

(2003) 07 MAD CK 0196

In the Madras High Court

Case No : Writ Petition No. 7466 of 1996 and W.M.P. No. 11088 of 1996

Munisamy

APPELLANT

Vs

The Special Tahsildar (Land Acquisition), Adi Dravidar Welfare
and The Collector of North Arcot

RESPONDENT

Date of Decision : 14-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 07 MAD CK 0196

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

Bench : Single Bench

Advocate : T.R. Rajaraman, for the Appellant; S. Gomathinayagam, Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioner prays for the issue of a writ of certiorari to call for the records of the respondents dated 6.3.1996 and to quash the same as it is illegal.

2. The petitioner seeks to question the proceedings initiated under Act 31 of 1978. He contends that he is the absolute owner of the agricultural lands of a total extent of 12 cents as detailed in the petition. A perusal of the plan and file shows that the Harijan Colony is on the southern side of the said punja lands and the cremation ground for the Adi Dravidars is on the northern side as shown in the plan. There are two roads leading from the Colony to the cremation ground. The first one is a mud road on the western side and the other on the east passing through Panapakkam main road. Panapakkam main road has two branches, one the main road itself and the other proceeding to the cremation ground. The attempt on the part of the respondent in having initiated proceedings under Act 31 of 1978 is for acquiring a land in between these two roads and intended to be an access road to the cremation ground. According to the petitioner, the Colony and the burial ground had been in existence for the

past 30 to 40 years and the people in the Colony were using the roads as shown in the plan to reach the cemetery. The petitioner's land and lands belonging to others are in between the said two roads. All the land owners have only a small extent of land. The petitioner's land has also a well as a source of irrigation. The petitioner and others are raising dry crops in their lands every year. They have no other land and agriculture is their only source of occupation and income. It is further stated that the first respondent visited the petitioner's land on 7.12.1995 and directed him to give "No objection" for the acquisition of the land. The petitioner and others who are affected, gave their representations against the proposal for acquisition of their lands. A copy of Form I notice u/s 4 of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme, was served on them and in terms of the said notice they were directed to appear for enquiry on 7.12.1995 viz., on the very same day. The said notice according to the petitioner, was not in conformity with the provisions of the Act and the first respondent had failed to give a minimum period of 15 days for enquiry u/s 4 of the said Act, the impugned notice having been served on the petitioner only on 7.12.1995. The notice u/s 4 of the Act was invalid. Hence, the petitioner has approached this Court.

3. Heard both sides. No counter has been filed in spite of several adjournments though it is more than seven years after notice had been served.

4. Learned Additional Government Pleader for the respondents contends that acquisition was essential as an access road to the burial ground. The proceedings had been initiated even earlier and hence there was no basis for the contention that the notice was served only on 7.12.1995 viz., the date on which the enquiry was posted. Admittedly, the petitioner and others have submitted their representation and hence they are not prejudiced in any manner.

5. I have considered the submissions of both sides. The positive contention that the notice was served on the petitioner only on 7.12.1995 is not disputed by filing a copy of the counter. In spite of repeated adjournments, no counter has been filed, but files have been produced. The petitioner had given their objections on the very same date. There is no justification for proceeding against the petitioner without providing sufficient time for filing their objection. It is true that if objections have been filed, the petitioner cannot be aggrieved even if notice period of 15 days was not strictly satisfied. But the issue of prejudice had to be considered in a practical and just manner. The time which is given should be reasonable and sufficient for the aggrieved persons to obtain necessary legal advice or even to prepare the objections even by themselves, at least by five days if not by 15 days as required under Rules. But the undisputed facts disclose that the notice has been served only on 7.12.1995 and on the very same date, they were directed to file their objections. The aggrieved persons had no other alternative and were under pressure. Principles of natural justice must be complied with in a proper manner and cannot be pushed through as an eyewash. There is no point in stating that as the representation has been filed no prejudice

was caused to the petitioner. Therefore, on that ground alone the writ petition is bound to be allowed.

6. It is also seen that there are two alternate access roads which are now being used by Colony people for several years. That being so, there is no justification for taking away the lands belonging of small land owners and poor agriculturists who are themselves very poor and eking out their livelihood only out of those lands. It is needless to mention that in any village, the burial ground or cemetery whether used by members of the Scheduled Caste or Caste Hindus, the location of the burial ground is bound to be in a corner of the village or in a particular place with an access road leading to the burial ground. All the residents of the village cannot have the facility of a short-cut to whichever Caste he may belong to. Such is the natural scenario in any village.

7. The necessity to have a pathway would arise only on two occasions. Firstly total absence of any pathway and the burial ground being surrounded by patta land. Secondly, even if there is any pathway, Caste Hindus refusing or preventing Adi Dravidars from using their customary pathway. In this case, neither of the two contingencies are raised. There are already two parallel pathways leading to the burial ground very close to the proposed pathway. It is not the case of the respondents before me that the Adidraavidars are prevented from using the said two access roads. The proposed pathway may serve as a short-cut to the burial ground only by a few metres. The question which arises for consideration is whether it is proper to take away the valuable property of the poor villagers to provide a short-cut for about few metres. As I had mentioned earlier, burial ground which may belong either to the Caste Hindus or Adi Dravidars, is bound to be in a corner of the village or usually on the banks of a channel or river and the public have to necessarily walk a short distance to reach the cremation ground. This is the practical and natural situation in any village and it will be atrocious for the Caste Hindus or Adi Dravidars to say that in order to have a short cut, the lands belonging to several poor agriculturists, should be acquired thus leaving to them only useless bits of land on either side of the road, which cannot be put to any use. This is precisely the resultant position in this case, to which authorities have turned blind eye and deaf ears. It is rather unfortunate that a laudable piece of Legislation enacted with the object and for the purpose of achieving social justice by providing the basic facilities to the downtrodden, is now made use of for other ulterior purposes, to create unnecessary communal tension, confusion, distrust in the villages between different groups.

8. The files also disclose that there is no independent application of mind by the District Collector who is really the competent authority. Final orders are passed mechanically without taking into account the objections. There is not even a note-order by the District Collector dealing with the objections even assuming that he is not required to give a personal hearing to the objectors. If only the District Collector had cared to see the plan, he would have noticed the unjust nature of the proposal considering that there are already two roads leading to the

cremation ground.

9. Therefore, there is no justification in taking away the rights of the other villagers who are also poor under the pretext of implementing Harijan Welfare Scheme. The proposal would cause prejudice to the other villagers who are equally poor and holding only small extent of land. Therefore, even on the merits of the case, I am inclined to set aside the impugned proceedings which do not appear to be bona fide. There are already two pathways available to reach the cremation ground and hence the impugned proceedings are unwarranted. The petitioner is therefore, entitled to succeed.

10. In the result, the writ petition is allowed. No costs. Connected miscellaneous petition is closed as unnecessary.