(2004) 03 MAD CK 0035

In the Madras High Court

Case No : Writ Petition No. 3549 of 1996

Mr. Perumal Mandadi and Mr. Janaki Mandadi — APPELLANT

Vs

The Special Tahsildar, (Adi Dravidar Welfare) and The Collector of North Arcot — RESPONDENT

Date of Decision : 29-03-2004

Acts Referred:

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

Citation : (2004) 03 MAD CK 0035

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : K. Jayakumar, for the Appellant; V. Velumani, Additional Government Pleader for Respondents 1 and 2, for the Respondent

Judgement

K.P. Sivasubramaniam, J.—The Petitioners pray for the issue of a certiorarified Mandamus to call for the records relating to the Notification

issued u/s 4(1) of the Tamilnadu Acquisition of Lands for Harijan Welfare Act (Act 31 of 1978) and published in North Arcot Dr. Ambedkar

District Extra ordinary Edition Gazette dated 11-12-1995 at page No.2 and to quash the same in respect of the land belonging to the petitioners as

stated in the writ petition.

2. In the affidavit filed in support of the writ petition filed by Mr. Perumal Mandadi and Janaki Mandadi, they have stated, that they have their own

lands in Survey No.171/2A of an extent of 1.16 Acres and Punja lands measuring 2.19 Acres at Survey No.171/2B that the properties were

originally purchased by one Mottai Mandadi, alias Govinda Mandadi and the Perumal Mandadi on 27-05-93 by way of Registered Sale Deeds dated 30-03-1957, and 22-03-1957. A Partition Deed was also registered as document No.903 of 1993 at the Office of the Sub Registrar,

Sholinghur, between the sons of Govinda Mandadi and Perumal Mandadi and that the first petitioner was in possession and enjoyment of his share

in terms of partition.

3. A part of land 50 of cents was sold to one Mr. Arasan and by way of Settlement Deed the remaining lands were settled in favour of first

petitioner''s son Janakiraman, the second petitioner herein. Ever since the date of settlement, it is stated that his son is in possession and enjoyment

of the said lands.

4. The adjoining lands, which were allotted to the share of one Narasimhan and Subramani (sons of Govindan Mandadi) were sought to be

acquired by the Government and notice u/s 4(2) of Tamilnadu Acquisition of Land for Harijan Welfare Scheme Act 1978 (Tamilnadu Act 31 of

1978)(hereinafter referred to as ''the Act'') was issued to them, for which they have filed their objections wherein they have clearly mentioned

about the partition effected and the interest of the petitioner in the said land. However, in furtherance to the said notice, Notification u/s 4(1)of the

Act, based on which, a notice was also issued for passing an award and the land of the petitioners was also included, without any proper notice.

5. In the counter affidavit filed by the respondents, the fact that the revenue records contain the name of Perumal Mandadi is not disputed. In

paragraph six of the counter affidavit, it is stated that the lands in Survey Nos.171/2A2 and 171/2B1 were registered in the name of Narasimma

Mandadi and Perumal Mandadi and that Survey No.172/2B2 was registered in the name of Subramani and Narasimman. According to the

respondents no partition has so far taken place between them. It is further stated in paragraph 11 that though patta number 152 of Pandiayanallur

Village stands registered in the name of Narasimhan and Perumal Mandady, there are several Survey Numbers mentioned in that patta and

S.No.171/2A2 is in the possession and enjoyment of only Narasimma Mandady and Subramani Mandady.

6. I have also heard the learned counsel for the petitioner and he contends that inspite of the fact that the name of the petitioner was found in the

revenue records, no notice has ever been sent to the petitioner.

7. The learned Additional Government Pleader contended that notice was received by Narasimma Mandadi who is none other than the son-in-law

of Perumal Manadai and he has filed his objections. The learned Additional Government Pleader further submitted that possession of the

properties were also taken on 08-04-1996.

8. In view of the claim made by the respondents that possession has already been taken over, and denial of the same by the petitioner, this Court,

by order dated 15-07-2003, appointed an Advocate Commissioner to find out as to whether the possession of the properties was with the

petitioners or whether the possession was taken over by the respondents. Mr.K.Sampath, Advocate Commissioner, has inspected the property on

23-08-03 and has also filed a report stating that in terms of entry in the the revenue records, respondents claim to have taken possession of the

properties on 08-04-1996. But the petitioners were found in possession of the properties and they have been paying tax till date. The Advocate

Commissioner has also stated that the petitioners submitted the tax receipts which would disclose that they have paid the tax till the current fasli. He

has further stated that major extent of the property was kept vacant, that a part of the land was being ploughed by petitioner, that traces of

cultivation was seen and that the Tractor/ Trailer belonging to the petitioner was also kept in the land.

9. I have heard and considered the submissions made by the learned counsel on either side. This is a case where the of Collector has passed his

order in cyclostyled format, without even considering the objections of the petitioner on that ground. Having regard to several orders of this Court

while dealing with similar cyclostyled orders, such a practice which disclose non-application of mind has been deprecated and on this ground

alone, the petitioner is entitled to succeed.

10. Even otherwise considering the merits of the contentions raised by the learned counsel for the petitioner, and the facts stated above, it is clear

that as per the entry in the revenue records, Perumal Mandadi/petitioner is admittedly one of the owners of the property. In fact, in the objections

filed by Narasimhan and Subramani also, they have clearly stated that Narasimhan, and Subramani and Perumal Mandadi are the owners of the

property and a document relating to the ownership by Perumal Mandadi has also been enclosed along with the objections. At least thereafter

separate notice should have been issued to Perumal. Nor the name of Perumal Mandadi, the first petitioner, is shown in the Notification issued in

the gazette on 11-12-1995. Therefore the proceedings in so far as it concerns the petitioners herein, have to be quashed.

11. The contentions raised by the learned Additional Government Pleader that notice has been issued in favour of Perumal Mandady cannot also

be accepted. In the Notice, names of Narasimma Mandady son of Mottai Govinda Mandady, and Subramanian alone are mentioned. However,

on the left hand side of the notice, the name of Perumal Mandadi is written in a different ink. It is obvious that his name has been added

subsequently, which is clearly substantiated by the copy of Form 1, which does not contain the name of Perumal Mandadi. Therefore, it is

established that inspite of the the fact that the petitioner''s name was found in the revenue records and also one of the joint owners has also stated

in his objections regarding the petitioner''s rights over the property, no notice was sent to the first petitioner, Perumal Mandadi as per the Rules.

Therefore, the alleged receipt of notice by Narasimhan as on behalf of the Perumal, cannot at all be accepted. It is rather unfortunate that

respondents should choose to create / manipulate records to make it appear as if the notice contains Perumal''s name and also as if possession had

been taken, which is found to be incorrect. This is not the manner in which valuable rights of parties should be dealt with.

12. It has already been stated that the Gazette notice also does not contain the name of the petitioner. For all the aforesaid reasons, the impugned

notification is set aside in so far as it relates to the petitioners, with liberty to respondents to proceed afresh in accordance with law.

13. The Advocate Commissioner who had inspected the property and filed his report was initially directed to be paid of Rs.5,000/- as

remuneration. Considering the nature of the work executed by the Commissioner, a further sum of Rs.5,000/- is directed to be paid. The writ

petition is disposed of accordingly.