
(1995) 12 MAD CK 0023
In the Madras High Court

N. Loganathan

APPELLANT

Vs

The Special Tahsildar, A.D.W.

RESPONDENT

Date of Decision : 12-12-1995

Acts Referred:

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

Citation : (1996) 1 MLJ 442

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Judgement

AR. Lakshmanan, J.—Heard Mr. M.S. Subramanian, learned Counsel for the petitioner and Mr. V.R. Rajasekaran, learned Government

Advocate, who takes notice for the respondent as per the direction of the courts. Since the matter arises from a very narrow compass, the main

writ petition itself is heard and disposed of at the admission stage, by consent of both parties.

2. According to the petitioner, he is the owner of lands in Nanthimangalam village, hamlet of Puducheri of Oothukottai Taluk, Chengai - M.G.R.

District in Survey Nos. 52/10, 52/11, 52/12, 52/13B, 52/18, 59/12, 52/20, 52/21 and 52/22 of an extent of 0.01.5, 0.01.5, 0.04.0, 0.01.0,

0.02.6, 0.02.05, 0.02.5, 0.033.05, (Part) and 0.15.0 Hectares respectively and the said lands are now sought to be acquired for the purpose of

providing House sites to Adi Dravidars of Nanthimangalam Village, hamlet of Puducheri of Oothukottai Taluk. It is stated that acquisition is sought

to be made under Act 31 of 1978. According to the petitioner, he is a permanent resident of Nanthimangalam Village and he is also the ex-

President of the Village.

3. Section 4(2) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Act (Act 31 of 1978), requires the District Collector or the Officer

authorised by the District Collector to call upon the owner to show cause why the land should not be acquired. Rule 3(i) of the Tamil Nadu

Acquisition of Lands for Harijan Welfare Rules, 1979 requires the District Collector or the Officer authorised by him to serve a show cause notice

in Form No. 1 individually on the owner or on all persons interested in the lands to be acquired and only if the owner or the other person interested

in the land resides elsewhere, the show cause notice shall be sent by Registered Post to the last known address. Sub-section (3) of Section 4 of

the Act requires an order to be passed by the District Collector as he may deem fit on the cause so shown and if the show cause notice was issued

by any officer authorised by the District Collector, a report shall be made to the Collector by such authority containing his recommendations on the

cause so shown for the decision of the District Collector and after considering such report, the District Collector may pass such orders as he may

deem fit.

4. Under the provisions of the Tamil Nadu Act 31 of 1978, immediately on the publication of the Gazette the land vests absolutely with the

Government free from all encumbrances u/s 5. As rightly pointed out by the learned Counsel for the petitioner, the vesting takes place immediately

on the publication of the Gazette and not on taking possession of the land and the title to the property itself will be lost immediately on the

publication of the Gazette and there is no question of any enquiry after the publication of the Gazette and before the vesting of the property.

Therefore, there is absolutely no opportunity for the land owner to question the acquisition after the issue of the notice u/s 4(1) of the Act.

5. Under the Act 31 of 1978, the one and the only opportunity given to the land owner or a person interested is on the issue of the show cause

notice u/s 4(2) of the Act. The Act being expropriatory in nature and having regard to the vigour of its provisions, the opportunity to show cause

why the land should not be acquired should be given, as it is a statutory requirement and the compliance thereof has therefore to be strictly adhered

to.

6. As rightly pointed out by the learned Counsel for the petitioner, the show

cause notice required to be issued u/s 4(2) read with Rule 3 is mandatory and therefore should be strictly complied with. Rule 3 as stated already requires individual notice to be served and every attempt has to be made to serve the show cause notice individually on the owner or the person interested and if for any reason, individual notice could not be served as the person cannot be found, the service may be made on any adult male member of his family residing with him and if no such adult male member is found, notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business.

7. According to Mr. M.S. Subramanian, in respect of the acquisition of the petitioner's land no such notice has been purported to have been issued on the petitioner or served on any adult male member of his family residing with him or by affixing the copy on the outer door of the petitioner's house. It is also stated that the petitioners have valid objections to the acquisition and he has not been heard so far. It is also to be noticed that the requirement to issue a show cause notice, not only carries with it the requirement of cause to be shown why the lands should not be acquired or objections, to the acquisition as it may be, but also an enquiry to substantiate and establish the causes shown in the objection at an enquiry to be held. The land owner in my opinion would be deprived of his valuable properties even without he being heard. If a reasonable opportunity is not given to him, as already pointed out, the Act being expropriatory in nature has to be construed strictly and even without issue of a show cause notice the authorities in my view cannot be allowed to proceed the statutory requirements of issuing a show cause notice and on such cause being shown, natural justice requires an enquiry to establish the cause shown and such an opportunity not being given to the petitioner, the petitioner's land cannot be acquired. It is stated that on coming to know of the proposed acquisition, the petitioner has issued a lawyer's notice on 19.11.1995 calling upon the respondent to issue a show cause notice, so that the petitioner put forward his objections. The said notice having been received by the respondent on 22.11.1995, so far no reply has been sent in this behalf. It is also represented that the respondent is likely to proceed with the acquisition without complying with any of the mandatory

requirements. It is also mentioned in the affidavit that most of the beneficiaries, for whose benefit his lands are to be acquired, have already been granted patta in the Survey No. 61 and they themselves have approached the authorities for allotment of the site for them. It is stated that the petitioner has valid objections to the acquisition and only because he has not been issued a show cause notice, the objections cannot be put forth by him and he will be able to substantiate his objections at the time of enquiry. It is also stated that the particulars regarding the valuation has been gathered and the District Collector is likely to issue the notice required u/s 4(1) at any time and if such a notice u/s 4(1) is issued, by publishing in the Gazette, without an enquiry and a show cause notice, the petitioner will be put to irreparable loss and damage. The contents of the section reads as follows:

Section 4: Power to acquire land : (1) Where the District Collector is satisfied that for the purpose of any Harijan Welfare Scheme, it is necessary

to acquire any land, he may acquire the land by publishing in the District Gazette a notice to the effect that he has decided to acquire the land in pursuance of this section.

(2) Before publishing as notice under Sub-section (1), the District Collector or any officer authorised by the District Collector in this behalf, shall

call upon the owner or any other person, who, in the opinion of the District Collector or the officer so authorised may be interested in such land, to

show cause why it should not be acquired.

(3)(a) The District Collector may, where he has himself called upon the owner or other person to show cause under Sub-section (2), pass such

orders as he may deem fit on the cause so shown;

(b) 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.

Section 5: Land acquired to vest in Government free from all encumbrances: When a notice under Sub-section (1) of Section 4 is published in the

District Gazette, the land to which the said notice relates shall, on and from the

date on which the notice is so published vest absolutely in the Government free from all encumbrances.

There is some substance in the arguments of the learned Counsel for the petitioner. As rightly pointed out by the learned Counsel for the petitioner, the authorities cannot be allowed to proceed to acquire the land without complying with the statutory requirements provided u/s 4 of the Act read with Rule 3 of the Rules framed thereunder, which reads as follows:

Rule 3: Procedure for acquiring land: (i) The District Collector or the Officer authorised by him in this behalf shall serve a show cause notice in

Form 1 under Sub-section (2) of Section 4 individually on the owner or on all persons interested in the land to be acquired. If the owner or any

other person interested in the land resides elsewhere than where the land is situated, the show-cause notice shall be sent by registered post

(acknowledgment due) to the last known address of the owner or any other person interested.

(ii) The District Collector, if after passing such orders as required by Sub-sections (2) and (3) of Section 4 is satisfied that it is necessary to acquire

the land, notice in Form II to that effect shall be published in the District Gazette.

8. In view of the above circumstances, I direct the respondent herein to issue a statutory show cause notice under Rule 3(i) of the Tamil Nadu

Acquisition of Land for Harijan Welfare Schemes Rules, 1979, in respect of the petitioner's lands in Survey Nos. 52/10, 52/11, 52/12, 52/13-B,

52/18, 52/19, 52/20, 52/21 and 52/22 of an extent of 0.01.5, 0.01.5, 0.04.0, 0.01.0, 0.02.5, 0.02.5, 0.33.5 (Part) and 0.15.0 hectares

respectively in Nanthimangalam Village, Oothukkottai Taluk, Chengai - M.G.R. District under the Tamil Nadu Acquisition of Lands for Harijan

Welfare Act (Act 31 of 1978) and consider his objections if any received and pass appropriate orders in accordance with the provisions of

Section 4 of the Act 31 of 1978. The writ petition is disposed of accordingly with the above direction.