

(2005) 08 MAD CK 0054

In the Madras High Court

Case No : Writ Appeal No. 1530 of 2005

Pachaiammal, S. Anandan, S. Alagesan and S. Ramesh

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 23-08-2005

Acts Referred:

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

Citation : (2005) 4 LW 285 : (2005) 4 MLJ 94

Hon'ble Judges : Markandey Katju, C.J.;A. Kulasekaran, J

Bench : Division Bench

Advocate : V. Selvaraj, for the Appellant; V. Raghupathy, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Markandey Katju, C.J.—This writ appeal has been filed against the impugned order of the learned single Judge dated 22.10.2002 passed in

Writ Petition No. 10246 of 1996.

2. We have heard the learned counsel for the appellant and perused the record.

3. The appellants/writ petitioners challenged the notification u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act,

1978 (hereinafter referred to as the "Act") published in the Gazette on 15.2.1996 by the respondent in respect of the land comprised in Survey

No. 129/1/A2 and Survey No. 132/2/E1 of 185 Sooradimangalm Village, Chengai MGR District and to quash the same.

4. The sole contention advanced by the learned counsel for the appellants, which was also the sole contention in the writ petition was that there

was no Harijan Welfare Scheme in existence and hence the notification u/s 4(1)

of the Act was illegal.

5. We regret our inability to accept this contention.

6. Section 4(1) of the Act states as follows:

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.

7. A perusal of Section 4(1) of the Act shows that the notification under that provision can be issued provided the District Collector is satisfied that

it is necessary to acquire any land for the purpose of any Harijan Welfare Scheme.

8. Two things can be noted from Section 4(1) of the Act. Firstly, the satisfaction required u/s 4(1) of the Act is that of the District Collector and

not of the petitioner. No doubt, if it can be pleaded and proved that there was no such satisfaction at all then the notification would be bad in law.

However, in this case, there is not even an averment in any paragraph of the writ petition that there was no satisfaction of the District Collector that

the aforesaid land was required for the purpose of a Harijan Welfare Scheme. All that has been stated in paragraph 7 of the petitioners' affidavit is

that there was no Harijan Welfare Scheme warranting acquisition of the land in question. In our opinion, such a pleading is not sufficient to

challenge the notification u/s 4(1) of the Act. There must be a specific averment in a writ petition challenging the validity of the notification issued u/s

4(1) of the Act that there was no satisfaction of the District Collector that the land in question was required for the purpose of a Harijan Welfare

Scheme. Such an allegation is different from the allegation that in fact there was no Harijan Welfare Scheme when the notification u/s 4(1) was

issued. The Harijan Welfare Scheme can come into existence in future also even after the notification u/s 4(1) of the Act is issued, and it is not

necessary that such a scheme must exist prior to the said notification. This is because Section 4(1) of the Act only requires that the District

Collector must be satisfied that the land in question is required for a Harijan Welfare Scheme, but there is no further requirement that the Harijan

Welfare Scheme must exist prior to the notification u/s 4(1) of the Act.

9. If we are to hold that the Scheme must exist on or before the issuance of the notification u/s 4(1) we will be adding words to the statute,

because then Section 4(1) will read as follows:-

Where the District Collector is satisfied that for any Harijan Welfare Scheme which is in existence it is necessary to acquire any land...

10. Thus, in the garb of interpretation the Court will be adding the words ""which is in existence"" in Section 4(1), which is not permissible. It is a

well settled principle of interpretation that the Court should neither add nor delete words from a statute.

11. In *State of Jharkhand v. Govind Singh* the Supreme Court (vide paragraphs 10 and 11) observed:-

When the words of a Statute are clear, plain or unambiguous, i.e., they are reasonably susceptible to only one meaning, the courts are bound to

give effect to that meaning irrespective of consequences. The intention of the Legislature is primarily to be gathered from the language used, which

means that attention should be paid to what has been said as also to what has not been said (See also *J.P. Bansal Vs. State of Rajasthan* and

Another,). As a consequence, a construction which requires for its support addition or substitution of words or which results in rejection of words

as meaningless has to be avoided. As was noted by the Privy Council in *Crawford v. Spooner* (1846) 6 Moo PC 1 : "We cannot aid the

Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". The view was

reiterated by this Court in *State of Madhya Pradesh and another Vs. G.S. Dall and Flour Mills and Others*, and *Commissioner of Income Tax,*

West Bengal III and Others Vs. Oriental Rubber Works, . Speaking briefly the Court cannot reframe the legislation, as noted in *J.P.Bansal's Case*

(*Supra*), for the very good reason that it has no power to legislate"".

12. The same view was taken by the Supreme Court in *Padmasundara Rao and Others Vs. State of Tamil Nadu and Others*, (vide paragraphs 12

and 14) wherein it was observed that ""the Courts cannot read anything into a statutory provision which is plain and unambiguous"".

13. The notification in question being the notification dated 15.2.1 996 states as follows: "" Whereas, it appears to the Government of Tamil Nadu

that the land specified in the schedule below and situated in 181 Pudupattinam

village, Chengalpattu Taluk, Chengalpattu M.G.R. District is needed

for the purpose of Adi-dravidar Welfare Scheme, to wit for the provision of house-sites to Adi-dravidars, notice to that effect is hereby given to all

to whom it may concern in accordance with the provisions of Sub-section (1) of Section 4 of the Tamil Nadu Acquisition of Lands for Adi-

dravidar Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978);

14. Thus, the notification u/s 4(1) of the Act specifically states that the land in question is needed for Adi-dravidar Welfare Scheme which is

undisputably a Harijan Welfare Scheme as the Adidravidas are Harijans and it is needed for providing house-sites to them.

15. It is well settled in Administrative Law that when there is a recital in an order regarding the satisfaction of the authority concerned required by

the Statute, then this recital places a heavy burden on the writ petitioner to prove that such a factual recital is baseless vide *The Barium Chemicals*

Ltd. and Another Vs. The Company Law Board and Others, which followed the decision of the Federal Court in *Emperor v. Shibnath Banerjee*

AIR 1945 FC 75

16. In *The Swadeshi Cotton Mills Co. Limited Vs. The State of U.P. and Others*, , a Constitution Bench of the Supreme Court observed (vide paragraph 11):

The difference between a case where a general order contains a recital on the face of it and one where it does not contain such a recital is that in

the latter case the burden is thrown on the authority making the order to satisfy the Court by other means that the conditions precedent were

fulfilled, but in the former case the Court will presume the regularity of the order including the fulfilment of the conditions precedent; and then it will

be for the party challenging the legality of the order to show that the recital was not correct and that the conditions precedent were not in fact

complied with by the authority: (see the observations of Spens, C.J in AIR 1943 75 (Federal Court) which were approved by the Privy Council in

AIR 1945 156 (Privy Council) at p.161).

17. In the present case, in our opinion, the petitioners have not been able to discharge that heavy burden on them.

18. Moreover there is no averment in the petition that before publishing the notification u/s 4(1) of the Act proceedings u/s 4(2) of the Act had not

been taken.

19. For the reason given above, there is no merit in this writ appeal and it is dismissed.