

(2012) 09 MAD CK 0111

In the Madras High Court

Case No : W.A. No. 133 of 2009 and M.P. No. 1 of 2009

Rethinaboopathy Ammal

APPELLANT

Vs

District Collector, Thanjavur District, Thanjavur and Others

RESPONDENT

Date of Decision : 17-09-2012

Acts Referred:

Citation : (2012) 7 MLJ 369

Hon'ble Judges : R. Subbiah, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : M. Venkatachalapathy, for M. Sriram, for the Appellant; M.E. Rani Selvam, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—The appellant herein, as writ petitioner, unsuccessfully challenged the acquisition proceedings, resulting in her preferring this appeal. To put the facts in a nut shell, the appellant is the owner of lands in S. No. 372/1, classified as "patta manavari" in the revenue records, measuring 1.07.5 hectare. A notice u/s 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (31 of 1978) (hereinafter referred to as the "Act") was issued to her on 21.7.1999 and an enquiry was conducted on 9.8.1999, wherein the land owner participated and submitted her objections and after rejecting such objections, notification u/s 4(1) of the Act was published on 30.9.1999, seeking the lands to be acquired for providing house sites to 75 eligible houseless Adi Dravidar families. Award enquiry notice u/s 5(1) of the Act was issued on 18.11.1999 in Form 3 for assessment of compensation payable in respect of the lands sought to be acquired.

2. At this stage, the appellant/petitioner has come forward to initiate these writ proceedings (in W.P. No. 19109 of 1999), seeking to issue a writ of certiorari, calling for the entire records connected with Notification u/s 4(2) and the Declaration u/s 4(1) and the consequential Award Enquiry Notice u/s 5(1) of the Act. A learned single Judge of this Court, at the time of admission of the writ

petition, has granted interim stay of dispossession, on 1.12.1999.

3. Since a learned single Judge of this Court has dismissed the said writ petition, the petitioner/appellant has come forward to file this writ appeal.

4. The case of the petitioner/appellant is that she originally belongs to Tirunelveli District and she along with her sons and grand children settled in Nellithopu village, Thanjavur district, after purchasing the lands under a registered sale deed dated 2.3.1983; that though the lands were classified as "manavari" in the Revenue records, they are in effective cultivation for all these years till date and the revenue records also show that the lands are under effective cultivation by her; that her family's growth became an eyesore to the local people since they are migrants from a different place; that since the family itself consist of more members, who can offer their hard work in cultivating the lands, they never engaged any labour, which is the main reason for the local people to grind grudge against the family of the appellant/petitioner and since the local people are giving trouble to her often, she has initiated various proceedings against the local persons, apart from the communist people, who are against the petitioner/appellant, since the petitioner/appellant and her family members are doing their own labour by not engaging any other labourers of that area belonging to the community party; that the third respondent, a leader of the community party, is always instigating the local people particularly belonging to socially and economically weaker Sections; that with the above said factors, it seems, at the instigation of the third respondent, they have mooted out complaint to the authorities to acquire the lands of the petitioner/appellant in question in S. No. 372/1 of Nellithopu village to an extent of 1.7.5 hectares.

5. It is the further case of the petitioner/appellant that the lands are not suitable for house sites for the Harijan and the land is away from the existing Harijan colony by four kms. and therefore, the land of the petitioner/appellant cannot be acquired at the instance of the third respondent and apart from that the beneficiaries cannot choose the lands for the purpose of providing house sites for the Harijans.

6. The further case of the petitioner/appellant is that the respondents 1 and 2 without proper application of mind and on erroneous view, have over-ruled her objections and directed passing of final declaration u/s 4(1) of the Act; that the notice u/s 4(1) does not specify the purpose of acquisition, which is sufficient to quash the entire acquisition proceedings; that there are other alternative lands in the nearby area to the existing Harijan colony; that she has stated to the respondents 1 and 2 that the poramboke lands of the Government are all under illegal occupation and encroachment and the land nearby the existing Harijan colony is the most suitable land for the purpose of acquisition; that the petitioner also represented before the 2nd respondent, at the time of enquiry, that in case, if there is any difficulty in acquiring the lands of the Government or any other alternative lands, which is best and suitable for the purpose, the petitioner/appellant is always ready and willing to secure similar extent of land nearby the

existing colony or give away their own lands in S. No. 53, Nellithoppu village or lands in S.F. No. 98 in Kumilakudi village. But, according to the petitioner/appellant, her contentions were not at all considered by the official respondents. The petitioner/appellant would also contend that the first respondent before overruling her objections, ought to have marked a copy of the report and ought to have given a reasonable opportunity to the petitioner and failure to do so, violates the principles of natural justice.

7. All the contentions of the petitioner were denied by the official respondents 1 and 2 by filing a counter before the learned single Judge. It is their case that the Land Acquisition Officer and Special Tahsildar (Adi-Dravidar Welfare), Thiruvaiyaru has given a hearing on 9.8.1999 u/s 4(3)(b) of the Act and sent a report to the Collector and on considering the same, the District Collector has passed orders on 30.9.1999 and therefore, the question of failure in hearing does not arise. Regarding the contention of the petitioner/appellant that there are alternative lands available, the respondents 1 and 2 have submitted that there were no "natham" or other Government waste lands available and the land in question being classified as "Manavari" in revenue records, the same were selected for acquisition and the petitioner/appellant did not offer any alternative lands at the time of enquiry, as alleged by her; that the objections of the petitioner were over-ruled on proper grounds and there were no suitable lands for the provision of house sites to Adi Dravidars near the Adi Dravidar Colony. The respondents 1 and 2 have denied that the land acquisition proceedings were initiated at the instance of some third parties. It is their specific case that the petitioner and her family are residing at Konur hamlet of Nellithoppu village and the land in S.No. 372/1 was kept unused for several years and there was no cultivation at the time of inspection by the Special Tahsildar (Adi Dravidar Welfare), Thiruvaiyaru and the District Adi Dravidar Welfare Officer, Thanjavur and the acquisition of land will not affect the livelihood or status of the petitioner/appellant and on the other hand, if the land acquisition proceedings are stopped, it will cause much hardship in the implementation of welfare scheme to the Adi Dravidars. It has also been submitted by the respondents 1 and 2 that at the time of inspection of the site, it was found that the land which is classified as "manavari" in Revenue records is lying waste for more than five years and it was also found that the writ petitioner is a wealthy pattadar having 1.17.5 hectares of wet lands and 5.92.0 hectares of wet land by other members of her family and knowing the above proposed acquisition by the Government, the writ petitioner has put up temporary huts and erected a borewell and raised cultivation just before filing of the writ petition only to avert land acquisition and the third respondent is no way connected with the acquisition proceedings.

8. The third respondent has also filed a detailed and separate counter, denying all the allegations of the petitioner/appellant. He has stated that the petitioner and her family members own larger extent of lands in which they cannot cultivate on their own without engaging the beneficiaries of the impugned proceedings; that poor scheduled caste agricultural coolies belonging to Konoor, Anna Thottam,

Seethampadi, Kumilakudi and other surrounding villages who are in dire need of house sites petitioned to the authorities on 14.7.1999 in People's Grievance Day camp held in Konoor and after due enquiry, the present site is found to be suitable for the purpose and hence the authorities had chosen it and started the land acquisition proceedings under Act 31 of 1978.

9. The learned senior counsel appearing for the appellant would argue that the copy of the report of the Special Tahsildar was not furnished to the petitioner and there is complete non-application of mind on the part of the District Collector and even though the appellant has specifically stated that there is alternative site available for the purpose and in fact, she herself has offered to part with other lands of her, but the said aspect has not at all been considered by the District Collector. In support of his arguments, the learned senior counsel would rely on the following judgments:

1. Loganathan Vs. The State of Tamil Nadu,

2. R. Rasappa Gounder Vs. The District Collector and The Special Tahsildar, Adi-Dravidar Welfare Branch and

3. The Secretary to Government, Adi Dravidar and Tribal Welfare Department, Fort St. George, Chennai-9, The District Collector, Salem District, The Special Tahsildar (ADW), Sankari, Salem District, Salem District, Salem Vs. P. Dhanabakkiam

10. In the first judgment cited above, the writ petitioner therein contended that in as much as notice calling for objections was issued by the Tahsildar and after receiving the objections from the petitioner, he submitted report to the Collector, the petitioner is entitled to the copy of the said report, a Division Bench of this Court, following the Full Bench judgment of this Court in R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector, , has held that "the stand taken by the respondents that there is no obligation on the part of the Collector to pass an order is not in accordance with the provisions of the Act 31 of 1978 and in view of the seriousness in the objections and of the assertion of the petitioner that Adi Dravidars in the village in question have already been provided with house sites and also of the assertion that several vacant lands/plots are available in the same village, it is but proper on the part of the authorities to furnish a copy of the report to the petitioner and as per the Full Bench decision, it is the duty of the respondents to convince this Court that there has been application of mind on the part of the District Collector and sufficient reasons are afforded in arriving at such a conclusion." Holding so, the Division Bench has allowed the writ appeal filed by the land owner.

11. In the second judgment cited above, another Division Bench of this Court, having discussed Section 4 of the Act and observing the file connected to the land acquisition, has observed that:

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."

"10.... 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.

Therefore, finding 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, the Division Bench has upheld the contention of the land owner.

12. In the third judgment, since there is variation in the preamble of Section 4(1) notification and that of the schedule, the Division Bench of this Court has set aside the notification on the ground of non-application of mind.

13. On the other hand, the learned Additional Government Pleader appearing for the respondents 1 and 2, drawing support from the reasonings of the learned single Judge, would argue that the learned single Judge has analysed all the facts and circumstances of the case in a righteous way and therefore, no interference of this Court is needed into such findings of the learned single Judge.

14. Since during the course of hearing, much emphasis has been placed on the part of the learned senior counsel for the appellant regarding the offer made by the appellant to part with other lands belonging to her family, this Court by the order dated 25.8.2010, permitted the appellant to submit a proposal to the District Collector/first respondent with copy of documents and plan and on production of such documents, the District Collector, Thanjavur District was directed to inspect the land for assessing the suitability for housing purpose and

to file a report.

15. Pursuant thereto, the report of the Special Tahsildar (ADW), Thiruvaiyaru, addressed to the Special Government Pleader, dated 14.1.2011 has been placed before us by the learned Special Government Pleader. For better appreciation, we extract hereunder the said report:

As per the direction of the Hon"ble High Court the appellant has submitted the proposal along with a copy of the miscellaneous petition filed before the Court. In this proposal, the appellant had offered the wet lands in R.S. No. 153/4C (Extent 0.02.0 Hec.) and 153/3 (Extent 0.75.0 Hec.) of Nellithoppu Village are situated in the compact area and registered in the name of Thiru Jebarathinam S/O the appellant, but it is not an equal extent to the land acquired already i.e. 1.07.5 Hec. The other lands mentioned in the proposal are having minimum extent and situated scaterly. Hence the appellant come forward to offer his land in neighbour village Kumilakudi of Papanasam Taluk. The lands in the Kumilakudi Village was also inspected by the District Collector, Thanjavur and find out the suitability of the land for housing purpose. In the meantime the 3rd Respondent Pakkirisamy and the old beneficiaries had raised their objections before the District Collector and requested to find out the alternative site within their own village (Nellithoppu) and extended their unwillingness to shift their families to other village (Kumilakudi).

On the basis of objections, the lands in R.S. No. 153/4C and 153/5 (total 0.77.0 Hec.) of Nellithoppu Village was again inspected by the District Adi Dravidar Welfare Officer and the Special Tahsildar (ADW), Thiruvaiyaru. During their inspection Thiru Jebarathinam was present and stated that the R.S.No. 153/3(0.22.5 Hec.) which was registered in his name and also ready to purchase the other two survey numbers, (which were under the possession of Thiru Jebarathinam) i.e. R.S. No. 153/2 (0.24.5 Hec.) registered in the name of Visalakshi and R.S. No. 153/4A (0.21.0 Hec) registered in name of Saravanan and requested to select this block of land towards the extent already acquired. But the written consent from the appellant son Thiru Jebarathinam is still awaited. After getting the consent from him the land has to be inspected by the District Collector as per the directions.

16. Considering the above report and further considering the fact that no written consent was given by the said Jebarathinam and to know the views of the beneficiaries also before taking the written consent, this Court, by the order dated 19.1.2011, directed the District Collector to file a report.

17. Thereafter, the said Jebarathinam has suggested alternative sites in S.Nos. 156/1 and 156/2 in Nellithoppu village, which were inspected by the District Collector and submitted his report to the Additional Government Pleader, which has been placed before us by the learned Special Government Pleader. We also extract hereunder the same for better appreciation:

Thiru Jebarathinam had suggested an alternative site in Nellithoppu village

available in his name:

Thiru Jebarethinam accepted to give eastern portion to the extent of 0.82.0 hec. in R.S.No. 156-1 and entire 0.25.5 hec. in R.S. No. 156-2 with a total extent of 1.07.5 hec. As per the instructions of the Honourable High Court of Madras, I have inspected the site on 22.9.2011. The proposed land is situated at 4 kilometres north of the Thanjavur and Nagapattinam Road. It is a wet land with source of irrigation and it is below the road level. At the time of inspection harvest was going on. On perusal of the village accounts, it was found that the field is under cultivation continuously. The acquisition of wet land for house site is permitted only when it is inevitable. So, acquisition of wet land which is continuously under the cultivation of paddy is not preferable. Hence the suggestion opted by the petitioner could not be complied with....

18. Much exercise has been undertaken by the respondents 1 and 2 to find out a suitable and alternative site, at the instance of this Court in these proceedings, considering the requests made by the appellant/petitioner. But, the alternative sites offered by the appellant/petitioner and her family members, as has been observed by the revenue officials, on physical inspection, are found to be not at all convenient for the purpose of providing housing to the adi-dravidar people. In fact, the lands in R.S. Nos. 156-1 and 156-2 offered by the son of the appellant are wet lands, with cultivation in progress. Therefore, we do not find any necessity to direct the respondents to accept any of the alternate lands offered by the appellant and her family members since the very purpose of acquisition would be defeated by adopting such a course.

19. The other factors borne by the records that the lands of the petitioner/appellant are "manavari" and they were lying unused for more than five years and only by knowing the present acquisition proceedings, the petitioner/appellant has raised cultivation besides erecting temporary huts and digging a borewell only with a view to defeat the acquisition proceedings, also prove the ill intention of the petitioner/appellant to thwart the avowed object of the Act.

20. With regard to the other arguments advanced on the part of the appellant/petitioner regarding the alleged non-application of mind on the part of the District Collector did not convince us, as the material on record would clearly show that the District Collector has correctly analysed the need and necessity of providing housing to the adi-dravidar and the convenience of the land of the petitioner/appellant for being used for the said purpose. When the District Collector has inspected the lands of the petitioner/appellant including the alternative sites suggested by her, it cannot be said that the District Collector has not applied his mind to the facts and circumstances of the case.

21. Equally, we are not able to appreciate the contentions raised on the part of the appellant/petitioner that the acquisition has been initiated at the instance of the third respondent. The request made by the downtrodden people for granting house sites to hem has been considered by the respondents 1 and 2 and in their

endeavour to find out a suitable place, the lands of the petitioner/appellant were found, for which no mala fides could be attributed either to the respondents 1 and 2 or to the third respondent. Though arguments have been advanced on the part of the petitioner/appellant with regard to non-furnishing of the report of the Special Tahsildar to the appellant/petitioner, no prejudice whatsoever has been shown to have caused to her. In fact, she has participated in all the proceedings before the authorities concerned and even the request of the appellant/petitioner for locating alternative sites has been dealt with in a judicious way by the respondents 1 and 2. Therefore, the judgments relied on by the appellant/petitioner do not come to her rescue since can be distinguished factually.

For all the above reasons, this writ appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.