

(2003) 10 MAD CK 0095

In the Madras High Court

Case No : Writ Petition No. 16210 of 1995

P.S. Subramaniam Mudaliar (deceased) and Manimekalai

APPELLANT

Vs

The Collector and The Special Tahsildar, Land Acquisition
(ADW)

RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4(3)

Citation : (2004) WritLR 782 : (2004) WritLR 401

Hon'ble Judges : D. Murugesan, J

Bench : Single Bench

**Advocate : V. Lakshminarayanan, for the Appellant; M.E. Raniselvam,
Government Advocate, for the Respondent**

Final Decision : Allowed

Judgement

D. Murugesan, J.—The deceased petitioner was the owner of an extent of 0.75.0 hectares of land in S. No. 403/1, 3, 4, 404/1 and 4 of Kilachur Village, Vellore Taluk, North Arcot Ambedkar District. By the impugned notice issued in Form-I under Rule 3(i) and under sub-section (2) of Section 4 of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978 (31 of 1978), the land of the petitioner was sought to be acquired for providing house sites to the Adi-dravidars. Pending writ petition, the petitioner expired and hence his daughter has been brought on record as the petitioner.

2. The petitioner has challenged the acquisition proceedings on the ground that as per sub-section (2) of Section 4 of the Act 31 of 1978, 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 land, to show cause why the land should not be acquired. Under the provisions of the Act, the District Collector is alone empowered to acquire the land, but he is also empowered to authorise any

officer to act in his behalf. There is a further pre-condition that when any officer is authorised by the District Collector under sub-section (3)(b), whereby such officer authorised by the District Collector shall make a report to the District Collector with his recommendations. The impugned Form-I notice has been issued by the Special Tahsildar (Land Acquisition), Adi-dravidar Welfare, Vellore who has not been specifically authorised by the District Collector under sub-section (2) of Section 4 of the Act. In the absence of such authorisation, the Special Tahsildar (Land Acquisition), Adi-dravidar Welfare, Vellore has no power to initiate acquisition proceedings.

3. The learned Government Advocate, on the other hand, placing reliance on the counter affidavit would submit that the District Collector has authorised the Special Tahsildar by notification published in the North Arcot Ambedkar District Gazette dated 20.12.95. In view of the said notification, it must be construed that the Special Tahsildar (Land Acquisition), Adi-dravidar Welfare, Vellore has the authority to issue notice and merely because this notification was published after the impugned Form-I notice, that will not render the land acquisition proceedings illegal.

4. I have considered the submissions of the respective learned counsel. The relevant section for the purpose of disposal of this writ petition is Section 4 of Act 31 of 1978. The said section reads as under:-

S.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.

(2) 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 land, to show cause why it should not be acquired.

(3)(a) The District Collector may, where he has himself called upon the owner or other person to show cause under sub-section (2), pass such orders as he may deem fit on the cause so shown;

(b) Where any officer authorised by the District Collector has called upon the owner or other person to show cause under sub-section (2), the officer so authorised shall make a report to the District Collector containing his recommendations on the cause so shown for the decision of the District Collector. After considering such report the District Collector may pass such orders as he may deem fit."

Sub-section (1) of Section 4 empowers the District Collector to acquire any land by publishing in the District Gazette that he has decided to acquire the land. Before publication of notice in the District Gazette, a notice in Form-I under Rule

3(i) of the Rules should be served on the person interested. For issuance of notice and calling for objections, the power is vested with the District Collector of course, with an exception enabling the District Collector to authorise any officer in his behalf. Such authorisation is a pre-condition to confer a right on the officer to initiate the acquisition proceedings under sub-section (2) of Section 4 of the Act. The said officer so authorised, after considering the objections filed by the person interested, if any, shall again submit his report with recommendations only to the District Collector to enable him to take action under sub-section (1) of Section 4 for publication in the official gazette. This provision is presumably to enable only the District Collector to either initiate the land acquisition proceedings or to pursue further. Though in paragraph 7 of the affidavit filed in support of the writ petition, the petitioner has raised a specific ground that the second respondent viz., the Special Tahsildar (Land Acquisition), Adi-dravidar Welfare, Vellore is not competent to proceed with the acquisition of lands and it is the first respondent who is the competent authority, while the said averment is controverted in the counter affidavit in paragraph 7, it is silent as to the ground of the petitioner questioning the competency of the second respondent to proceed with the land acquisition. In the absence of specific denial, it must be construed that there was no authorisation by the District Collector empowering the second respondent to initiate the land acquisition proceedings. This is further fortified by the fact that the District Collector has authorised the Special Tahsildar (Land Acquisition), Adi-dravidar Welfare, Vellore for the purpose of sub-sections (2) and 3(b) of Section 4 to acquire the land situate in the revenue taluks of Vellore and Arcot, by notification dated 20.12.95. It is therefore clear that prior to the said notification, the Special Tahsildar (Land Acquisition), Adi-dravidar Welfare, Vellore was not authorised by the District Collector. The impugned notice in Form-I was dated 19.9.95, on which date admittedly, the Special Tahsildar (Land Acquisition), Adi-dravidar Welfare, Vellore was not competent to initiate land acquisition proceedings, as he was not authorised by the District Collector.

5. In that view of the matter, the impugned notice has been issued by the second respondent without any authority of law. Consequently, the impugned notice is set aside and the writ petition is allowed. It is made clear that the order in the writ petition shall not stand in the way of the respondents to initiate land acquisition proceedings strictly in accordance with the provisions of law more particularly, u/s 4 of the Act 31 of 1978. No costs. Consequently, W.P.M.P. No. 25773 of 1995 is closed.