

(2011) 08 MAD CK 0473

In the Madras High Court

Case No : Writ Petition No. 9273 of 2009 and M.P. No. 1 of 2009

R. Harikrishnan

APPELLANT

Vs

The Collector, The Special Tahsildar Harijan Welfare Scheme
(Polur) and The Government of Tamil Nadu

RESPONDENT

Date of Decision : 04-08-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 6

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

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 — Rule 3, 3(1), 5(1)

Citation : (2011) 08 MAD CK 0473

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Palaniappan, for the Appellant; R M. Muthukumar, GA, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner has come forward to file the writ petition, challenging the notification issued by the District Collector in the Tiruvannamalai District Government Gazette dated 06.03.2009 made u/s 4(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Schemes Act, 1978 (for short Act 31 of 1978) in respect of the acquisition of the lands of the Petitioner to the extent of Acre 1.00 cents (hectare 0.40.5) in Survey No. 256/10B4 situated in Sevoor Village, Arani Taluk as well as the subsequent proceedings and to forbear the Respondents from any manner interfering with the peaceful possession and enjoyment of the property by the Petitioner.

2. The writ petition was admitted on 15.05.2009. Pending the writ petition, this Court granted an interim stay of dispossession of the land. Since the Respondents did not file any counter, this Court directed the original file to be produced for perusal by this Court. Accordingly, the learned Government

Advocate produced the original file for perusal by this Court and it was also perused.

3. It is the case of the Petitioner that he had purchased the land by a registered sale deed dated 18.11.2004 for consideration. It was claimed that the land was purchased for the purpose of putting up a Rice Mill to cater the needs of the people. But when the land was sought to be acquired for granting free house sites to the Adi Dravidar People of the Sevoor Village, the Petitioner sent a representation stating that establishing Adi Dravidar Housing Scheme closer to the village may result in frequent clashes. The ground water was also not fit for consumption and the road abutting the land is a narrow road.

4. Notwithstanding the same, a notification u/s 4(1) was published in the Government Gazette on 06.03.2009. Thereafter, when the Petitioner was asked to attend the enquiry under Rule 5(1), the Petitioner has filed the present writ petition.

5. The contention raised by the Petitioner was that his objections were not considered. Instead of the District Collector satisfying himself, the Gazette Notification shows the satisfaction was that of the Government and therefore, on that short ground, the acquisition must fail.

6. Mr. A.Palaniappan, learned Counsel for the Petitioner referred to the following judgments in support of his contentions:

i) The Land Acquisition Officer and Special Tahsildar (LA), Adi Dravida Welfare Coimbatore and Anr. v. R.Manickammal and Ors. (2002 (2) CTC 1)

ii) Jainabi v. The State of Tamil Nadu rep by the Secretary to the Government 2006 (5) CTC 163).

iii) M. Nagu and Others Vs. The District Collector and The Special Tahsildar (ADW), .

7. The learned Counsel also referred to the judgment of the Full Bench in R. Pari v. The Special Tahsildar Adi-Dravidar Welfare Devakottai and Anr. reported in 2006 (4) CTC 609 in support of his contention.

8. But however this Court after perusing the file is fully satisfied that the District Collector had taken appropriate steps in acquiring the land and he had applied his mind to the case on hand. The file nowhere discloses that the matter was dealt with at the Government level and the satisfaction that is reflected in the file is that of the District Collector and not of the Government. The confusion arose only because the District Collector had utilised the same Form as used under the Central Act for the purpose of Gazette publication.

9. 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.

10. 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.

(Emphasis Added)

11. The other contention that the District Collector was not satisfied and it was the Government's satisfaction, it must be stated that the original file produced shows that there is No. reference to any Government's intervention in this case. On the other hand, the District Collector's personal satisfaction is clearly reflected in the file. The Gazette Notification produced by the Petitioner cannot be the basis for determination of the issue. As directed by the Full Bench in R.Pari's case, (cited supra), it is ultimately that the file must reflect the

satisfaction of the Collector and the Court must be satisfied with the procedure adopted by the Respondents (see the extracts reproduced in para 10).

12. The Supreme Court vide its decision in *Delhi Administration Vs. Gurdip Singh Uban and Others*, , dealt with the question of recording reasons in case of declaration issued u/s 6 of the Land Acquisition Act, 1894. The Supreme Court in that decision in para 49, had observed as follows:

No reasons or other facts need be mentioned in the Section 6 declaration on its face. If the satisfaction is challenged in the Court, the Government can show the record upon which the Government acted and justify the satisfaction expressed in Section 6 declaration.

These observations will apply in its entirety to the case on hand.

13. Notwithstanding the binding precedents referred to above, the following decisions were cited at the bar in support of their submissions regarding the lack of satisfaction by the District Collector before issuing the notification u/s 4(1) of the T.N.Act 31 of 1978:

i. 2002 (2) CTC 1 (DB) (*The Land Acquisition Officer and Special Tahsildar (LA) and Anr. v. R. Manickammal and Ors.*);

ii.(2006 (5) CTC 163) *Jainabi v. The State of Tamil Nadu* rep by the Secretary to the Government

iii. *M. Nagu and Others Vs. The District Collector and The Special Tahsildar (ADW)*, ;

14. In the decision reported in 2002 (2) CTC 1 (cited supra), the passage found in para 3 (extracted below) will show that in that case there was a governmental intervention contrary to the opinion of the District Collector:

3.... the Collector has initiated proceedings and issued draft notification u/s 4(1), which has been gazetted on 17.7.1997. Objections were raised against the acquisition and the Collector has made an enquiry into the same. The Collector has opined that the value of the land was high and prohibitive and it was not desirable to acquire the lands for the public purposes notified. But the Secretary to Government has intervened in the matter and issued a mandate to the Collector to go ahead with the acquisition, in spite of the report of the Collector to the contra. A question was raised before the learned Single Judge challenging the jurisdiction of the Government to intervene on the ground that it was for the Collector to exercise the said power and the Collector having been satisfied that the lands should not be acquired, the Government ought not to have interfered in the matter.

15. In the decision reported in *M. Nagu and Others Vs. The District Collector and The Special Tahsildar (ADW)*, , though was rendered subsequent to the Full Bench in *R.Pari's* case, there is No. reference to it. Hence, the notification issued under Form II (Rule 3(ii)) of the Tamil Nadu Acquisition of Land for Harijan

Welfare Schemes Rules, 1979 (for short "the Rules") came to be quashed on the face of the notification as can be seen from the passages found in para 19, which is as follows:

19. In view of the categoric pronouncement of the legal position by the Division Bench that the Government is different from the Collector in the matter of arriving at the satisfaction for acquiring land for Harijan Welfare Schemes under the Act 31/78, the contention of the learned Government Advocate that the District Collector also forms part of the Government and there is No. distinction is only a fallacy. Therefore, looking into at any angle, I have No. hesitation to conclude in this case that apart from non-service of notice u/s 4(2) read with Rule 3(1), the notification u/s 4(1) is bad in law, since it is clear from the records that it is only the Government which has satisfied itself as to the requirement of the Harijan Welfare Schemes and not the District Collector as required under the law

Hence, the said decision cannot be said to be laying down the correct proposition of law.

16. In the case on hand, in the original file produced by the learned Special Government Pleader, there is neither any reference to any Government's instruction nor the Collector being directed by the Government. On the contrary, it clearly shows the Collector's independent application of mind as required under the Tamil Nadu Act 31 of 1978.

17. The statutory notification issued u/s 4(1) and published in the District Gazette gave rise to this mischief and gave an handle to the Petitioner to raise such an issue. Form II prescribed under Rule 3(ii) of the Rules was clearly responsible for the same.

18. Form II in which the notification is issued may be reproduced below:

FORM II (See Rule 3(ii)) NOTICE u/s 4(1) of THE TAMIL NADU ACQUISITION of LAND FOR HARIJAN WELFARE SCHEMES ACT, 1978.

WHEREAS it appears to the Government of Tamil Nadu that the land/lands specified in the Schedule below and situated in the _____ village, _____ taluk, _____ district, is/are needed for the purpose of Harijan Welfare Scheme to writ, _____ notice to the 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 Land for Harijan Welfare Schemes Act, 1978 (Tamil Nadu Act 31 of 1978).

AND WHEREAS, it has become necessary to acquire immediate possession of the land/lands in the Schedule below;

NOW, THEREFORE, in exercise of the powers conferred by Sub-section (1) of Section 4 of the said Act, the Collector of _____ district hereby directs that the land / lands be acquired under the provision of the said section.

(Emphasis Added)

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. No. costs. Consequently, connected miscellaneous petition is closed.

22. Before it is concluded, it must be noted that the constitutional validity of T.N. Act 31 of 1978 was upheld by the Supreme Court in the year 1995 and a Full Bench of this Court has settled the controversy on the modalities of the procedure involved in the Land Acquisition for Harijan Welfare Schemes in the year 2006. It is a pity that these cases which are filed one decade before have virtually frustrated the welfare scheme conceived for the welfare of Dalits. Thirty years have gone by and the law conceived for the Dalits remains a paper proposition.

23. A number of anti-discrimination statutes and positive-benefit provisions exist in Indian law for the protection and benefit of dalits, tribals, and other backward classes of society. But the implementation and enforcement of these laws is poor. Dalits face social, linguistic and systematic barriers that become virtually impossible to overcome in the face of an often hostile system and an insensitive civil administration. The entire system is designed to exclude and ostracize Dalits.

24. Hence, the Respondent District Collector is directed to expedite the implementation of the scheme in right earnest.