

(2008) 12 MAD CK 0172

In the Madras High Court

Case No : Writ Petition No. 19109 of 1999

Rethinaboobathy Ammal

APPELLANT

Vs

The District Collector, The Special Tahsildar, Adi Dravidar
Welfare and Pakkirisamy

RESPONDENT

Date of Decision : 03-12-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 6

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 — Section 4,
4(1), 4(2), 5(1)

Citation : (2008) 12 MAD CK 0172

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : M. Venkatachalapathy, SC for M. Sriram, for the Appellant; A. Arumugam, Spl.G.P. (R1 and R2) and K. Subburam, (R3), for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides and perused the records filed in this case as well as the original records circulated by the learned Special Government Pleader.

2. The petitioner, aggrieved by the acquisition of her land in Survey No. 372/1 situated at Nellithoppu village, Papanasam Taluk, Thanjavur District under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (for short "T.N. Act 31 of 1978"), has filed the present writ petition.

3. The writ petition was admitted by this Court on 01.12.1999. An interim order against dispossession of the lands from the petitioner was also granted. The interim order came to be made absolute on 12.9.2001. A counter affidavit has also been filed by the second respondent justifying the acquisition of the lands for the purpose of providing house sites to the beneficiaries, who admittedly belong to the Adidravadar Community of that village.

4. The second respondent being the prescribed authority initiated proposals for

the acquisition of lands for the Harijan Welfare Scheme and the notice u/s 4(2) was issued and served on the owner of the lands. The petitioner received the notice on 21.7.1999. An enquiry was conducted on 09.8.1999. The land owner participated in the enquiry. The land owner gave her objection on 09.8.1999 to the officer concerned.

5. The objection given by the owner was considered by the authority concerned. He sent his proposals dated 24.8.1999 to the District Collector. The District Adi Dravidar Welfare Officer also inspected the land on 09.9.1999 and recommended the case for acquisition. The District Collector rejected the objections given by the land owner by his order dated 30.9.1999. Thereafter, a notification u/s 4(1) was published in the District Government Gazette on 05.10.1999. Before the Award enquiry, the petitioner had moved this Court and got a stay order.

6. The following contentions were raised by the petitioner:- The District Collector did not apply his mind to the objections and he had not personally satisfied himself with the proposal. No personal enquiry was conducted. The land was not usable for the schemes for which it was acquired. The proposal to acquire the land of the petitioner did not take into account the availability of other lands in the village or the lands nearby. The offer of the petitioner for alternate land was not considered by the authority. The District Collector did not give the report of the Special Tahsildar. Further, the acquisition was malafide and done at the instance of the third respondent. The gazette notification did not specify the beneficiaries for whom the acquisition has been made.

7. 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. Thus, this matter and the connected matters came to be grouped together and were posted before this Court on being specially ordered by the Honourable Chief Justice.

8. A counter affidavit dated 21.1.2000 has been filed by the second respondent. The third respondent has also filed a counter affidavit dated 02.10.2001 denying the allegation of motive attributed to him. The petitioner had filed a reply affidavit dated 26.3.2000 denying the statement made by the second respondent.

9. The petitioner attributing malafide against the third respondent will not vitiate the statutory proceedings. The Collector was personally satisfied with the acquisition proceedings. He had also given parawise reply to the objections made by the land owner and rejected each one of the objections by a speaking order. He had made it clear that there are no alternate lands for granting house sites to the Adidraavidars of the area. The petitioner's land was classified as "manavari"

only in the village records. The personal rivalry which the petitioner had projected against the third respondent had nothing to do with the acquisition. The proposals came to be made after representations were given to the Collector during the grievance day. It was also stated that the petitioner has other lands in the same village. The offer of the petitioner to provide some alternate lands in Survey No. 53, Nellithope Village or in Survey No. 98 in Kumilakudi Village was not made during the enquiry at the stage of Section 4(2) proceedings and, hence, they were not taken into account.

10. The learned Senior Counsel's submission that the statutory notification u/s 4(1) did not specify the purpose is contrary to the records. The notification clearly states that it was for granting house sites for the Adidraavidars of the village. The decision relied on by the learned Counsel in *S.K. Thirugnanasambandam and Others Vs. The Government of Tamil Nadu and Others*, does not advance the case of the petitioner.

11. 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)

12. 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 9).

13. 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.

14. 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.

15. 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.

16. 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 wit, _____ 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)

17. 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.

18. 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.

19. In the light of the above, the writ petition is misconceived, devoid of merits and accordingly will stand dismissed. No costs.

20. 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.

21. 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.

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