

(2009) 01 MAD CK 0109
In the Madras High Court
Case No : Writ Petition No. 9887 of 2001

P. Govindaraj

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 17, 4(1), 4(2)

Citation : (2009) 01 MAD CK 0109

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Parthasarathy, for the Appellant; Sneha, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides and perused the records filed in this case as well as the original records circulated by the learned

Government Advocate.

2. The petitioner, aggrieved by the acquisition of his land in Survey Nos. 859/1A and 2 (part) situated at Thekkampatti Village, Mettupalayam

Taluk, Coimbatore District under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (for short

"T.N.Act 31 of 1978"), has filed the present writ petition.

3. The writ petition was admitted by this Court on 15.5.2001. An interim order against dispossession of the lands from the petitioner was also

granted. The interim order came to be vacated on 06.5.2002 since possession was taken over. A counter affidavit has also been filed by the third

respondent justifying the acquisition of the lands for the purpose of providing house sites to the beneficiaries, who admittedly belong to the

Adidraavidar Community of that village.

4. The third respondent being the prescribed authority initiated proposals for the acquisition of lands for the Harijan Welfare Scheme and the notice

dated 15.12.1998 u/s 4(2) was issued and served on the owner of the lands. The original owner received the notice on 06.12.1998. An enquiry

was conducted on 31.12.1998. The land owner did not participate in the enquiry. Instead, the petitioner filed a suit in O.S. No. 193/98 in the

District Munsif Court at Mettupalayam in spite of a specific bar u/s 17 of the T.N.Act 31 of 1978.

5. Necessary proposals were sent to the District Collector. The District Collector accepted the proposal for the land acquisition and a notification

u/s 4(1) was published in the District Government Gazette on 19.3.1999. An Award in 2/99-2000 has been passed on 04.2.2000 and the

compensation amount has been deposited into the Principal Sub-Court at Coimbatore. Possession was taken over on 04.10.2000 and plots were

laid in the land.

6. The following contentions were raised by the petitioner:

(a) The land that is sought to be acquired is the only land by which the petitioner is eking out his livelihood; and

(b) The land has been developed at a cost of Rs. 10 lakhs and he had also mortgaged the land. Further, even while the suit was pending, the land

has been acquired.

7. Before the issues can be decided, it must be stated that this matter was filed at the time when a Full Bench of this Court was called upon to

decide conflicting judgments of this Court on the procedure involved under T.N. Act 31 of 1978. P.K.Misra, J., speaking for the Full Bench

rendered its opinion on 25.8.2006. It has been since reported in 2006 (4) CTC 609 (R. Pari v. The Special Tahsildar (ADW), Devakottai and

Anr.). The Full Bench thereafter directed the individual Writ Petitions to be decided on their merits and in accordance with the direction of the Full

Bench. Thus the connected matters came to be grouped together and were posted before this Court on being specially ordered by the Honourable

Chief Justice.

8. In the counter affidavit dated "nil" (January 2002) filed by the third respondent, it was stated that the petitioner did not participate in the enquiry.

The suit filed by him was not maintainable. The lands were kept barren all these years and that he had spent Rs. 10 lakhs was not believable.

9. The grounds urged by the petitioner is not believable. Since the ruling of the Full Bench in R. Pari's case (cited supra) is the guiding factor, it is

necessary to refer to the following passages found in paragraphs 37, 42 and 43:

37. The desirability of furnishing a copy of the report to enable the land owner to make a further representation to the District Collector does not

mean that in every case, where such report has not been furnished, the ultimate order passed by the District Collector deciding to acquire the land

is automatically vitiated. The scope for judicial interference in the matter relating to acquisition of land obviously being very limited, the Court in

each case is required to find out whether non-furnishing of the report in any way has prejudiced the person concerned. The object of furnishing the

report and affording further opportunity to the land owner to make a further representation is obviously to pinpoint any deficiency in the report of

the authorised officer. If any particular aspect has been highlighted by the land owner and has not been considered by the authorised officer, the

land owner would get a further opportunity to highlight such aspect before the District Collector. In other words, if the authorised officer has

considered the relevant aspects indicated by the objector and made his recommendation, merely because a copy of such report is not furnished

and no further opportunity is given to the land owner, may not be a ground to quash the land acquisition proceedings. On the other hand, if

important aspects, which have been highlighted by the land owner, have been ignored by the authorised officer, it may be reasonable to infer non-

furnishing of such report and non-offering of opportunity to make further representation might have vitiated the ultimate decision of the District

Collector. These are matters to be considered on the basis of the facts and circumstances in each acquisition and it should not be construed that as

a matter of law in every case where copy of the report has not been furnished and opportunity of making further representation had been denied, it

is sufficient to quash such acquisition. Ultimately the Court has to judge the prejudice caused to such person by keeping in view the facts and

circumstances in particular case.

...

42. However, it is necessary to enter a small caveat. The observation made by the Division Bench or the Single Judge regarding requirement to indicate reason while passing the order has to be understood in the context of non-application of mind. Even though in a given case, the order which is communicated to the land owner does not indicate any reason why the objection has been rejected, if the application of mind is reflected in the file even by way of notings and endorsements, the ultimate decision to acquire the land cannot be said to be vitiated merely because the order which is communicated to the land owner/objector does not contain any detailed reasons. The requirement is that the materials on record, that is to say the relevant file, should indicate application of mind to the relevant facts and circumstances and not passing of a formal reasoned order as is required in judicial or quasi-judicial proceedings. The function obviously being administrative in nature, it is futile to expect furnishing of detailed reasons in the order which is communicated to the person. It is necessary to enter such caveat lest it may be construed that in every case, where the order of rejection communicated to the land owner does not contain the reasons, the rejection communicated to the land owner does not contain the reasons, the proceeding stands vitiated. Ultimately the Court is required to find out in each case whether there has been application of mind. Therefore, the brief reasons, which are contemplated, can be given either in the file in the shape of notings, endorsements, etc. or even can be reflected in the order. But mere non-reflection of reasons in the order communicated or in the notice published in the Gazette, would not be sufficient to hold that there has been non-application of mind and the question as to whether there has been application of mind or non-application is required to be considered on the basis of the return filed and the relevant file to be produced before the Court.

43. 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.

10. In the light of the above, the writ petition is misconceived, devoid of merits and accordingly will stand dismissed. No costs.