
(2015) 03 MAD CK 0306

In the Madras High Court

Case No : W.A. No. 32 of 2012 and M.P. No. 2 of 2012

R. Harikrishnan

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Constitution of India, 1950 — Article 46

Citation : (2015) 03 MAD CK 0306

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Advocate : A. Palaniappan, for the Appellant; R. Rajeswaran, Special Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

G. Chockalingam, J.—Being aggrieved by the dismissal of the writ petition in W.P. No. 9273 of 2009, by an order dated 04.08.2011, the writ petitioner has preferred this appeal.

2. Brief facts of the appellant/writ petitioner are as follows:--

"[i] The appellant/writ petitioner is the owner of the land to an extent of Acre 1.00 cents out of a total extent of Acre 2.04 cents situated in Survey No. 256/10B at Sevoor Village, Arani Taluk, Thiruvannamalai District. It is the further case of the appellant that he had purchased the aforesaid property by virtue of a registered Sale Deed dated 18.11.2004 registered as Document No. 4847 of 2004 on the file of the Sub Registrar, Arani. The appellant had purchased the aforesaid property for the purpose of erecting a Rice Mill to provide the needs of small farmers in and around the said locality and the said property is immediately abutting the road. The appellant had been planning for erection of the said Rice Mill in the said property. In the meantime, the respondents had initiated proceedings for acquisition of the said land for the purpose of providing house sites to Adi Dravidas of Sevoor Village, Arani Taluk, Thiruvannamalai

District and the first respondent/District Collector, Thiruvannamalai District, had issued a notice under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [hereinafter referred to as "the Act"].

[ii] it is the further case of the appellant that the first respondent/District Collector through the second respondent/Special Tahsildar had initiated the proceedings under Section 4(2) of the Act and vide Rule 3(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules had issued Form - I notice dated 28.07.2008 bearing reference No. A739/08, calling upon the appellant to submit his objections with respect to acquisition of land. According to the appellant, he had given his objections to the said show cause notice vide his communication dated 08.08.2008. The said objection was not acceded by the respondents and there was no further communication with regard to the decision of the first respondent/District Collector in respect of the show cause notice and the reply given by the appellant by way of objection. It is the further case of the appellant that the second respondent/Special Tahsildar had not communicated any report based on the aforesaid show cause notice and his objection and the appellant had not given any opportunity of personal hearing or provided him an opportunity to place all necessary documents in this regard. The further case of the appellant is that all of a sudden, the second respondent had issued the Form III notice as contemplated by Rule 5(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules 1979, on 18.03.2009. The said notice dated 18.03.2009 bearing Na.Ka.A739/2008 was received by the appellant on 29.03.2009. By the terms of the said notice, he was called for enquiry and he was also called upon to place his objection, if any, with regard to the extent of the property. According to the appellant, his objections were never considered by the first respondent/District Collector and the second respondent/Special Tahsildar has not even communicated the report in respect of the aforesaid enquiry contemplated under Section 4(2) of the Act and that the appellant came to know that a notification, dated 06.03.2009, under Section 4(1) of the Act has been published in the Thiruvannamalai District Gazette by the first respondent/District Collector. Aggrieved by the decision of the first respondent in publishing the notification, the appellant filed a writ petition in W.P. No. 9273 of 2009 before this Court praying to quash the impugned notification dated 06.03.2009 published in the District Gazette, Thiruvannamalai, dated 26.02.2009."

3. The learned Single Judge, after hearing both sides, dismissed the writ petition filed by the appellant/writ petitioner by holding as under:--

"19. The Form II prescribed is a mechanical reproduction of the Form used under the Central Act 1 of 1894. That is why the Full Bench cautioned the Courts to go by substance and not by Form while deciding the validity of the acquisition. It is high time the State Government modifies the Form prescribed in tune with the spirit of the T.N. Act 31 of 1978.

20. In any event, the issue raised by the learned counsel for the petitioner based on the printed Form cannot clinch the issue in favour of the petitioner for the

reasons stated above.

21. In the light of the above, the writ petition is misconceived, devoid of merits and accordingly will stand dismissed."

As against the said order passed by the learned Single Judge dismissing the writ petition, the appellant/writ petitioner is before this Court by way of the above writ appeal.

4. Learned counsel for the appellant would contend that the learned Single Judge has failed to appreciate the fact that inasmuch as the impugned publication made by the first respondent in the form of notification bearing Reference No. K1/4890/2009, dated 26.02.2009 under Section 4(1) of the Act in respect of the acquisition of the land belonging to the appellant is in gross violation of the mandatory procedure, the dismissal of the writ petition challenging the aforesaid impugned notification is unsustainable in law. The learned counsel for the appellant specifically contended that prescribed forms are annexed under the Act and when the District Collector is the competent authority to issue the notification under Section 4(1) of the Act, he has to consider whether the land is necessary for the purpose of providing house sites to the Adi Dravidas. Further, the learned counsel for the appellant would contend that the learned Single Judge had proceeded on the wrong footing that the first respondent/District Collector has acted by satisfying himself with regard to the acquisition process without giving any specific finding in the said aspect and the entire order of the learned Single Judge is based upon the presumption and assumption that the first respondent has performed his functions. The learned counsel for the appellant would also contend that the learned Single Judge has failed to consider the fact that the first respondent had deliberately and wantonly failed to satisfy himself in the form of a subjective satisfaction with regard to the objection raised by the owners of the land i.e., the appellant in respect of the aforesaid matter and had failed to communicate such a decision. The learned counsel for the appellant would contend that the learned Single Judge has failed to consider that the entire notification, which is sought to be quashed in the writ petition, is based upon the decision of the Government to provide lands covered in the schedule to the said impugned notification for the purpose of providing free house sites under the provisions of Section 4(1) of the Act.

5. Further, the learned counsel for the appellant would contend that the learned Single Judge has failed to consider the fact that the first respondent/District Collector has initiated proceedings under Section 4(2) of the Act and consequently, the impugned notification was issued under Section 4(1) of the Act. But the learned Single Judge has failed to consider the above stated facts and circumstances and dismissed the writ petition. Hence, the learned counsel for the appellant prayed that the order of the learned Single Judge has to be set aside and the writ appeal has to be allowed.

6. Per contra, learned Special Government Pleader appearing for the respondents

would vehemently contend that the learned Single Judge, after going through the entire records pertaining to land acquisition and after analysing all the material documents placed before this Court, came to a correct conclusion that the notification under Section 4(1) of the Act was correctly issued. He would further contend that as per the Rules and Forms mentioned in the Act, the principles and provisions were clearly followed by the respondents and acquisition proceedings are made in accordance with law and therefore, there is no illegality or infirmity in the order passed by the learned Single Judge. Hence, the learned Special Government Pleader prayed that the appeal has to be dismissed.

7. We have considered the submissions made by the learned counsel on either side and carefully perused the original files produced before this Court.

8. In this case, On a perusal of the original files produced before this Court, it is seen that before acquiring the lands for Harijans Welfare Schemes for providing house sites to Adi-Dravidar, the District Collector satisfied himself and issued Notification under Section 4(1) of the Act. The proceedings of the District Collector reads as follows:--

9. On a perusal of the above proceedings of the District Collector, Thiruvannamalai District, we are of the considered view that the District Collector, who is the competent authority under the Act 31/78, after considering the objections of the land owners and after satisfying himself only, issued the notification under Section 4(1) of the Act and authorised the Special Tahsildar to proceed with the acquisition proceedings. Hence, the arguments of the learned counsel for the appellant that as per the Act, the District Collector has not considered the objections of the land owners and the District Collector has not satisfied himself about the acquisition are not correct and therefore, the said arguments are liable to be rejected.

10. It is admitted by the learned counsel for the appellant that Form Nos. I and II as prescribed in the Act was served to the appellant by the competent Authority. In this regard, it is worth referring to the Statement of Objects and Reasons and also Sections 2, 3(g) and 4(1)(2) and (3) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [hereinafter referred to as "the Act"] which read as under:

"STATEMENT OF OBJECTS AND REASONS

Provision of house-sites, pathways, burial grounds or any other amenities for the benefit of Harijans is a socio-economic measure and the necessity to provide them needs no emphasis. This Government find that the existing Land acquisition Act, 1894 (Central Act I of 1894) does not help achieving this object in a short period as there are number of provisions in the Act which are time-consuming. This Government is, therefore, of the view that it is necessary to quicken the process of land acquisition by conferring powers to prescribed officers and also making provision for payment of compensation in instalments for phasing the financial commitment of the Government.

2. This Bill seeks to achieve the above objects.

1....

2. Declaration.--It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles laid down in Part IV and in particular Article 46 of the Constitution.

This section contains declaration that this Act is enacted to give effect to the policy of the State towards securing the principles laid down in Part IV (Directive Principles of State Policy of the Constitution and, in particular, Article 46 so as to enable for acquisition of Land of Harijan Welfare Schemes.

3. Definitions.--In this Act, unless the context otherwise requires,-

(a) to (f).....

(g). "Harijan Welfare Scheme" means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling-house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans;

(h) to (j).....

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."

11. Learned counsel for the appellant, in support of his stand, has relied on the following judgments:

"[i] Jainabi Vs. The State of Tamil Nadu .

"6. However, as per sub-section (2) of Section 4, before a notification under Sub-section (1) is published, the District Collector or any officer authorised by the District Collector in this behalf, shall call upon the owner or any other person to show cause why the land should not be acquired. By that section, the District Collector is only empowered to delegate his power to any officer only for the purpose of showing cause to the owner or any other person who may be interested in such land to show cause as to the acquisition. Sub-section (3)(a) of Section 4 contemplates that where the District Collector himself has called upon the owner or other person to show cause under sub-section (2), he may pass orders as he may deem fit on the cause so shown. On the other hand, under sub-section (3)(b) of Section 4, where the District Collector had authorised any officer to call upon the owner or other person to show cause and the officer so authorised shall make a report containing his recommendations, and the District Collector, after considering such report, may pass such orders as he may deem fit. The satisfaction as to the very Harijan Welfare Scheme and the consequential decision to acquire the land are vested in the District Collector only in terms of Section 4(1) of the Act. The District Collector may authorise any of the officer to call for explanation and conduct enquiry from the owner or any other person aggrieved, and such authorised officer can only make his recommendations to the District Collector and after considering such recommendations, the District Collector has to again satisfy himself as to the acquisition. The issue of notice under Rule 3(ii) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 also contemplates that the District Collector, after passing orders under sub-sections (2) and (3) of Section 4, is satisfied that it is necessary to acquire the land issue notice in Form II to that effect and that such notice shall be published in the District Gazettee. The issue of even a notice in Form II is in the name of the District Collector only.

7. From the above, this Court could draw no other interference except to find that when the legislature intended that the authority to exercise the power of issue of notice in Form II as well the notice under Section 4(1) shall be the District Collector only, the Government, in exercise of power under Section 16, cannot delegate such power to any other authority. That apart, none of the provisions of the Act even empowers the District Collector to authorise any officer to issue notice under Section 4(1), except an authorised officer for the purpose of holding enquiry under sub-section (2) of Section 4 of the Act.

8. On the above discussions, we hold that the District Collector is the only competent authority to exercise the power under Section 4(1) of the Act for issue of notification, and such power cannot be delegated to any other officer including the Additional Collector in whose name the notification has been issued. We also hold that the power under Section 16 can be invoked by the Government only in respect of the power conferred or any duty imposed on them and such power cannot be extended by delegating the power of the District Collector to issue the notification under Section 4(1) to the Additional Collector. As we have found merit in the first contention and, on such finding, the notification is liable to be

quashed, we are not inclined to go into the next contention of the learned counsel for appellant relating to the failure on the part of the respondents to serve the proceedings of the Tahsildar. Accordingly, the writ appeal is allowed and the acquisition proceedings are quashed."

[ii] R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector, (2006) 3 LW 1000 : (2007) 2 MLJ 706

"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."

12. In this case, on the side of the appellant/writ petitioner, there is no dispute regarding the fact that before issuing the notification under Section 4(1) of the Act, objection was called for from the land owners and the land owners had also submitted their objections to the competent authorities. But the vehement contention of the learned counsel for the appellant is that the District Collector is the competent authority and he has not satisfied himself and also not considered the objections and given a finding regarding the subjective satisfaction for acquiring the land.

13. On a perusal of the records produced, it is seen that the District Collector before issuing the notification under Section 4(1) of the Act, had considered the objections of the land owners and overruled the objections. Hence, we are of the considered view that there is no illegality or infirmity in the order passed by the learned Single Judge in W.P. No. 9273 of 2009, dated 04.08.2011 and the same does not warrant any interference by this Court.

In the result, the writ appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.