64.0 hectares belonging to him are required to provide house sites for Adi Dravidars thereby calling upon him to send his objections and to attend an enquiry on 12.02.1996. According to him, he raised his objections on 31.01.1996 and also attended the enquiry conducted by the third respondent. The third respondent without considering his objections recommended for the acquisition. The second respondent without considering his objections, accepted the recommendations of the third respondent and notified the acquisition. The said notification was published in Chengalpat MGR District Gazette dated 25.07.1996. He also received notice in Form-III calling upon him to attend the Award Enquiry to be held on 24.03.1997. In those circumstances, he filed the writ petition for quashing the entire acquisition proceedings on various grounds.

4. The third respondent, the Land Acquisition Officer and Special Tahsildar (ADW), Tiruvallur, Chengai-MGR District, has filed a counter affidavit disputing various averments made in the affidavit of the petitioner. It is stated that due notice was issued to the petitioner u/s 4 (2) of the Act. But the petitioner did not appear for the enquiry, which was held on 12.02.1996. However, an objection was sent for the proposed acquisition. After examining the objection, the third respondent recommended for overruling. After observing usual formalities, 4(1) proposals were submitted to the Collector of Chengapat MGR District for his approval. The proposals u/s 4(1) have been approved by the Collector in his proceedings dated 09.07.1996 and 4(1) notification was published in Chengalpat MGR District Gazette Extraordinary issue No. 30 dated 25.07.1996. It is further stated that the objections raised by the writ petitioner were carefully examined and recommended for rejection and there is no need to pass an order considering his objection.

5. The petitioner has also filed a reply affidavit stating that there is no need for the present acquisition. He also highlighted various factual aspects regarding earlier acquisition and the availability of the alternate land for allotment of those beneficiaries.

6. The third respondent has filed an additional counter affidavit with regard to the certain factual details mentioned in the reply affidavit by the petitioner. The learned single Judge, by the impugned order, after considering the elaborate pleadings of both parties and by referring certain decisions and after finding that respondents 2 and 3 have fully complied with the provisions of the Act and Rules, has dismissed the writ petition, hence, the present writ appeal by the writ petitioner.

7. The learned Senior Counsel appearing for the appellant/petitioner, after taking us through various averments in the affidavit, reply affidavit and rejoinder etc., as well as the stand taken by the third respondent in the counter affidavit, has contended that in view of the valid objections raised, the second respondent ought to have considered the same and dropped the acquisition proceedings. He further contended that inasmuch as notice calling for objections was issued by

the Tahsildar and after receiving the objections from the petitioner, he submitted report to the Collector and the petitioner is entitled to the copy of the said report. He finally submitted that the stand taken by the respondents that there is no obligation on the part of the second respondent to pass an order is not in accordance with the provisions of the Act.

8. In support of the above contention, the learned Senior Counsel heavily relied on the recent Full Bench decision of this Court reported in 2006 (4) CTC 609 R. Pari v. The Special Tahsildar, Adi Dravidar Welfare, Devakkottai Pasumpon Muthuramalinga Thevar District and Anr.

9. On the other hand, the learned Government Advocate, by drawing our attention to various factual aspects from the counter affidavit and rejoinder of the third respondent as well as the reasonings of the learned single Judge, has contended that there is no valid ground for interference and prays for dismissal of the writ petition.

10. We have perused the relevant materials and considered the rival contentions.

11. It is not in dispute that the petitioner-land owner must be given an opportunity to put forth his objections. In fact, he was served with Form-I notice dated 19.01.1996. Pursuant to the same, he submitted his objection to the third respondent on 31.01.1996. The copy of the said objection is available in the typed set of papers, vide pages 3 to 12. In the objection, the petitioner has highlighted that for the benefit of 40 Adi Dravidars of Nandhimangalam village, house site pattas were issued in Survey No. 61/1 in the year 1988 by the District Collector. Thereafter in the year 1994-95, group of house sites i.e., for about 20 houses under Jawahar Employment Scheme were also allotted. Therefore, as per the census, no Adi Dravidar families were living without house sites. It is also stated in the same representation that even today, in the land bearing survey No. 61/1, there are sufficient number of vacant flats available without being allotted to anyone. It is the complaint of the learned Senior Counsel for the appellant that it is not clear whether the third respondent had taken note of the above objections. We have already referred to in the earlier part of our order that it is the stand of the third respondent that there is no need to pass an order on the objections raised by the land owner. The stand taken by the third respondent is not in accordance with the provisions of the Act. It is useful to refer to the conclusion arrived at by the Full Bench of this Court in the decision reported in 2006 (4) CTC 609 R. Pari v. The Special Tahsildar, Adi Dravidar Welfare, Devakkottai Pasumpon Muthuramalinga Thevar District and Anr., wherein in para 43, the Full Bench has referred to the procedure to be followed and complied with u/s 4(1) of the Act and Rules made thereunder.

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 the 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 authorised officer.

12. The learned Government Advocate, by drawing our attention to the conclusion arrived at by the Full Bench, submitted that in the absence of any prejudice shown by the petitioners/land owners, there cannot be any interference, merely because, the copy of the report of the Tahsildar was not furnished. In our case, as pointed out above, the notice was issued by the third respondent-Special Tahsildar on the directions of the second respondent-District Collector. It is not in dispute that the petitioner has submitted his objections. Pursuant to the same, the third respondent forwarded his report to the Collector. We have already referred to the objections of the petitioner. In view of the seriousness in the objections and of the assertion of the petitioner that Adi Dravidars in the village in question have already been provided with house sites and also of the assertion that several vacant lands/plots are available in the same village, we are of the view, it is but proper on the part of respondents 2 and 3 to furnish a copy of the report to the petitioner.

13. It is not in dispute that as per notification u/s 4(1) of the Act, the District Collector, after considering the report/recommendation of the Tahsildar, take a decision and publish the same in the Government Gazette to the effect that he has decided to acquire the land. Though the learned single Judge elaborately referred to the pleadings of the parties and various decisions, there is no specific reference to the order of the District Collector. Even before us, the order said to have been passed by the District Collector is not available. As per the Full Bench decision, it is the duty of the respondents to convince this Court that there has been application of mind on the part of the District Collector and sufficient reasons are afforded in arriving at such a conclusion. As stated earlier, we have no opportunity to verify the decision of the District Collector to find out whether he has applied his mind with reference to the objections raised by the petitioner. As pointed out by the Full Bench, if sufficient materials/reasons are available in the relevant records relating to the acquisition in question, even in the absence of service of copy of the report, the order can be sustained.

14. In view of our discussion and in the absence of such order before us, we are

of the view that the objection raised by the petitioner cannot be ignored lightly. On these grounds and in view of the principles enunciated in the Full Bench decision, we are of the view that the impugned proceeding cannot be sustained. All these aspects have not been adverted to by the learned single Judge, while dismissing the writ petition. Accordingly, the order passed by the learned single Judge in W.P. No. 3879 of 1997 dated 04.02.2005 is set aside and the writ appeal is allowed. The second respondent-the Collector of Chengai-MGR District, Kancheepuram, Chengai-MGR District, is free to proceed afresh, if he so desires, in accordance with law. No costs. Consequently, WAMP No. 650 of 2005 is closed.