
(2013) 04 MAD CK 0052

In the Madras High Court

Case No : Writ Petition No. 1450 of 2007 and M.P. No. 2 of 2007

V.S. Kumarasamy Mudaliar

APPELLANT

Vs

District Collector and Another

RESPONDENT

Date of Decision : 22-04-2013

Acts Referred:

Constitution of India, 1950 — Article 17
Land Acquisition Act, 1894 — Section 31(2), 4(1)

Citation : (2013) 4 MLJ 742

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; M.S. Ramesh, Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.R. Shivakumar, J.—The petitioner, who was the owner of a portion of the land acquired for a public purpose, namely, for providing a

pathway leading to the burial ground from the harijan colony of Ottai village, has come forward with the present Writ Petition praying for quashing

of the proceedings of the first respondent, viz., the District Collector, Villupuram, issuing a notification u/s 4(1) of the Tamil Nadu Acquisition of

Land for Harijan Welfare Schemes Act 1978 (Act 31 of 1978) on the ground that the same is illegal, incompetent and without jurisdiction. There

was a long standing demand for providing a pathway to the burial ground from the harijan colony in Ottai village since they had to carry the dead

bodies to the burial ground only through the patta lands belonging to members of various communities and at times, they had to face stiff resistance

from the land owners. Accepting such a demand, the District Collector of Villupuram, authorised the Special Tahsildar, Adi Dravidar Welfare,

Tindivanam, to perform the functions of the Collector u/s 4(2) of the said Act. Accordingly, the Special Tahsildar, Adi Dravidar Welfare,

Tindivanam, identified the lands to be acquired, issued notice to the interested persons and submitted a report along with the objections to the

District Collector, Villupuram, recommending for the acquisition of the portion of the lands comprised in S. Nos. 67, 70, 71, 72, 76 and 77,

measuring a total extent of 0.27.0 hectares. The proposed land acquired was separately shown in Sub-divisions in S. Nos. 67/1A, 70/1A, 71/1B,

71/2B, 72/1A, 76/1A, 76/2A, 76/3A and 77/2A. Among the respective owners of the lands comprised in the above said survey numbers, except

the petitioner, others did not raise any objection for the proposed acquisition. The petitioner who was the owner of S. No. 71/1 alone raised an

objection contending that it was not necessary to acquire the said lands for the provision of pathway leading to the burial ground in S. No. 77/1

since the use of the said poramboke land comprised in S. No. 77/1 in Ottai village had been discontinued and they have got another poramboke

land which could be used as burial ground. The report of the Authorised Officer, viz., the Special Tahsildar, Adi Dravidar Welfare, Tindivanam,

along with the written objections submitted by the petitioner was considered by the District Collector, Villupuram and upon such consideration, the

District Collector, Villupuram was satisfied with the necessity to acquire the above said lands including 0.07.0 hectares of the land comprised in S.

No. 71/1 belonging to the petitioner. Consequently, the District Collector issued notification u/s 4(1) of the said Act 31 of 1978 on 30.12.1999.

The same was published in the Official Gazette of the Villupuram District on 10.1.2000.

2. As per the scheme of the Act, on the publication of the notification u/s 4(1), the land vested with the Government absolutely free from

encumbrances. Thereafter, the prescribed authority, namely, the Special Tahsildar, Adi Dravidar Welfare, Tindivanam, conducted the award

enquiry for fixing the compensation and passed an award in Award No. 17 of 1999-2000, dated 28.03.2000. For the above said land of the

petitioner, a sum of Rs. 3,501/- was awarded as compensation. Since the petitioner was not prepared to receive the compensation, the

compensation amount relating to the land of the petitioner which was acquired for the above said purpose was deposited in the Additional Sub

Court, Tindivanam. A reference u/s 31(2) of the Land Acquisition Act 1894 was taken on file by the Court as L.A.O.P. No. 78 of 2000 and a

notice was served on the petitioner regarding the deposit of the compensation amount into Court. Thereafter, the petitioner, instead of receiving the

said amount without prejudice to his right to challenge the quantum of compensation, simply chose to file a claim petition contending that the

acquisition itself was not in accordance with law and hence, the reference itself should be rejected. It seems the Court also, without considering the

scope of the reference and the claim statement made by the petitioner, kept the matter pending for about six years thinking that it was a reference

for apportionment of the compensation awarded for the land acquired. However, when the same was taken up for trial, the learned Additional Sub

Ordinate Judge, Tindivanam, found that the petitioner had attempted to convert the said L.A.O.P. proceedings into a proceedings for challenging

the notice u/s 4(2) of the Act 31 of 1978 and also the notification u/s 4(1) of the said Act and came to the conclusion that such a contention could

not be raised in the L.A.O.P., registered based on a reference and deposit of the award amount u/s 31(2) of the Land Acquisition Act 1894.

Accordingly, the learned Additional Subordinate Judge ordered that the compensation amount of Rs. 3,501/- deposited into Court by the

Authorised Officer in connection with the award in Award No. 17 of 1999-2000, dated 28.03.2003 be paid to the petitioner along with interest, if

any. After the said order came to be passed, the petitioner has chosen to approach this Court with the present Writ Petition, not challenging the

award, but challenging the 4(1) notification itself.

3. Mr. V. Raghavachari, learned counsel for the petitioner made the following contentions:

(1) there was no necessity to provide a pathway from harijan colony of Ottai village to the alleged burial ground in S. No. 77/1B, since the use of

the said land as burial ground has been discontinued;

(2) the lands comprised in S. No. 65/1, new S. No. 66/1 which has been classified as poramboke could be converted into a burial ground and in

such an event, acquisition of the petitioner's land and the land of the others for providing pathway would not be necessary;

(3) the petitioner's land was a fertile land, in which, agricultural operations were

carried on and by the acquisition, the petitioner's right to carry on the profession as agriculturalist was affected;

(4) even the members of the schedule caste of Ottai village were not in favour of the acquisition of the lands in question for providing pathway and

they were in favour of conversion of the poramboke land in S. No. 65/1 (new S. No. 66/1) into a burial ground;

(5) the acquisition was made at the instance of the neighbouring land owners who wanted to lay out their lands into house sites; and

(6) the Authorised Officer, namely, the Special Tahsildar, Adi Dravidar Welfare, alone conducted enquiry u/s 4(2) and the Collector before

approving the 4(1) notification did not apply his mind to the objections raised by the petitioner.

4. Based on the above said contentions, the learned counsel for the petitioner argued vehemently that the colourable exercise of the power of

eminent domain should properly dealt with by the Court by setting aside the 4(1) notification, by which, the lands sought to be acquired would

stand vested with the Government.

5. Per contra, it is the contention of the learned Additional Government Pleader representing the respondents that the Authorised Officer who

submitted the report u/s 4(2) to the Collector, has not been made a party in the Writ Petition, whereas the Village Administrative Officer who has

nothing to do with the acquisition proceeding has been unnecessarily made a party to the Writ Petition. It is the further contention of the learned

Additional Government Pleader that though conducting enquiry with the interested persons was assigned to the Authorised Officer, namely, the

Special Tahsildar, Adi Dravidar Welfare, Tindivanam, the report of the Adi Dravidar Welfare, Tindivanam, was personally considered by the

District Collector and the District Collector, on being satisfied with the necessity to go ahead with the proposed acquisition, chose to issue 4(1)

notification.

6. Learned Additional Government Pleader also would contend that the faint attempt made by the learned counsel for the petitioner to project as if

the District Collector had acted mechanically without even applying his mind to the objections raised by the petitioner, is bound to be

discountenanced because the District Collector considered the objections raised

by the petitioner and only after considering the objections, the District Collector passed necessary order for the issuance of 4(1) notification. In this regard, this Court wants to point out the fact that the learned counsel for the petitioner during his arguments contended that there was record showing that the Collector passed an order for the acquisition of the land, that too, after considering the objections raised by the petitioner.

7. This Court does have the benefit of going through the entire file relating to the acquisition proceedings which shows that the District Collector, after going through the materials including the objections raised by the petitioner, passed an order for the issuance of 4(1) notification pursuant to which alone, Section 4(1) notification came to be issued. So far as the contention raised on behalf of the petitioner that the acquisition proceeding was nothing but a colourable exercise of eminent domain as, according to the petitioner, the same was done at the behest of the neighbouring land owner who wanted to lay out his land into house sites is concerned, there is no material to substantiate such a contention. There is not even a reference to such an object in the written objection submitted by the petitioner to the Special Tahsildar, Adi Dravidar Welfare, Tindivanam. It is obvious that the said ground is nothing but one invented belatedly for the purpose of challenging the acquisition proceedings in the Writ Petition.

Hence, as rightly contended by the learned Additional Government Pleader, the said contention of the learned counsel for the petitioner deserves to be discountenanced.

8. The next contention of the petitioner is that S. No. 77/1B was not used for a long time as burial ground and it's user as a burial ground has been discontinued. Yet another contention made by the petitioner is that there is another poramboke land in old S. No. 65/1, new S. No. 66/1 which can be used as a burial ground for the harijans of Ottai Village. The very averment made in the objection that another land can be used as a burial ground itself will show that there was no other land except S. No. 77/1B which was in use as burial ground for the harijans of Ottai Village. In this regard, learned counsel for the petitioner wanted to project that some of the members of the scheduled caste residing in Ottai Village wanted the lands suggested by the petitioner to be used as the burial ground for them.

9. The learned Additional Government Pleader pointed out the fact that not only

the lands belonging to the members of other communities, but also the lands belonging to the members of schedule caste of Ottai Village have been acquired for the purpose of forming the pathway leading to the burial ground in S. No. 77/1B from the harijan colony situated in S. No. 51 of the said village. The particulars of land acquired for the above said purpose are furnished as under:

10. There was no objection from the owners of the other lands except S. No. 71/1B regarding which the petitioner was the owner. When all the other persons give their lands and expressed their no objection for providing a pathway leading to the burial ground from the harijan colony, the petitioner alone wanted to be a stumbling block for the welfare measure sought to be taken by the Government. Initially, he raised an objection before the Authorised Officer, viz., the Special Tahsildar, Adi Dravidar Welfare, Tindivanam. He considered the same and submitted a report stating that the objection could not be sustained. The said objection was also considered by the District Collector and the District Collector also, on application of mind, chose to reject the objection and proceed with the acquisition proceedings. After 4(1) notification was issued, which had the effect of vesting the property with the Government free from encumbrances, the petitioner did nothing and kept quite. Subsequently, the award enquiry was conducted by the prescribed authority, viz., the Special Tahsildar, Adi Dravidar Welfare, Tindivanam, which resulted in the passing of the award in Award No. 17 of 1999-2000, dated 28.3.2000. The 4(1) notification was published in the Villupuram District Gazette, on 10.1.2000. Till the award was passed on 28.3.2003, the petitioner did nothing. He did not chose to challenge the 4(1) notification immediately after its publication. Even after the passing of the award which resulted in the submission of the reference u/s 31(2) of the Land Acquisition Act 1894 and deposit of the compensation amount in the Court since the petitioner did not come forward to receive the amount, the petitioner simply kept quite till he received a notice in L.A.O.P. No. 78 and 2000 registered based on the reference made u/s 31(2) of the Land Acquisition Act 1894. By the clever method to purchase the time, the petitioner chose to file a claim petition before the Additional Sub Court in the L.A.O.P., praying for dismissal of the reference stating that the acquisition was not a bona

fide one for public purpose. When the matter was heard by learned

Additional Sub Judge, Tindivanam, the Learned Judge found that the matter was unnecessarily prolonged at the instance of the petitioner. The

learned Additional Sub Judge, rightly rejected his claim and directed payment of the compensation amount deposited into Court to the petitioner.

Only thereafter the petitioner has chosen to come forward with the present writ petition.

11. As rightly contended by the learned Additional Government Pleader, the present petition is liable to be thrown out on the ground of laches

also. There is no acceptable explanation forthcoming from the petitioner for the inordinate delay in challenging the acquisition proceedings except

an invented ground that he was misguided by the Court. The fact remains that the petitioner was represented a counsel before the Additional Sub

Court, Tindivanam, in L.A.O.P. No. 78 of 2000. A legal brain was behind filing of the claim statement with an intention to put on hold the benefit

of the acquisition proceedings reaching to the beneficiaries.

12. So far as the other contention that the valuable agricultural land of the petitioner was sought to be acquired for forming a pathway leading to the

burial ground from the harijan colony of Ottai village, this Court accepts the contention of the learned Additional Government Pleader that the

suitability and necessity was properly considered by the District Collector and then only the proposal for acquisition was given effect to by issuing

4(1) notification. The said contention is accepted by this Court. In addition, it was contended on behalf of the petitioner that the petitioner's land

was a fertile land, in which, Casuarina and sugar cane crops were raised to project as if it was a wet land. But the fact remains that the

classification of the land of the petitioner was only "dry land". It is a known fact that sugar cane cannot be grown in a field where casuarina trees

are planted. The cumulative effect of all these aspects will go to show that the petitioner, who is inimically disposed towards the members of the

oppressed community in Ottai village, was bent upon putting up hurdles for providing a passage to their final destination, viz., the burial ground.

Even after several decades after independence and abolition of untouchability by inclusion of Article 17 of the Constitution. People's mentality has

not changed and such hurdles such as the one provided by the petitioner is

accepted and liberty is given to the petitioner to approach the

Commissioner of Panchayat Union with a written representation for the cause. For all the reasons stated above, this Court comes to the conclusion

that the challenge made to the acquisition proceedings is bound to fail not only on the ground of laches but also on merits. For all the reasons stated

above, the writ petition deserves to be dismissed.

13. Learned counsel for the petitioner now makes a request that in case of stagnation of rain water in his field, he may be allowed to drain the

water across the pathway that may be laid. Learned Additional Government Pleader submits that already the pathway (mud road) has been laid

and the same is in use for about 13 years; that the said mud road is in the control of the Commissioner of Panchayat Union and that if the petitioner

wants such permission, he has to approach the Commissioner of Panchayat Union through proper channel.

14. Learned counsel for the petitioner" request for incorporation of an observation that the petitioner can be given liberty to approach the

Commissioner of Panchayat Union for making provision of draining water that gets stagnated in his lands, across the road, Act 31 of 1978 does

not provide for any reference for enhancement of compensation. It provides a right of appeal. Knowing fully well that the petitioner had to file an

appeal in case he was not satisfied with the amount awarded as compensation, the petitioner made an attempt to put on hold the conferment of the

benefit of the acquisition proceedings on the beneficiaries by trying to project the reference u/s 31(2) as a proceedings in which he could make a

challenge to the acquisition proceedings in its entirety. In case, any such application is filed, it shall be considered on its own merits by the

concerned authority and this Court does not express any opinion regarding merits of such claim. In the result, this Writ Petition is dismissed.

Consequently, connected Miscellaneous Petition is also dismissed. No costs. However, the petitioner shall be at liberty to approach the

Commissioner of Panchayat union or any other appropriate authority seeking permission to have a provision across the road for draining the water

stagnated in his land during rainy season in his land.