

**(2009) 07 MAD CK 0434**

**In the Madras High Court**

**Case No : Writ Petition No. 2557 of 2003**

Victor Devasahayam

APPELLANT

Vs

The Collector and The Special Tahsildar (ADW) Ponneri  
Division

RESPONDENT

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**Date of Decision : 27-07-2009**

**Acts Referred:**

Constitution of India, 1950 — Article 14, 21, 300A

General Clauses Act, 1897 — Section 27

Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 — Rule 3, 3(1)

**Citation : (2009) WritLR 908**

**Hon'ble Judges : K.N. Basha, J**

**Bench : Single Bench**

**Advocate : R. Thiyagarajan for V. Vijay Shankar, for the Appellant; P. Muthukumar, GA, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

K.N. Basha, J.—The petitioner has come forward with this petition seeking for the relief of quashing the proceedings of the first respondent herein in Lr. No. Rc.J1/20030/2002 dated 24.07.2002 published in the Tamilnadu Gazette No. 17 dated 03.08.2002 in so far as the lands of the petitioner in Survey Nos. 13/2, 13/3, 13/6 A, 13/6 B, 13/8, 13/9, 13/10, 13/4, 14/5, 14/8, 14/9a, 14/9b, 14/10, 14/11a, 14/11b, 18/1, 18/2, 19/1A in Ariyalur Village, Ambattur Taluk, Thiruvallur District.

2.1. The case of the petitioner is that he is the owner of the land in Survey Nos. 13/2, 13/3, 13/6 A, 13/6 B, 13/8, 13/9, 13/10, 13/4, 14/5, 14/8, 14/9a, 14/9b, 14/10, 14/11a, 14/11b, 18/1, 18/2, 19/1A in Ariyalur Village, Ambattur Taluk, Thiruvallur District. The petitioner had purchased the above said lands from several vendors by various sale deeds dated 17.11.1984, 31.10.1985, 09.01.1986 and 09.05.1986 and right from the date of purchase, the petitioner has been in continuous enjoyment and uninterrupted possession of the lands and

he has also paid necessary kist and other taxes. The petitioner is also possessing necessary pattas for the above said lands.

2.2. The further case of the petitioner is that on 18.9.2000, the second respondent herein, namely, Special Tahsildar (ADW), Ponneri, issued a Notice u/s 4(2) of the Tamil Nadu Acquisition of Land for Adi-dravidar Welfare Schemes Act, 1978 (hereinafter referred to as "the Act") r/w Rule 3(1) of the Tamil Nadu Acquisition of Lands for Harijan Welfare Scheme Rules (hereinafter referred to as "the rules") proposing to acquire the lands of the petitioner under the Act.

2.3. The petitioner submitted his objection dated 29.09.2000 pointing out that the lands proposed to be acquired are agricultural lands and such lands are the only source of income and if the same is acquired, he would be put into great hardship and irreparable loss. The petitioner understands that the some other adjoining lands were also sought to be acquired and similar objections were raised by the the other land owners. Thereafter, by order dated 30.03.2001 passed u/s 4(3) of the Act, the second respondent informed the petitioner that the acquisition proceedings were dropped after inspection of the lands taking into account of the fact that it would not be possible to make pucca constructions on the said lands.

2.4. The further case of the petitioner is that petitioner along with his wife had gone abroad for a long time from 26th April 2002 to 31st October 2002 and after their return to India in November 2002, the petitioner came to know that a notification u/s 4(2) of the Act in proceedings Lr. No. Rc.J1/20030/2002 dated 24.7.2002 published in the Official Gazette by the Collector, Thiruvallur District, the first respondent herein to the effect that petitioner's lands and other lands in Ariyalur Village were acquired for provisions of house sites to Adi Dravidas. The petitioner came to be informed of such development only in the end of December 2002 and thereafter, the petitioner was able to get a copy of the notification u/s 4(1) of the Act published in the Official Gazette. The said notification u/s 4(1) of the Act was passed without following the mandatory requirements of serving show cause notice u/s 4(2) of the Act so as to give an opportunity to the petitioner to raise his objections and only thereafter, the necessary orders to be passed u/s 4(3) of the Act by the Collector or authorities or Authorized Officer either accepting the objections by dropping the proceedings or otherwise. After following the above said procedure only, the notification u/s 4(1) of the Act can be issued.

2.5. As far as the case of the petitioner is concerned, the above said mandatory requirements were not followed. The disputed lands were already released from acquisition in March 2001, considering the objections raised by the petitioner and decided to drop the proceedings. Therefore the petitioner has been constrained to approach this Court with this petition.

3.1. The respondents by filing a counter denied the allegations contained in the affidavit filed by the petitioner herein. It is admitted by the respondents in the

counter that the proposal to acquire the lands of the petitioner for Adi Dravida housing was dropped on the objections raised by the petitioner after inspection of the disputed lands of the petitioner considering that the said lands were found not suitable for pucca construction. It is further stated that thereafter on a representation of Dr. Ambedkar Nadaipathai Vasihal Nalavazvu Sangam, the respondents initiated a fresh proceedings by issuing notice to the petitioner as contemplated u/s 4(2) of the Act 31 of 1978. The petitioner did not appear for the enquiry or filed any objections in writing and the contention that the petitioner was away from India is flimsy and not acceptable. The land acquisition process was completed as per rules, the report was submitted to the Collector in R.C. 61/2002 dated 29.04.2002 for publication of notice u/s 4(1) of the Act 31/78. The Collector, in turn, approved the report by order dated 24.7.2002 and issued notification u/s 4(1) of the Act and the same was also published in the District Gazette of Tiruvallur under Issue No. 17.

3.2. The respondents also filed additional counter affidavit in respect of their claim of serving notice to the petitioner as contemplated under Rule 3(1) of the Rules. In the said additional counter affidavit while narrating the sequence of events, it is stated that a notice as per provisions under Rule 3(1) was despatched to the land owners through the registered post with acknowledgement due calling them to file their objections if any at the time of enquiry on 25.05.2002 and 01.04.2002 and the postal receipts were pasted in the despatch register of the respondents' Office. The petitioner did not appear at the time of enquiry. Thereafter, the further process of acquisition was taken and the District Collector, Thiruvallur, issued notification u/s 4(1) of the Tamil Nadu Act 31 of 1978 and the notification was published in the extra-ordinary District Gazette No. 17 dated 03.08.2002. It is further stated in the additional counter affidavit that awards in respect of the owners of other lands were passed on 24.03.2004 after filling this writ petition by the petitioner and no award was passed in respect of the petitioner as this Court granted status quo by order dated 29.01.2003 and such interim order was made absolute on 17.10.2008.

4. Mr. R. Thiyagarajan, learned Senior Counsel for the petitioner mainly contended that the respondents have not served the notice as contemplated u/s 4(2) of the Act and they have not followed the procedures contemplated as per Rule 3(1) of the rules and as such the entire proceeding is liable to be quashed. It is contended by the learned Senior Counsel that though the respondents have now come forward with the version that the respondents sent a notice as per Section 4(2) of the Act through registered post with acknowledgement due, they have not stated so in the first counter and only for the first time it is stated in the additional counter affidavit. The learned Counsel would further contend that the respondents have not produced any acknowledgement to substantiate their contention that they have served notice to the petitioner. It is further contended by the learned senior counsel that yet another contention of the learned Government Advocate to the effect that they affixed the notice on a placard is also made for the first time during the course of arguments of the learned

Government Advocate and the same is neither stated in the first counter nor in the additional counter affidavit. The learned senior counsel for the petitioner would contend that there is absolutely no material available on record to establish that the respondents have taken all efforts to serve notice on the petitioner as contemplated under Rule 3(1) of the Rules. The learned Senior Counsel, in support of his contentions, would place reliance on the following decisions of this Court:

(i) M. Nagu and Others Vs. The District Collector and The Special Tahsildar (ADW), ; and

(ii) Kannian v. The Collector, Salem District, Salem reported in 2004 (3) MLJ 129.

5. Per contra, Mr. P. Muthukumar, learned Government Advocate contended that the respondents had taken all necessary steps to serve the notice as contemplated under 4(2) of the Act. It is contended that the notice was sent through registered post with acknowledgement due and the same is evident from the despatch register maintained by the respondent office affixing the postal receipt in respect of sending the notice to the petitioner herein and as per such register, the said notice was despatched to the petitioner on 12.02.2008. Therefore it is contended that there is no contravention of the provision u/s 4(2) of the Act. The learned Government Advocate would further submit that by way of precaution, the respondents also affixed a notice on a placard in the lands of the petitioner. The learned Government Advocate produced a document prepared by the Tahsildar in order to substantiate the above contention. The learned Government Advocate contended that there is no infirmity or illegality in initiating the acquisition proceedings in respect of the lands of the petitioner herein and the respondents strictly followed the procedure contemplated under the Rules and Act and they have not contravened any of the provisions of the Rules and the Act.

6. I have carefully considered the rival contentions put forward by either side and thoroughly perused the entire materials available on record and also perused the counter affidavit as well as the additional counter affidavit apart from the affidavit filed by the petitioner herein.

7. The crux of the question involved in this matter is whether the respondents herein have served the notice to the petitioner as contemplated u/s 4(2) of the Act by following the procedure contemplated as per Rule 3(1) of the rules during the course of acquisition proceedings in respect of the lands of the petitioner.

8. At the outset, this Court is constrained to state that in the counter affidavit only a bald and vague statement has been made to the effect that notices under Rule 3(1) of the Rules were issued to the land owners on 09.02.2002 and 21.03.2002 mentioning eight names including the petitioner herein informing the proposed acquisition of lands and calling for their objections if any at the time of enquiry on 25.02.2002 and 11.04.2002 and there is absolutely no whisper to the effect that the notice was served on the petitioner. Thereafter, the respondents

made an attempt to substantiate their version that the petitioner was served with the notice by filing an additional counter affidavit. In the additional counter affidavit in respect of sending notices to the land owners under Rule 3(1) of the rules, it is stated as hereunder:

Notices u/s 3(1) were issued to the land owners/interested person on 09.02.2002, 12.02.2002 and 21.03.2002 we sent through by register post along with acknowledgement card and the same day the above mentioned postal receipt pasted in the despatch register of this respondent office. The same is also very much available in records informing the proposed acquisition of lands and to file their objections if any at the time of enquiry on 25.02.2002 and 01.04.2002, Thiru Victor Devasagayam land owner was not appearing at the time of enquiry.

It is pertinent to note that the above said statement in the additional counter affidavit makes it crystal clear that it is not the version of the respondents that they have served the notice on the petitioner and only a general statement is made to the effect that notices were sent to the land owners/interested person by registered post with acknowledgement due. The fact remains that the respondents have not produced any acknowledgement to substantiate their version that they have served the notice on the petitioner. The learned Government Advocate at the time of his arguments produced a register in which the postal receipts were pasted in respect of despatching the registered post to the land owners. A perusal of the said register discloses that number of postal receipts were pasted and in other receipts, the to (receiver's) addresses were clearly mentioned with door number, etc. But as far as the petitioner is concerned, the postal receipt does not disclose the door number of the house of the petitioner. Therefore, it cannot be stated that the said notice was sent to the correct address of the petitioner. Assuming that the respondents herein despatched notices through the registered post with acknowledgement due, still, it cannot be considered to have been despatched to the correct address of the petitioner herein and as such even as per the provision u/s 27 of the General Clauses Act, the notice could not be deemed to have been served on the petitioner as the said notice was not despatched to the correct address.

9. The respondents have also made yet another vain attempt to substantiate their claim that they have also affixed the notice on a placard at the land of the petitioner by producing a document. A perusal of the said document reveals that the Tahsildar said to have recorded the affixing of the notice on a placard at the lands of the petitioner by mentioning the respective survey numbers. The fact remains that the contents of the recording is in one ink and the signature of the Tahsildar is in another ink. The said document does not contain the seal of the Tahsildar or the date on which it was recorded. The other documents contains the seal of the respective officers. Therefore, this Court is of the considered view that no sanctity could be attached to such document and the same cannot be relied.

10.1. At this juncture, it is relevant to refer to the provisions u/s 4(1) and (2) of the Act and Rule 3(1) of the Rules regarding the issue of show-cause notice

before initiating the acquisition proceedings.

10.2. Section 4(1) and (2) of the Act reads hereunder:

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.

The above said provision makes it crystal clear that before publication of the notice under Sub-section (1) of Section 4, the District Collector or any officer authorised by him shall issue a show-cause notice calling upon the owners of the land or any other interested person as to why it should not be acquired.

10.3. Rule 3(i) and (ii) of the Rules reads hereunder:

3. Procedure for acquiring land - (i) The District Collector or the officer authorised by him in this behalf shall serve a show cause notice in Form I under Sub-section (2) of Section 4 individually on the owner or on all persons interested in the land to be acquired. If the owner or any other person interested in the land resides elsewhere than where the land is situated, the show cause notice shall be sent by a registered post (acknowledgement due) to the last known address of the owner or any other person interested.

(ii) The District Collector, if, after passing such order as required by Sub-sections (2) and (3) of Section 4, is satisfied that it is necessary to acquire the land, notice in form II to that effect shall be published in the District Gazette.

A reading of the provision under Rule 3(i) of the Rules makes it abundantly clear that notice u/s 4(2) of the Act should be served individually on the owner of the land or on the persons interested in the land to be acquired. It is pertinent to note that only after complying with the provisions under Sub-section (2) of Section 4, the District Collector, in the event of his satisfaction to acquire the land, notice shall be published in the District Gazette.

11. At the risk of repetition, it is to be re-iterated that Rule 3(i) speaks about the mode of service of the notice on the owners or on the interested persons of the land. The procedure, as per that provision, is to serve the notice individually to all the owners or to the interested persons and if they are residing elsewhere than at the place where the land is situated, the notice must be served by registered post with acknowledgement due. There is no contemplation of any provision of affixing the notice.

12. It is pertinent to note that in the instant case, there is absolutely no

explanation as to what prompted the respondents to resort to affix the notice on a placard at the lands of the petitioner. A perusal of the records does not disclose that the respondents have taken all efforts and steps to serve the notice to any person and thereafter, resorted to affix the notice on a placard.

13. At this juncture, it is relevant to refer the decision of this Court in *M. Nagu and Others Vs. The District Collector and The Special Tahsildar (ADW)*, wherein it has been held as follows:

Procedure contemplated Rule 3(1) makes it clear that authority shall serve notice on owners individually. On a careful perusal of entire records, there is absolutely nothing to show that second respondent has taken steps to serve on each and every one of owners and on their refusal only they proceeded to notice by affixture. Nothing was stated in affixture endorsement about efforts taken by second respondent in serving notice on owners. Therefore, it is a violation of procedure contemplated in Rules which in turn a violation of Principles of Natural Justice.

14. In yet another decision in *R. Ramakrishnan v. State of Tamil Nadu and Anr.* reported in 2007 W.L.R. 645, this Court held as hereunder:

17. Hence I am satisfied that the impugned acquisition proceeding is vitiated on the ground that Section 4(2) notice was not served on the petitioner in the manner as contemplated under the Act, i.e., without resorting to personally serving the notice on the petitioner or on any adult male member of his family, straight away the Village Administrative Officer affixed the notice on the door of the petitioner's house and no date is also mentioned by the Village Administrative Officer to satisfy this Court, on which date the affixture was made. The objection raised by the petitioner on 1.12.1997 is available in the file and the third respondent, without conducting enquiry, recommended to reject the same in a cyclo-styled form and the second respondent also failed to record satisfaction to acquire the land by rejecting the objections made by the petitioner. The inconsistent stand with regard to the filing of objection by the petitioner is made in counter affidavit in para 4, which is extracted above. The petitioner in his objection dated 1.12.1997 has not given consent to remove the palmarah trees, however, the third respondent states in his report that the petitioner agreed to remove the palmarah trees. Hence it is beyond doubt that in a casual and lethargic manner and in violation of the above referred judgments, the land acquisition proceeding is initiated against the petitioner and therefore the same is liable to be set aside and accordingly set aside.

15. This Court by placing reliance on Rule 3(1) of the Rules in *Alagu and Ors. v. District Collector, Madurai and Anr.* reported in 2008 (2) MLJ 1168, held as follows:

The provisions of the Act and Rules do not provide for service of notice in the manner aforesaid. The authorities should have made some attempt to find out the owners if they are not able to identify the persons concerned. The affixture of

a notice in the land in question on a placard cannot be termed as a proper service of notice on the owners of the land. Nothing is placed on record to show that any attempt was made to identify the owners of the land before proceeding to paste the notice in the manner stated above.

16. In *Kannian v. The Collector, Salem District*, Salem reported in 2004 (3) MLJ 129, this Court held as follows:

15. The records indicate that the service of notice having been refused by Renulingam, it was effected by affixture on the boundary stone. This is contrary to the rules which require the notice to be served on the land owner, if he resides in the lands in question or if he resides elsewhere, by registered post in the last found address. This alone would be service according to law and not other mode of service.

17. This Court in *P. Rajendran v. The District Collector, Salem and Anr.* (2000) 2 M.L.J. 790, quashed the proceedings because the notice was affixed on the survey stone and it was held to be not in accordance with law.

18. It is also pertinent to refer to the Full Bench decision of this Court in *R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector*, . The Full Bench of this Court in that decision held that where an enquiry held by the Special Tahsildar or any authorised officer, the report of such officer shall be made available to the owner of the property or to the interested person enabling him to make a further representation to the District Collector. It is better to incorporate the relevant portion of the Full Bench decision which reads hereunder:

26. ...Therefore, it would be reasonable to conclude that where the enquiry is held by the Authorised Officer, the report of such officer shall be made available to enable the person interested to make a further representation to the District Collector instead of insisting upon a second formal enquiry.

27. ...We do not think that by furnishing a copy of the report/recommendation of the Authorised Officer and giving opportunity of making a further representation would unduly delay any such proceedings. In our opinion, if the copy of the report/recommendation of the Authorised Officer is given to the owner at the time when such report/recommendation is sent to the District Collector and the owner is called upon to make further representation, if any, within a period of two weeks" from the date of receipt of such report, the proceedings would not get unduly delayed.

28. We feel emboldened to take the above view, in view of the expanding horizons of the principles of natural justice and extended application of such principles to matters which are even considered to be administrative in nature.

19. The Full Bench of this Court in that decision further held as follows:

38. So far as Question No. 2 is concerned, since it is construed by us that it is necessary for the Collector to give opportunity to the owner to file further

representation on the report/recommendation made by the Authorised Officer, such copy of the report/recommendation is required to be furnished. We also add that in view of the provisions contained in the Right to Information Act, 2005 the owner would be entitled to copy of the report of the Authorised Officer.

39. It was submitted on behalf of the State Government that since specific provisions had been made in Section 4 and Rule 3 and particularly in Form I, it would not be appropriate to incorporate any other principle of natural justice.

A similar contention had been repelled by the Supreme Court in the decisions reported in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and *S.L. Kapoor Vs. Jagmohan and Others*, . In the later decision, relying upon the decision reported in *Mohinder Singh Gill v. Chief Election Commissioner, New Delhi* (supra), it was observed:

10. ...We are unable to agree with the submission of the learned Attorney-General. It is not always a necessary inference that if opportunity is expressly provided in one provision and not so provided in another, opportunity is to be considered as excluded from that other provision. It may be a weighty consideration to be taken into account but the weightier consideration is whether the administrative action entails civil consequences. This was also the view taken in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , where it was observed:

We have been told that wherever the Parliament has intended a hearing it has said so in the Act and rules and inferentially where it has not specified it is otiose. There is no such sequitur. The silence of a statute has no exclusionary effect except where it flows from necessary implication.

20. It is pertinent to note that even the principle laid down by the Full Bench of this Court in *R. Pari's* case was not followed in the instant case as the respondents neither served a notice u/s 4(2) of the Act by following the procedure contemplated under Rule 3(1) of the Rules nor furnished the report submitted by the Special Tahsildar, the second respondent herein, affording opportunity to the petitioner to make further representation to the District Collector, the first respondent herein. The principle laid down in the decision cited supra makes it crystal clear that serving of the notice u/s 4(2) of the Act as per the procedure contemplated under Rule 3(1) of the Rules is not a mere empty formality and the object of serving such notice is to give opportunity to the land owners or the interested persons to make their objections. Therefore, the procedure contemplated u/s 4(2) of the Act and Rule 3(1) of the Rules should be followed scrupulously by serving notice to the owner of the property or to the interested person and further after the submission of the report of the Special Tahsildar or the authorised officer, the report should be furnished to the owner of the land or the interested person affording opportunity to give further representation, otherwise it would result in grave prejudice to the said person. As it is already pointed out, it cannot be stated that the petitioner may not have any

valid objection as the petitioner already raised his objections at the time of earlier occasion and thereafter, the acquisition proceedings were dropped. It is needless to state that right to property is a human right and also a constitutional right and such right cannot be infringed by adopting arbitrary and unreasonable procedure depriving the owner of the land to put forward his objections.

21. At this juncture, it is also relevant to refer the observations of the Full Bench of this Court in R. Pari's case (cited supra) which reads hereunder:

However, right to land being a Constitutional Right recognised under Article 300-A of the Constitution, such right can be denied only in accordance with law. Law which provides for such acquisition of land obviously should stand the test of lack of arbitrariness as otherwise such law may fly in the face of Article 14 and may be Article 21. Even though the substantive right of the State to acquire land cannot be denied, such law providing for acquisition of land should satisfy the test of procedural reasonableness and it is therefore apparent that the authority acquiring such land (in the present case the District Collector) must be satisfied about the necessity to acquire such land and while arriving at such satisfaction, the authority is also required to consider the objections raised by the land owner. The authority must be alive to the requirement of balancing the need of the State as well as peculiar disadvantages to be suffered by the land owner.

22. In view of the aforesaid reasons, this Court is constrained to come to the irresistible conclusion that the impugned proceedings is liable to be quashed and accordingly, the proceedings initiated by the first respondent herein, viz., The District Collector, Thiruvallur District, in Lr. No. Rc.J1/20030/2002 dated 24.07.2002 published in the Tamilnadu Gazeete No. 17 dated 03.08.2002 is hereby quashed.

23. However, it is open to the respondents to initiate fresh proceedings, if they desire so, and in the event of satisfying and establishing that the lands of the petitioner are still required for the public purpose, for which, the said lands were sought to be acquired earlier.

This petition is allowed. No costs.