
(2015) 03 MAD CK 0302

In the Madras High Court

Case No : W.A. No. 2466 of 2010 and M.P. No. 1 of 2010

Thiru. A. Krishna Manthri and Others

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Citation : (2015) 03 MAD CK 0302

Hon'ble Judges : V. Dhanapalan, J;G. Chockalingam, J

Bench : Division Bench

Advocate : K. Sridhar for K. Sridhar Associates, for the Appellant; T.N. Rajagopalan, Special Govt. Pleader, Advocates for the Respondent

Judgement

G. Chockalingam, J.

1. The land owners, who have filed the writ petition challenging the acquisition proceedings effected by the Government to acquire their lands for the welfare of Harijan Welfare Scheme, having failed before the learned Single Judge, have come up in the writ appeal.

2. The case of the appellants/petitioners is as follows:-

The lands that were acquired originally belonged to the father of the plaintiff Thiru.Aiyavu Manthri and after his death, the appellants/petitioners inherited the property and in joint possession of the same and they are solely depend on the said lands for their livelihood by agriculture. The purpose for which the lands were acquired seems to be allotment of house sites to Arunthathiyars in Karadikudi Village whereas, there are no such community people in the said village and hence, the acquisition itself is unnecessary. The petitioners sent their objections on 26.5.2000 contending that their lands are agricultural lands and the only source for their livelihood and there are other poramboke lands are available for house site purposes. Since the authorities have not considered their objections and proceeded further in initiating the acquisition proceedings, the appellants/petitioners were constrained to file the writ petition.

3. The writ petition was dismissed by the learned Single Judge on the ground that there are laches on the part of the petitioners in approaching the Court and the writ petition filed after the award is not maintainable. Aggrieved against the same, the present writ appeal has been filed by the writ petitioners.

4. Learned counsel for the appellants vehemently contended that learned Single Judge failed to consider that no enquiry was conducted and no proper notification under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 1978 [hereinafter referred to as the Act] was published in respect of the extent of land. He further contended that no proper enquiry was conducted by the Authorities and also there is plenty of poramboke lands available for acquisition and the appellants' land in S.No. 255/3B 0.20 Hectares of lands in Devichettikuppam Village was already acquired and there is no Arunthathiyar community in the village and there is no necessity for providing house-sites to the Arunthathiyar community, since there is no Arunthathiyar community available in the village and there is no necessity for acquisition of the lands. It was only for the extraneous and illegal consideration by the Authorities that the present acquisition proceedings was initiated.

5. Further, the learned counsel for the appellants contended that learned Single Judge failed to consider the extent of land wrongly notified and come to the wrong conclusion that there was proper acquisition of land. Further there was no lapses or delay on the part of the appellants in preferring the writ petition questioning the notification under Section 4(1) of the Act. Immediately, after receipt of the award, after coming to the knowledge of the award, the appellants preferred the writ petition in W.P. No. 9297 of 2001, challenging the award and there is no delay or lapses on the part of the appellants. Since the learned Single Judge failed to consider the facts as stated above, the judgment of the learned Single Judge is erroneous and liable to be set aside and prayed to allow the writ appeal.

6. Learned Special Government Pleader contended that in this case, there was proper notification under Section 4(1) of the Act was published and further proper enquiry was conducted and on the request of the Arunthathiyar community people to fulfill the welfare scheme of the Arunthathiyar community house-sites lands were sought to be acquired by the Authorities. The argument of the learned counsel for the appellants that it was for extraneous and illegal consideration that the lands of the appellants were acquired is not at all correct and not at all acceptable one. The further argument of the learned counsel for the appellant that there is plenty of poramboke land available for providing house-site for Arunthathiyar community is also false one.

7. Learned Special Government Pleader further contended that the extent of the lands were correctly stated in the notification under Section 4(1) of the Act and it will not in any way vitiate the acquisition proceedings since they have attended the enquiry in the initial stage itself. The appellants filed the writ petition only after passing of the award and hence there is delay in filing of the writ petition

and the learned Single Judge considered the delay and latches. Further, the learned Special Government Pleader produced entire file regarding the acquisition notice.

8. The learned Special Government Pleader further contended that acquisition of the land was done properly under the Land Acquisition Act and there was no necessity to quash the acquisition proceedings. Further, there is no illegality or infirmity in the order of the learned Single Judge. Thus prayed for dismissal of the writ appeal.

9. We have carefully considered the arguments of both sides and perused the entire original file produced on the side of the Government.

10. Further, in this case, the contention of the learned counsel for the appellants that there are plenty of poramboke lands available for acquisition for providing house-sites to the Arunthathiyar community and there is no Arunthathiyar community in the village, so there is no necessity to acquire the lands for the house-sites. The above arguments is not supported by any materials and the learned counsel for the appellants has not produced any documents to substantiate the above facts before this Court.

11. Further, it is the right of the Government to acquire lands for providing house-sites for Arunthathiyar community and provide house-sites to the Arunthathiyar community. Hence, the argument of the learned counsel for the appellants that there is no Arunthathiyar community in the village and there is plenty of poramboke land available for acquisition is victimised since there is already acquisition proceedings of the appellants' land. The arguments of the learned counsel for the appellants that it is only to victimize this land was acquired is not at all acceptable. Further, the learned counsel for the appellants in his appeal grounds himself has admitted that S.No. 467/1 extent of 0.45.5 hectares of land belongs to the appellants.

12. Perusal of the original file shows that Form No. 1 under Rule 3(i) notice was served and in that the extent was stated as S.No. 167/1, Government Dry land extent is 0.45.5 Hectares belongs to Vijayan and Krishnan. As stated above, notice was published and notification under Section 4(1) of the Act was published in the Government Gazette.

"Rc.K11/40315/2000 FORM II [See Rule 3(ii)] Notice under section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978. Whereas it appear.....
SCHEDULE Vellore Taluk, Karadikudi Village.

Government dry, S.No. 167-1, extent 0.45.5 hectare, belonging to Vijayan and Krishnan sons of Ayyavu Mandiri, bounded on the north by S.No. 203 and 163-B, east by S.No. 168, south by S.No. 167-2A and west by S.No. 203 and 166-B - 0.45.5 hectares."

"RC.A/795/2000

13. Reading of the above notification under Section 4(1) and Form-I (See Rule 3(i), the extent is properly described and notice was published properly. Contrary to the above, publication of notice, there is no materials produced on the side of the appellants that notification under Section 4(1) of the Act and extent and description of the land was wrongly described. There is no material to show that the description of the land was wrongly mentioned in the above notice. In view of the above stated position and the Government Gazette copy of the Rule 3(1) and notification under Section 4(1) of the Act, the extend of the land is correctly mentioned in the above notice. So the argument of the learned counsel for the appellants that the notification under Section 4(1) of the Act contains no description of extent of the land is not at all sustainable.

14. Further, on perusal of the file, it is seen that so many persons belonging to the Arunthathiyar community had requested the Government to provide house-sites for them and after consideration of the written applications of the community alone, the Government prepared this Scheme for acquisition of house-site for the Arunthathiyar community. In view of the fact, argument of the learned counsel for the appellants that there is no Arunthathiyar community in that particular village and there is no necessity to provide house-sites for the Arunthathiyar community falls to ground.

15. Further, in this case, learned counsel for the appellants vehemently contended that since after knowing the award proceedings, he had immediately come to the Court and now the land is still in possession of the appellants and the Government has not taken over the possession of the land and produced some copies of additional possession certificates issued by the Village Union Councilor and Village Panchayat Union President and Village Administrative Officer stating that they are still in possession of the land. The learned counsel for the appellants argued that, the learned Single Judge fail to consider the present appellants are still in possession of the land and there is no proper acquisition proceedings was taken place.

16. On perusal of the file, the appellants herein has given letter to the Tahsildar which reads as follows:

Vernacular Matter ommited here

17. From the above letter given by the appellants on 16.04.2001 to the Special Tahsildar, Adi Dravidar Welfare, it is clearly admitted that the land was acquired by the Government and further for giving false certificate by the Village Administrative Officer regarding the possession is still in custody of the appellants, departmental action was taken and in that enquiry, the concerned Village Administrative Officer who has given the certificate admitted that he has given false certificate on 24.02.2011 due to the over burden of his work. He has given written statement and communicated the facts to the appellants and

concerned Tahsildar and also the letter provided in the file state as follows:

Vernacular Matter omitted here

18. In view of the above facts, the appellants are still in possession of the acquired lands is not at all substantiated by the appellants herein. On the other hand, after passing of the award, the Government has taken possession of the land is substantiated on the side of the respondents. The appellants admitted that they have attended the enquiry on 26.05.2000 and preferred the writ petition in the year 2001.

19. In view of the above, it is clear that the appellants have appeared for the enquiry, after that notification under Section 4(1) of the Act was issued and only after passing of the award alone, they have preferred the writ petition. There is a long un-explained delay and the appellants have no right to participate in the enquiry after publication of the notification under Section 4(1) of the Act. Without questioning the above only they have come forward challenging the acquisition only after passing of the award and after possession of the land was taken by the Government. Hence, the learned Single Judge is right in holding that the writ petition is affected on the ground of delay and laches.

20. Learned counsel for the appellants though contended that the amount was not deposited in the name of the appellants. But the award says that they have deposited in the name of the other persons mentioning appellants as Sub-Judge. Hence, the acquisition Authorities not applied their mind in passing of the award and subsequent proceedings. Hence, acquisition proceedings vitiated.

21. But contrary to that, learned Special Government Pleader contended that the land was properly acquired. Since the appellants have not received the compensation, the compensation amount was deposited in the concerned Jurisdiction court which is Sub-ordinate Judge court, Vellore.

22. On a perusal of the original file concerned portion relating to the appellants reads as follows:

"FORM-IV See Rule 5(1) Made by Thiru.G.Sadasivam, Land Acquisition Officer and Special Tahsildar (ADW), Vellore. AWARD

No. 5/2000-2001

dated:25-10-2000

Rc.A.79/2000

Whereas an extent of land measuring 0.45.5 Hectares , situated in Karadikudi Village of Vellore Taluk, Vellore District and registered in the name of occupied by the persons specified below have been declared by the Collector of Vellore District at page No. 3 part No. 27, dated 26-8-2000 of Vellore District Gazette be needed for the provisions of house sites to the Arunthathiyars of Karadikudi Village under Sub-Section (T) of Section 4 of the Tamil Nadu Acquisition of Land

for Harijan Welfare Scheme Act 1978 (T.N.L.A. Act) of 31 of 1978) the undersigned, after full enquiry into the case and on due consideration of the various circumstances connected with the acquisition as before set forth, makes the following "AWARD" under his hand.

1. The true area of the land : 0.45.5 Hec.=1.12 Ac.

2. Market value of the land : Rs. 56,000/-

3. Value of building etc. : -

4. 15% solatium for : Rs. 8,400/-

5. Total Compensation and all : Rs. 64,400/-

The persons interested in the land to whom the amount is due

Hence, the DDs are ordered to be issued in the name of Sub-Judge, Vellore.

The undersigned certified that there is before him a plotted plan of the land or lands to be acquired.

LAND ACQUISITION OFFICER & SPECIAL TAHSILDAR (ADW.) VELLORE.

To Concerned."

23. On a perusal of the above award passed on the side of the Land Acquisition Authorities, it is very clear that the names of the appellants are mentioned. Since, they have not turned up for enquiry and not given written opinion, the amount which belongs to the appellants were deposited in the jurisdiction Court i.e., Subordinate Judge Court, Vellore. So, there is nothing wrong on the part of the Land Acquisition Officer in sending the amount to the Subordinate Judge Court, Vellore which is the jurisdictional Court and deposited the amount by DD. So the argument of the learned counsel for the appellants that the Land Acquisition Authorities mentioned appellants as Sub Judge is not at all acceptable one and that argument also fails.

24. Thus, we are of the considered view that the order of the learned Single Judge do not warrant any interference of this Court and this writ appeal fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.