

(2010) 01 MAD CK 0182

In the Madras High Court

Case No : Writ Petition No. 8303 of 2003 and W.P.M.P. No. 10643 of 2003

V. Krishnasamy Gounder and Another

APPELLANT

Vs

The District Collector, The Special Tahsildar, Adi Dravidar
Welfare and The President, Village Panchayat

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Land Acquisition Act, 1894 — Section 30, 31(2), 4(1)

Citation : (2010) 2 CTC 193

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : K. Kalyanasundaram, for the Appellant; N. Senthil Kumar, Additional Government Pleader for Respondent Nos. 1 and 2 and No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The petitioners have filed this Writ Petition for issuance of a Writ of Certiorari in calling for the records from the file of the second respondent/ Special Tahsildar, Adidraavidar Welfare, Tirupur in regard to the issuance of the impugned notice of the second respondent dated 06.11.2000 and to quash the same. The petitioners are the owners of lands in S. No. 302/2a and S. No. 762/1, Veerapandi Village, Tirupur Taluk, Coimbatore District (now Tiruppur District) to an extent of 0.10 acres and they were in possession and enjoyment of the property for several years.

2. The second respondent issued a notice u/s 4(2) of the Tamil Nadu Acquisition of Land for Harijan Welfare Act in Na.Ka. No. 1278/98/a dated 23.05.2000 calling for objections for acquisition of a part of the lands in S. No. 302/2a and S. No. 762/1 to make pathway to the lands in S. No. 288 which was already acquired by the second respondent and pattas were issued to Harijans to construct houses. The petitioners raised their written objections for acquisition in the enquiry

conducted on 13.06.2000. In the objections, they mentioned that since already the Government laid a pucca Tar road to the Harijans colony by spending lakhs of rupees, there was no need to acquire their lands and moreover the religious ceremony were being celebrated in the Vinayagar Koil situated adjacent to their lands will be disturbed due to the acquisition of the lands.

3. The case of the petitioners is that the second respondent while issuing the impugned notice in Form III, Rule 5(i) of Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules had not followed the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act and that the entire acquisition proceedings of the respondents were arbitrary and illegal and therefore liable to be quashed.

4. Also the stand of the petitioners is that the second petitioner by means of a settlement deed dated 15.11.1982 became the owners of the lands and indeed the second respondent issued a notice as per Section 4(2) of the Tamil Nadu Land Acquisition Act only to the erstwhile owner of the land and not to the second petitioner and since serving of notice as per Section 4(2) of the Act is a mandatory requisite one, the same was not followed and therefore the said notice was to be quashed and the Writ Petition needs to be allowed by this Court.

5. Continuing further, it is the contention of the petitioners that without taking into account the objections raised by the petitioners and without following the due procedures prescribed under the Tamil Nadu Acquisition of Lands for Harijan Welfare Act, the impugned notice dated 06.11.2000 issued was in violation of the Principles of Natural Justice and moreover the respondents had not appreciated the fact that the first petitioner was living in the house constructed in the lands and doing agriculture and hence if the lands were to be acquired for making a pathway to the Harijan colony, their peaceful possession and enjoyment would be disturbed.

6. The contention of Mr. N. Senthilkumar, the learned Additional Government Pleader appearing for respondents 1 and 2 is that the Adi Dravidars of Kuppandampalayam of Veerapandi Village, Tiruppur Taluk applied for the provision of pathway to the burial ground with a view to provide pathway to the existing Adi Dravidar burial ground in Kuppandampalayam of Veerapandi Village and considering the need and necessity for shortening the distance of existence of pathway to the burial ground, the land measuring an extent of 0.05 ? Acre in S.F. No. 302/2A and 0.04 ? acre in S.F. No. 762/1 of Natham of Veerapandi Village was selected for formation of road as existing burial ground was at a distance of one k.m. from the colony and inasmuch as there was no other suitable pathway to the burial ground in the village the land measuring an extent of 10 cents in S.F. Nos. 302/2A and 762/1 were acquired under the provisions of Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 31/78 and after following the due formalities, the aforesaid lands were acquired and an award was passed by the second respondent in the Award No. 3/2000-2001 dated 22.11.2000.

7. That apart, a compensation of Rs. 10,000/- was sanctioned to the land owners and the cheque was deposited before the Tribunal viz., the Sub Judge, Tiruppur as per Sections 30 and 31(2) of the Land Acquisition Act and the real fact was that the possession of the land acquired was taken by the Assistant Grade Revenue Inspector, Adi Dravidar Welfare, Tiruppur and later the possession was handed over to the President, Veerapandi Village on 03.01.2003. Further more, the Adi Dravidars of Kuppandampalayam of Veerapandi Village in Petition dated 03.03.2003 made a request to the first respondent/District Collector to remove the encroachment in the land already acquired for the pathway.

8. The second respondent/Special Tahsildar inspected the land on 04.03.2003 and found that the pathway was obstructed by the fencing and later the encroachment was removed by the President of Veerapandi Panchayat in the presence of public, police officials, etc., and the pathway was free from encroachment for using the same to proceed to the burial ground.

9. It transpires from the counter filed by the second respondent that Form 1 notice was issued to the land owner to appear for an enquiry in regard to the proposed acquisition on 13.06.2000 and the notice dated 23.05.2000 was issued to one Nachammal, the mother of the second petitioner. She participated in the enquiry on 25.07.2000 and informed that the land proposed for acquisition was given to the second petitioner by means of a settlement dated 15.11.1982. Also the fact was that the second petitioner took part in the enquiry on 25.07.2000 and objected to the land acquisition. Notwithstanding that, the first petitioner also took part in the enquiry on 25.07.2000 and put forward his objection for the acquisition. The objections were overruled and a publication as per Section 4(1) of the Land Acquisition Act 31/78 was submitted to the first respondent/District Collector of Coimbatore District as per Ref. No. 1278/99/A/dated 28.07.2000 of the Special Tahsildar/second respondent, Adi Dravidar Welfare, Tiruppur. After overruling the objections, notification u/s 4(1) of the Land Acquisition Act 31 of 1978 was approved by the first respondent as per Ref. No. 2751/2000/N6 dated 6.8.2000.

10. It is to be borne in mind if the Collector of a District is satisfied then he may acquire the land as per Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978. However, as per the Land Acquisition Act 1894, the State Government has to satisfy itself in regard to the acquiring of the land. As a matter of fact, Rule 3 of the Tamil Nadu Acquisition of land for Harijan Welfare Schemes Rules, 1979 specifies the procedure for acquiring the land. Rule 3 also prescribes the show cause notice in Form I and notice to be published in the District Gazette in Form II.

11. Be that as it may, at this stage the learned Additional Government Pleader appearing for the second respondent submits that this Court in the decision The Executive Engineer and Administrative Officer, Coimbatore Housing Unit, Tamil Nadu Housing Board Vs. Girija Janarthanan and Others, , has held that "the Writ Petition filed challenging the notification for acquisition of land filed after the

possession was taken is not maintainable and even if a defect had crept in the issuance to the Land Acquisition Act, Section 4(1) notification, the Court shall not entertain the challenge to the land acquisition proceedings after the award was passed and possession was taken" and by placing reliance on the principles laid down by this Court in the aforesaid decision, he contends that the present Writ Petition filed by the writ petitioners is not maintainable because of the candid fact that the present Writ Petition was filed by the petitioners on 10.03.2003 and by that time, the Award No. 3/2000-2001 dated 22.11.2000 by the second respondent in Ref. No. 1278/99/A and also added the fact that the compensation of Rs. 10,000/- was sanctioned to the land owners but since the petitioners had not received the same, the said amount was deposited by means of cheque before the learned Sub-Judge, Tiruppur and all the more the lands in acquisition were acquired for providing a pathway for the burial ground and hence the same cannot be challenged by the petitioners before this Court in Writ jurisdiction.

12. This Court pertinently points out the decision of the Honourable Supreme Court New Riviera Coop. Housing Society and Another Vs. Special Land Acquisition Officer and Others, , wherein it is held that "it cannot be held that the acquisition for public purposes violates Article 21 of the Constitution or the right to livelihood or right to shelter or dignity of person."

13. Further if the land is required for a public purpose and if a notification is issued in accordance with law then in exercise of extraordinary powers under Article 226 of the Constitution of India the High Court will not substitute its opinion, for the opinion of the competent Authority to enquire into the wisdom of Authorities in this regard.

14. In the decision N. Varadappa Naicker Vs. State of Madras and Another, it is observed that "once the decision to acquire the land for public purpose is taken then the Court cannot canvas that the purpose of acquisition is outside the power of Eminent Domain". At this stage, this Court aptly points out that the private interest must yield to the primordial public interest.

15. On a careful consideration of respective contentions, this Court is of the considered view that the respondents have acted in accordance with law and that all procedural formalities in the manner known to law have been complied with by the concerned Authorities and inasmuch as the lands in question have been acquired for providing a pathway to the burial ground the interest of the petitioners must necessarily yield to the public interest in regard to the present case on hand and therefore this Court comes to an inevitable conclusion that this Court cannot substitute its opinion for the opinion of the Authority or to enquire into the wisdom of the Authorities in acquiring the land and viewed in that perspective, the Writ Petition is devoid of merits and the same fails. In the result, the Writ Petition is dismissed leaving the parties to bear their own costs. The connected Miscellaneous Petition is closed.