

(2003) 03 MAD CK 0086

In the Madras High Court

Case No : Writ Petition No. 1203 of 2001

P. Venkatarama Reddy

APPELLANT

Vs

The Special Tahsildar, Adi Dravidar Welfare and The District
Collector

RESPONDENT

Date of Decision : 19-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 03 MAD CK 0086

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

**Advocate : M.S. Subramanian, for the Appellant; T. Koikilavani, for the
Respondent**

Final Decision : Allowed

Judgement

D. Murugesan, J.—The petitioner is the owner of the Punja land measuring 3.05.0 Hectare and 0.72.5 Hectare of Nanja lands in No. 39,

Ayyaneri (East) Village of Pallipattu Taluk.

2. By the impugned 4(1) Notification dated 18.09.2000, published in Thiruvallur District gazette dated 13.11.2000 and the consequential notice by

the first respondent issued in Form-III dated 04.01.2001, certain extent of land belonging to the petitioner is sought to be acquired under Act 31

of 1978 for the purpose of construction of house site for Adi Dravidas.

3. In this writ petition, the petitioner has challenged the above 4(1) Notification and the Form-III notice on the ground that the petitioner was not

given show cause notice prior to the gazette publication as contemplated u/s 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare

Scheme Act, 1978 read with Rule 3 of the Tamil Nadu Acquisition of Land for

Harijan Welfare Scheme Rules 1979, herein after called ""the Act"".

4. In support of the said submission, the learned counsel would rely upon the judgments reported in 2000 (3) L.W 517 (T.M. Lakshmiah Vs. The

Collector of Dharmapuri District, Dharmapuri and Special Tahsildar, Adi Dravidar Welfare, Krishnagiri, Dharmapuri District) and in 1996 WLR

28 (N. Loganathan Vs. The Special Tahsildar, A.D.W. Tiruvellore).

5. The first respondent, The Special Tahsildar, Adi Dravidar Welfare, Tiruthani filed counter in which it is stated that notice issued to the petitioner

in Form-I was refused on 10.03.2000. A further notice was sent on 10.03.2000 by Registered Post which was returned to the first respondent

office undelivered. Hence, the grievance of the petitioner that the Form-I notice was not served is not factually correct. Though some other points

are also raised by the learned counsel for the petitioner, I do not propose to deal with those points in view of the disposal of the writ petition on the

first point itself.

6. ""The Act"" is expropriator in nature. After Notification u/s 4(1) of the Act, no opportunity is contemplated for hearing the owner of the land.

However, such opportunity is contemplated u/s 4(2) of the Act read with Rule 3(1) of the Rules requiring the Officer authorized by the District

Collector to serve a show cause notice in Form-I individually on the owner or on all persons interested in the lands to be acquired. The Act

contemplates only a personal notice. The only safeguard to the land owner to put-forth any objection is by way of responding to the show cause

notice served on him u/s 4(2) of the Act read with Rule 3(1) of the Rules. In that way, the issue of show cause notice assumes importance. In the

absence of such notice, the acquisition proceedings cannot be sustained as has been held by the two Judgments referred supra.

7. Keeping the above in mind, the facts of the case have to be looked into. It is the specific grievance of the petitioner that Form-I notice was not

served personally on the petitioner before Notification u/s 4(1) of the Act. Though the said submission is disputed by the respondents on the

ground that the petitioner refused such a notice on 10.03.2000, the endorsement to the effect that the petitioner has refused to receive the notice

itself is disputed by the petitioner. It is seen that Form - I notice issued under Rule 3(1) of the Rules was signed by the Special Tahsildar on

13.02.2000. There is absolutely no endorsement as to the dates on which attempts were made to serve the notice on the petitioner from

13.02.2000 till 10.03.2000 on which date an endorsement by the Village Administrative Officer is made that the petitioner has refused to receive

the notice on the ground he has disposed the land to one Raghavan. Factually it is not correct as the properties sought to be acquired were ever

sold by the petitioner to Raghavan. Notice issued to land owners by names Raghavan and Kallan was acknowledged by one D. Raghavan. Except

the signature of the Raghavan, I do not find any date of the service of the notice.

8. It is the further case of the respondents that on 10.03.2000 itself, Form-I notice was sent to the petitioner by registered post which was sought

to be served on him on 11.03.2000, 14.03.2000, 15.03.2000 and 16.03.2000 and finally it was returned undelivered on 18.03.2000. The Act

does not contemplate service of notice by registered post. However, there is no explanation as to what prompted the respondent to send a copy of

the notice by registered post on 10.03.2000, when the endorsement of the Village Administrative Officer dated 10.03.2000 said to have been

made to the effect that the petitioner has refused to receive the notice.

9. With the above background, the endorsement dated 10.03.2000 should be considered. In the teeth of the provision of Section 4(2) of the Act

and Rule 3(1) of the Rules, opportunity to file objections cannot be dispensed with in any manner. When once Notification u/s 4(1) is issued,

question of further opportunity to the land owner does not arise. In the circumstances, the obligation on the part of the respondent to take every

effort to serve the notice cannot be dispensed with lightly by making an attempt once and returning the notice with an endorsement that the land

owner has refused. When the notice by registered post sent on 10.03.2000 is sought to be served on the petitioner for almost five days, no

explanation is forthcoming as to why the notice signed by the first respondent on 13.02.2000 was not sought to be served by making attempts

atleast on one or two occasions before the endorsement dated 10.03.2000 was made. It is the admitted case of the respondent that objections

were said to have been made by the petitioner on 12.03.2000. The enquiry was scheduled to be held on 15.03.2000. No enquiry was held even

on the said objections dated 12.03.2000.

10. In view of the above, I do not find that the sole endorsement dated 10.03.2000 made to the effect that the petitioner has refused to receive the

Form-I notice can be the basis for proceeding further with the Land Acquisition Proceeding as the respondents are duty bound to see that the right

of the petitioner to make objections to the Land Acquisition proceedings is not defeated by making atleast one or two attempts to serve the notice.

In this context, I am unable to accept the endorsement made on 10.03.2000 to the effect that the petitioner has refused to acknowledge the notice

as the endorsement itself is doubtful in view of the fact that there was no attempt on the part of the respondent to serve the notice on even one

occasion from 13.02.2000.

11. Further, the fact remains that though in Form-I notice, the enquiry was sought to be conducted on 15.03.2000, no such enquiry was held, but

from a perusal of the file at Page-155, it is seen that a further notice dated 29.03.2000 addressed to the petitioner as to the next date of enquiry on

03.04.2000 is found. There is no corresponding document available evidencing the service of the said notice dated 29.03.2000 on the petitioner.

There is not even a material to show that the said notice was ever sent to the petitioner. Only in the absence of communication of the said notice,

the enquiry is said to have been conducted on 03.04.2000.

12. The grievance of the petitioner is that the land sought to be acquired is the front portion of the other extent of the land owned by the petitioner

and once the land is acquired, the petitioner will have no access to the major portion of the other extent of land. The further grievance exposed by

the petitioner is that earlier other lands belonging to the petitioner were also acquired and there are alternative lands available for acquisition.

Though these grounds cannot be considered by this Court for sustaining the plea of the petitioner, nevertheless law requires an opportunity to the

petitioner to put forth all these objections for consideration by the respondents. The petitioner has been deprived of such an opportunity.

13. In view of the above, the Land Acquisition Proceedings cannot be sustained. Accordingly, the impugned 4(1) Notification made under

R.C./J.1/36295/2000 dated 18.09.2000 published in the Tiruvallur District Gazette on 13.11.2000 and the notice of the first respondent in Form

III in Na.Ka.72/2000 are quashed.

14. This Court is informed that pursuant to the acquisition proceedings, so far the possession of the land has not been taken over. In view of the above, while passing the impugned order, it is made clear that the respondents are at liberty to proceed afresh to acquire the land, if they decide so by following Section 4(2) of the Act read with Rule 3(1) of the Rules by serving personal notice in Form I on the petitioner and after affording opportunity to submit any objection.

15. The writ petition is allowed accordingly. No costs.