

(2012) 01 MAD CK 0099

In the Madras High Court

Case No : Writ Petition No. 16174 of 2002

P. Deivegan (deceased), P. Kamalammal, D. Udayakumari,
Mohan and Durga Devi

APPELLANT

Vs

The Special Tahsildar, for Adi-Dravidar Welfare, The District
Collector and The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

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

Citation : (2012) WritLR 170

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : Manikumar for M/s. For and Fair Associates, for the Appellant; I.
Arokiyaswamy Govt. Advocate - R1 to R3, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice R. Sudhakar

1. This writ petition is filed to call for the records relating to the gazette publication dated 7.3.2002 form II of Kottaiyur Village, Kallakurichi Taluk

of the Villuppuram District Gazette issued by the 2nd respondent and quash the same and direct the respondents 1 and 2 to forbear from acquiring

the lands covered in the said gazette notification.

2. This writ petition is filed challenging the notification issued u/s 4(1) of the Tamil Nadu Land Acquisition Act addressed by the Collector on

27.2.2002 and gazetted on 7.3.2002. At the time of admission, interim stay was granted and made absolute subsequently.

3. The two legal pleas taken by the learned counsel for the petitioner are as follows:

(i) The notification u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978 (Tamil Nadu Act 31 of 1978) (herein

after referred to as "The Act") has been issued at the behest of the Government and not by the Collector, who is the competent authority u/s 4(1)

of the Act relying upon the decision of this Court in Rajammal and others v. The District Collector, Dharmapuri and another reported in 2008 5

CTC 154.

(ii) The notice in terms of Section 4(2) of the Act was issued on 31.12.2001, enquiry was conducted on 22.1.2002 by the Authorised Officer and

the petitioner gave two representations dated 21.1.2002 and 22.1.2002. In the said two representations, the petitioner has pointed out the infirmity

in the acquisition proceedings and also to the order passed by the District Collector on 12.3.1991 not to acquire petitioner's lands. The extract of

the letter is as follows:

Proceedings of the Collector of South Arcot,

Cuddalore. Present: Thiru A. Elangovan, I.A.S.,

Ref.: W1/3189/91

Dated: 12.3.1991

Sub: Public Grievance Day - Petition present to the Collector of South Arcot on 11.3.91 at Cuddalore -Kallakurichi Taluk - Petitioner Tmt.

Kamalam, W/o Periasamy of Kottaiyur request for deletion of her land from acquisition - orders issued.

Read: Petition of Tmt. Kamalam dated 11.3.1991.....

ORDER:-

The grievance represented by Tmt. Kamalam, wife of (Late) Periyasamy Udayar, a small farmer of Kottaiyur Village of Kallakurichi Taluk that her

lands of meagre extent of ownership may be deleted from acquisition for the provision of House-sites to Adi-Dravidars of the Village has been

considered by the Collector of South Arcot, Cuddalore.

The Special Tahsildar (ADW), Kallakurichi is hereby directed not to cover the lands of the petitioner in any of the acquisition proceedings.

4. In the representations, the petitioner has also pointed out the dropping of the acquisition proceedings on the earlier occasions. The Authorised

Officer after enquiry on 22.1.2002 furnished a report to the District Collector and

thereupon the notification was issued u/s 4(1) of the Act. The copy of the report of the Authorised Officer has not been furnished to the owner/ the petitioner herein so as to enable him to make further representation to the District Collector and therefore, prejudice is caused to the petitioner. The petitioner in the absence of the report could not point out to the District Collector, the infirmity and illegality in the acquisition proceedings. For this plea, the learned counsel for the petitioner refers to the decision in R. Pari v. The Special Tahsildar, Adi-Dravidar Welfare, Devakkottai reported in 2006 4 CTC 609.

5. The learned Government Advocate appearing for the respondent referred to the counter affidavit to state that the representations were considered and rejected and that the petitioner cannot expect the office report, which is meant for public purpose, to be furnished to him and therefore, the copy of the report has not been furnished to the petitioner. On this plea, he prayed that the writ petition should be dismissed.

6. On the first plea with regard to the satisfaction of the District Collector is concerned, in a number of decision, this Court has taken a consistent view that the District Collector alone will be the competent authority to initiate proceedings with regard to the acquisition on being satisfied.

7. In the decision reported in 2008 5 CTC 154 (cited supra) in paragraphs 20,12,28 & 29, the said view has been highlighted.

20. In a very recent case, the issue regarding subjective satisfaction to be arrived at by the Collector came up for consideration before a learned Judge of this Court in M. Nagu and Others Vs. The District Collector and The Special Tahsildar (ADW), , and the learned Judge considered

similar notification as in the present case issued u/s 4(1) of Act 31 of 1978 and held that the notification issued u/s 4(1) was bad in law since it was clear from the records that it was only the Government which satisfied itself about the acquisition and not the District Collector as required by law.

21. Even though it is possible for the Government to delegate some of the functions to the Collector as per the provisions of the relevant statute, it is not possible for the Government to take up the function of a Collector when the statute clearly mandates that the power has to be exercised by the Collector itself. Though the officers like the Collectors are also the limb of the Government, in matters wherein subjective satisfaction of the

Collector has to be arrived at for a particular purpose, the Government cannot substitute its opinion or views in the place of the Collector. The

legislature was very conscious of the fact that in case Government is entrusted with the responsibility to acquire the land it will take its own course

as the file has to be routed through different departments at various levels and the ultimate decision would be taken only after considerable delay.

28. Therefore, it is beyond any cavil that the satisfaction of the Collector is a condition precedent for initiating proceedings for acquisition under

Act 31 of 1978 and failure on the part of the collector to arrive at a subjective satisfaction with respect to the acquisition, vitiates the whole

proceedings. The satisfaction arrived at by the Government cannot be a substitute for the satisfaction to be arrived at by the Collector. Hence, the

impugned land acquisition proceedings initiated on the basis of the satisfaction arrived at by the Government does not satisfy the requirement of law

and as such the same is liable to be quashed.

29. In the result, the writ petition is allowed and the impugned notification is quashed. It is open to the first respondent to proceed afresh in

accordance with law. No costs.

I am in agreement with the reasoning of the learned Judge on the issue that the Collector alone should subjectively satisfy himself with regard to the

acquisition and it cannot be otherwise. On this plea, the petitioners are entitled to the relief.

8. As far as the second plea of the petitioner that the report of the authorised officer has not been furnished is concerned, prejudice is pleaded as

follows:-

It is stated that in the representations, the earlier proceedings of the District Collector not to acquire has been pointed out to the Authorised Officer

so as to desist from acquisition. If the report had been furnished to the petitioners, they could have pointed out to the District Collector with regard

to their objection and as to how it has been erroneously dealt with by the Authorised Officer while submitting the report. This has caused

prejudice.

On this issue, the Full Bench decision in 2006 4 CTC 609, (cited supra) in paragraph 43, considers and holds as follows:-

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.

All the writ petitions are now required to be placed before the learned single Judge.

10. In the above decision, it has been clearly held that a copy of the report of Authorised Officer should be furnished and time should be given to

make further representation to the District Collector. The non-furnishing of the report by the Authorised Officer before the matter could be dealt

with by the District Collector vitiates the proceedings as the petitioner has already established the plea of prejudice in the various representations

given from time to time coupled with the earlier letter of the District Collector dated 12.3.1991.

11. For the reasons as above, the impugned notification is liable to be set aside and accordingly set aside. The writ petition is allowed. No costs.