

(2014) 12 MAD CK 0033

In the Madras High Court

Case No : W.A.No.350 of 2013 and M.P.No.1 of 2013 (Writ Appeal under Clause 15 of Letters Patent against the order dated 21.12.2009 made in W.P.No.7669 of 2001)

Sri Murugan Coconut Products

APPELLANT

Vs

The District Collector, Thanjavur

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Citation : (2015) 1 CWC 295

Hon'ble Judges : Mr. V. Dhanapalan and Mr. G. Chockalingam, JJ.

Bench : Division Bench

Advocate : Mr. T. Raja Kalifulla, Advocate, for the Appellant; Mr. T.N. Rajagopalan, Special Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

G. Chockalingam, J.—Being aggrieved by the dismissal of the writ petition in W.P.No.7669 of 2001, by an order, dated 21.12.2009, the writ petitioner has preferred this appeal.

2. The case of the appellant/writ petitioner is that they are the owner of lands to an extent of 1.1.0 hectares situated in S. Nos.231/2A, 231/3A1, 231/3C1, 231/3A2, 231/3C2, 231/3B and 231/3D at Thamarankottai Village, Pattukkottai Taluk, Thanjavur District. The Special Tahsildhar, Adi Dravidar Welfare, Pattukkottai Taluk, had issued a notice on 24.04.2000 under Section 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 [hereinafter referred to as "the Act"] read with Rule 3(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, calling upon the appellant to submit their objections within 15 days from the date of service of the notice and in the said notice, the date of personal hearing was fixed on 18.05.2000. According to the appellant, the said notice was served on them only on 15.05.2000. As the time given for submission of objections was too short, they appeared before the second respondent on 18.05.2000 and filed an application

praying for extension of time for filing their objections. It is the further case of the appellant that the second respondent received the said application and informed the appellant that the next hearing date for filing the objections would be informed. Thereafter nothing was communicated to the appellant and that they came to know that a notification, dated 06.03.2001 under Section 4(1) of the Act has been published in the Thanjavur District Gazette by the first respondent. Aggrieved by the decision of the first respondent in publishing notification, the appellant filed a writ petition in W.P.No.7669 of 2001 before this Court praying to quash the impugned notification, dated 06.03.2001 published in the District Gazette, Thanjavur, dated 09.03.2001.

3. The learned Single Judge, after hearing both sides, dismissed the writ petition filed by the appellant/writ petitioner. As against the said order passed by the learned Single Judge, the appellant/writ petitioner is before this Court by way of the above writ appeal.

4. The learned counsel for the appellant would contend that the learned Single Judge failed to see that the respondents have failed to adhere the mandatory provisions of Section 4(2) of the Act and also failed to see that under Section 4(2) of the Act, the respondents are bound to publish the notice and the publication of the said notice should be in conformity with Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Rules, 1979 [hereinafter referred to as Rule], as provided under Rule (3). Further, the learned counsel for the appellant would contend that the learned Single Judge failed to see that the Rule (3) provides that the notice should be in Form I and according to Form I, the said notice should give clear 15 days time from the date of service of the notice to the land owners to submit their explanations and only thereafter, enquiry ought to have been held. It is the further contention of the learned counsel for the appellant that the learned Single Judge failed to see that the notice under Rule 3(1) in proceedings No.186/2000/A, dated 24.04.2000 was said to have been issued by the second respondent by fixing the hearing date on 10.05.2000 in the office of the second respondent and the said notice, by any stretch of imagination, cannot be said to be in conformity with mandatory requirement as provided under Rule 3(1), more-fully prescribed in Form I. Further, the learned Single Judge failed to see that 15 days time as provided in Form I read with Rule 3(1) of the Rules, has not been given and on the face of it, the said notice is bad in law. The learned counsel for the appellant further contended that the learned Single Judge failed to see that the failure to submit objections within one months, as sought for by the appellant cannot be put against the appellant on the face of the infirmities and irregularities committed by the respondents in the matter of acquisition of lands. The learned Single Judge also failed to see that in view of non expiry of 15 days time from 15.05.2000 to 18.05.2000, the respondents ought to have fixed another date for enquiry so as to enable the appellant to submit their objections and such a lapse on the part of the respondents, without giving a reasonable opportunity to the appellants, has resulted in the impugned declaration in utter violation of the principles of natural justice. The learned counsel for the appellant

also contended that the observation of the learned Single Judge "that it could be seen that between 24.04.2000, the date on which the notice was issued under Section 4(2) of the Act read with Rule 3(1) and 09.03.2001, the date on which the 4 (1) notification was issued, there was ample time available to the appellant to submit their objections", is totally against the letter and spirit of the Act and the same is not provided under the Act 31 of 1978. The learned counsel for the appellant also contended that the learned Single Judge ought to have quashed the impugned notification on the sole ground that 15 days time does not expire from the date of service of the notice i.e., 15.05.2000 to the date of enquiry i.e., 18.05.2000 and hence the impugned notification is not in accordance with law.

5. 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 are 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, he prayed that the appeal has to be dismissed.

6. 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) & (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."

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

[i] (2006) Writ L.R. 653 [Jainabi v. The State of Tamil Nadu & another].

"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] 2006 (4) CTC 609 [R. Pari v. The Special Tahsildar, Adi-Dravidar Welfare,

Devakkottai]

"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."

[iii] 2008 Writ L.R. 585 [R. Rasappa Gounder v. The District Collector, Dindigul and another]

"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 to 9.

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".

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, notification under Rule 3(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 was issued on 24.04.2000 fixing a date for enquiry on 10.05.2000 giving 15 days time to file objections, if any. The report of the Special Tahsildar, Adi-Dravidar Welfare Officer reads as follows :-

"gl;Lf;nfhil;il tl;lk;/ 157 jhku";nfhl;il tlghjp fpuhkj;jpy; jdpahh; njhg;g[fs;py; trpj;J tUk; brhe;j kid ,y;yhj 40 Mjppuhtplh; FLk;g";;fSf;F ,ytr tPl;Lkid trpg;gjw;F jFjp tha;e;j g[wk;ngfh;F epy";fs; ,f;fpuhkj;jpy; fpilahJ/ ,th;fs; tptrhaf; Typntiy bra;J gpiHj;J tUfpd;wdh;/ vdnt nkW;go kf;fSf;F ,ytr tPl;L kid tH";;Ftjw;F VJthf g[y vz;fs;/ 231/2A, 231/3A1, 231/3C1, 231/3 g2, 231/3c2, 231/3B, 231/d Mfpatw;wpy; jkpH;ehL murpd; epy vLg;gr; rl;lk; 31/1978 4(1) d; fPH; epy vLg;g[eltof;iffs; nkW;bfhs;s cj;njrpj;J xU mwptpg;g[10.05.2000 jhku";nfhl;il tlghjp fpuhkj;jpy; tpsk;guk; bra;ag;gl;IJ/ Mdhy; md;W fpuhk epUthf mYtyh;fs;/ tUtha;j;Jiw mYtyh;fs; ntiy epWj;jk; fhuzkhf tprhuiz nkW;bfhs;s ,aytpy;iy/ vdnt 18.05.2000 md;W tprhuizf;F mwptpg;g[tpsk;gug;gLj;jg;gl;IJ/ gadhspfs; epy vLg;g[,lj;jpw;F mUfhikapy; jdpahh; njhg;g[fs;py; trpj;J tUtjhf bjhpfpwJ/

9. On a perusal of the report of the Special Tahsildar, Adi-Dravidar Welfare Officer, it is seen that since on the date fixed for personal hearing on 10.05.2000 as there was a strike for Village Administrative Officer/Revenue staff, the date was fixed on 18.05.2000. On 18.05.2000 the appellant and four others appeared through advocate Mr.R.Ramadas. Hence, as per Rule 3 (1) of the Land Acquisition under Tamil Nadu Adi Dravidar Welfare Scheme, before acquisition of lands, proper notice was given to the land owners and they have also appeared through advocate and without filing any objection, they pray for one month time to file counter. As per the Rule, within 15 days, the land owners have to file objections on the particular hearing date. Form I reads as follows:-

Form I

[See rule 3(i)]

Notice is hereby given that the land/lands specified in the Schedule below and situated inVillage taluk district is/are necessary to be acquired for the purpose of

All persons interested in the land/lands are accordingly directed to lodge before the Collector of.....district/ Officer authorised by the Collector of.....district under sub-section (2) of section 4 of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act,

1978 (Tamil Nadu Act 31 of 1978), within fifteen days after service of this notice, a statement in writing of their/your objections, if any, showing cause why the land/lands mentioned in the schedule below should not be acquired.

The statement of objections, if any, received after the expiry of the time stipulated or sent by a person, who is not interested in the land, is liable to be summarily rejected.

The statement of objections, if any, received within the time stipulated will be enquiry into at on the at the offence the..... They/you will be at liberty to appear in person or represented by pleader and adduced any oral or documentary evidence in support of their/your, objections, failing which, it will be presumed that they/you have no objection whatsoever in respect of the said land/lands to be acquired and action will be taken accordingly."

But, they have not filed any written objections pertaining to the land acquisition and only requested one month time to file counter. Hence, the argument of the learned counsel for the appellant that the objections given by the appellant was not considered is not at all correct. Further, the argument of the learned counsel for the appellant that clear 15 days notice is essential under Rule 3(1) of the Land Acquisition under Tamil Nadu Adi Dravidar Welfare Scheme, is not at all correct. As per Rule 3(1), within 15 days, the land owners have to file objections. But in this case, they have appeared through Advocate and requested one month time to file counter. Hence, the argument of the learned counsel for the appellant that the procedure contemplated under Rule 3(1) has not followed is not at all acceptable.

10. The learned Single Judge, after considering the entire materials placed before him and after perusing the original records for the acquisition proceedings, came to a correct conclusion dismissing the writ petition. Hence, this Court is of the considered view that there is no illegality or infirmity in the order passed by the learned Single Judge in W.P.No.7669 of 2001, dated 21.12.2009 and the same does not warrant any interference by this Court.

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