

(2008) 03 MAD CK 0193

In the Madras High Court

Case No : Writ Appeal (MD) No. 148 of 2008 and M.P. (MD) No. 2 of 2008

R. Rasappa Gounder

APPELLANT

Vs

The District Collector and The Special Tahsildar, Adi-Dravidar
Welfare Branch

RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

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

Citation : (2008) 03 MAD CK 0193

Hon'ble Judges : P.K. Misra, J; P. Murgesen, J

Bench : Division Bench

Advocate : S.S. Sundar, for S. Siva Thilagar, for the Appellant; Pala Ramasamy,
Special Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—Heard the learned Counsels appearing for the parties.

2. The present Appellant had filed W.P. No. 2329 of 2004 for quashing the notification issued u/s 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (Act 31/1978), hereinafter referred to as "the Act".

3. The main contention raised in the writ petition was to the effect that the Collector, without application of mind to the objection raised by the owner of the land, had mechanically passed orders relating to issuance of notification for acquisition of the land. The notification relates to acquisition of land in Survey No. 247 and 239/1A in Irulakudumbanpattty village, Oddanchatram taluk. Upon receipt of the notice issued by the Special Tahsildar for the proposed acquisition of the land of the Appellant for using the same as pathway to the burial ground, the Appellant submitted objection contending inter alia that the land was being used as an agricultural land and would be bifurcated by the user and an alternative pathway was available already to reach the existing burial ground and, therefore, there is no necessity to acquire the land. The Special Tahsildar

made enquiry into the matter and submitted a report before the Collector and thereafter the notification u/s 4(1) of the Act was issued. The relevant portion of the notification is to the following effect:

Since it appears to the Tamil Nadu State Government, that the lands described in the following schedule and situated in Oddanchatram Village, Oddanchatram Taluk, Dindigul District are required for the purpose of Adi Dravidar people residing at Irulakudumbanpatti Village, Oddanchatram Taluk, notice is issued hereby to all the person concerned in accordance with Sub-section 1 of Section 4 of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (Tamil Nadu Act 31/1978).

It is hereby ordered by the District Collector, Dindigul District that the lands mentioned in the schedule below are acquired in exercise of the power conferred u/s 4(1) of the above said Act, as the lands are immediately required.

4. In the present appeal, the learned Counsel for the Appellant submitted that under the provisions contained in the Act, the power is vested with the Collector to consider the necessity of the acquisition and to pass orders regarding acquisition. However, in the present case, notification itself indicates that the satisfaction regarding requirement was of the Tamil Nadu State Government. The other allied contention is to the effect that the decision to acquire the land was taken by the Collector without application of mind.

5. Section 4 of the Act being relevant, is extracted hereunder:

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 to 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.

6. A perusal of the aforesaid provision makes it amply clear that it is the District

Collector who is required to take an appropriate decision in the matter. The relevant portion of the notification, which has already been extracted, indicates as if the satisfaction was that of the Tamil Nadu State Government. There is no indication in such notification that the District Collector was satisfied regarding the requirement to acquire the land. Under the Act, power has been statutorily conferred on the Collector to consider the requirement for the acquisition. But, in the present case, notification issued by the Collector indicates as if the satisfaction was that of the State Government. Thus, it is obvious that notification suffers from the vice of non-application of mind.

7. A statutory authority is not expected to come to a particular conclusion on the basis of outside dictation as has been observed by the Supreme Court in *R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector*, .

8. Apart from the above, we have gone through the entire file produced by the State Government to consider as to whether there had been independent application of mind. The materials indicate:

In the sketch, S. No. 249 is shown in pink colour. There is a foot pathway from S. No. 249, which passes through S. Nos. 247 and 249 and reaches the main road. From the main road, one can reach the burial ground. A well laid pathway is available in S. No. 249 towards west and then north and it joins the main road, which leads to the burial ground-Government has proposed to acquire the land situated in S. No. 247 to form a road to reach the burial ground. The proposed land runs on the middle of S. No. 247. The owner of the land has submitted an objection to the Special Tahsildar stating that if the said land is acquired and the dead bodies are taken through the said land, the crops would be destroyed and that it would result in communal clash. The objection of the land owner about the damage to the crops and the possibility of a communal clash had not been considered. According to the Government, burial ground is situated in S. No. 347. But in the plan produced before court, it is shown that the burial ground is situated in S. No. 345/14.

9. In the Full Bench decision of this Court reported in 2006 (4) CTC 609 : 2006-3-L.W. 1000 (*Pari R. v. The Special Tahsildar, Adi-Dravidar Welfare, Devakkottai*), it was observed:

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 nothings 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 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.

10. Keeping in view the observations in the decision of the Full Bench, we have examined the file. The notes and endorsement nowhere indicate the application of mind of the Collector regarding the requirement to acquire land, particularly when it had been specifically indicated in the objection that a well-laid alternative pathway to reach the burial ground is in existence. On the other hand, the materials indicate as if the entire pressure to acquire the land extorted by the purported beneficiaries was through the communications received from the Government. In the above context, the conclusion in the notification to the effect "It appears to the Tamil Nadu State Government that the lands...are required for the purpose of Adi Dravidar people" assumes much more significance. A close perusal of the relevant file clearly indicates that the Collector has mechanically

issued direction for acquisition of the land without semblance of application of mind to various facts and circumstances including the objection raised by the land owner and it is apparent that the Collector has simply give a short shrift to the objection by simply observing "discussed today. Notification accepted".

11. For the aforesaid reasons, we are of the considered opinion that the order passed by the learned single Judge cannot be sustained and the notification issued u/s 4(1) of the Act is required to be quashed. The writ petition is accordingly allowed. No costs.