

(2004) 10 MAD CK 0024
In the Madras High Court
Case No : Writ Petition No. 19459 of 1997

P. Arunachalakani

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 07-10-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 10 MAD CK 0024

Hon'ble Judges : A.K. Rajan, J

Bench : Single Bench

Advocate : K. Rajkumar, for the Appellant; M. Hidayathulla, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Rajan, J.—This writ petition has been filed for the issuance of a writ of Certiorarified Mandamus, to call for the records relating to

Form I issued in Na.Ka.2555/97A dated 09.10.1997 by the Special Tahsildar, Adi Dravidar Welfare (Land Acquisition), Periyakulam the third

respondent herein quash the same and consequently forbear the respondents herein from in any manner proceeding further with the acquisition of

the petitioner's lands covered in S.Nos.342/1, 342/2, 342/3, 342/4, 342/5, 341/2A1B, 341/2A1C of Thenkarai Village, Periakulam Taluk.

2. The point for consideration in this writ petition is that whether the property has been acquired for the Housing Scheme for the Harijan Welfare.

3. According to Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 1978, "where a 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." Subsection 2 of Section 4 provides, " Before publishing a 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 lands, to show cause why it should not be acquired.

4. It has been specifically averred in the affidavit filed in the writ petition, the District Collector has not passed any order himself or he has not authorised the land Acquisition Officer u/s 4(2) to take proceedings. To that counter has been filed by the respondents in Paragraph-22 as follows:

The decision to acquire the lands has been taken only by the LAO who the authorised Officer in this case.

5. It is silent with respect to the authorisation given to LAO by the District Collector, when there is a specific point raised by the petitioner in the writ petition that the District Collector had not authorised the LAO to initiate proceedings to acquire the land. The counter is also silent as to the authorisation given by the District Collector to LAO. It unless says the order is authenticated, authenticated does not mean authorisation.

Therefore, the ground raised in the affidavit has not been denied by the respondents. Therefore, it has to be presumed that there is no authorisation given by the Collector to the Land Acquisition Officer.

6. Under the circumstances, there is a specific violation of the safeguard provided u/s 4(2) of the Tamil Nadu Land Acquisition Act. Inasmuch as there is a violation of the mandatory provision of Section 4(2) of the Act, the notice issued by the Special Tahsildar, third respondent herein is not legal and va lid and hence the entire proceedings is vitiated. The writ petition is allowed as prayed for. No costs.