

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/08/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K.MISRA

W.P.NO.7776 OF 2001

1.Sri Pillappa

2.P.Srinivas

3.P.Muniraju ..Petitioners

-vs-

1.State of Tamil Nadu
rep. by its Secretary to Government
Adi Dravidar Welfare
Fort St. George
Chennai 9

2.The District Collector
Dharmapuri District
Dharmapuri

3.The Special Tahsildar
Adi Dravidar
Krishnagiri ..Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorari calling for the records relating to the impugned notification issued by the respondents under Sec.4(1) of the Act vide ref.No.Ka.Ka.10132/2001 Ko1 dated 15.2.2001, as published in the Dharmapuri District Gazette dated 16.2.2001 and consequently the award proceedings in Award No.10/2000-2001 vide proceedings ref.Na.Ka.No.583/2000 dated 23.3.2001 by the third respondent in respect of the petitioner's lands in S.No.45/2B, 49 & 50/A in Nandimangalam Village, Hosur Taluk, Dharmapuri District, quash the same.

For petitioners : Mr.T.R.Rajaraman

For respondents : Mr.S.V.Durai Solaimalai

:ORDER

The present Writ Petition has been filed for quashing the notification issued by the second respondent under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme, Act (Act 31/1978) (hereinafter referred to as the Act). The issue relates to the property belonging to the petitioner in Survey No. 45/2B to an extent of 0.13.0 hectares, Survey No.49 to an extent of 0.81.0 hectares and Survey No.50/1A to an extent of 0.23.0 hectares in village Nandimangalam. A notice under Section 4(2) of the Act dated 20.12.2000 was issued by the 3rd respondent in the name of the petitioner No.1. Petitioners 2 and 3 are the sons of the petitioner No.1. In the said notice it was indicated that the lands were required for the purpose of providing house sites to Adi-dravidars in the village. As per the notice, the petitioner No.1 was required to attend the enquiry on 8.1.2001. The petitioner No.1 filed a detailed written objection dated 2.1.2001 wherein it was indicated among other things that Government poramboke lands were available for the use of the Adi-dravidars. It was also indicated out of the lands already acquired for Adi-dravidars, several plots were lying vacant. It was also indicated that there had been oral partition among the members of the family and all the separate lands owners had not been issued notice and more over the lands under occupation of the family members being inimical should not be acquired. The petitioner No.2 also issued a legal notice indicating that the lands in S.No.45/2B and S.No.50/1A had been allotted to him. It was also indicated that the notice dated 20.12.2000 was served on the petitioner No.1 only on 30.12.2000 and yet the enquiry had been fixed to be held on 8.1.2001 without giving 15 days notice. Subsequently, the notification under Section 4(1) was published in the Gazette. But, such notification was not communicated to the petitioners and only after issuing notice for the award enquiry the petitioners came to know about the notification under Section 4(1) of the Act. Thereafter, the present Writ Petition has been filed. In the Writ Petition it is contended that the notice issued by the 3rd respondent under Section 4(2) of the Act was improper inasmuch as the notice dated 20.12.2000 was served only on 31.12.2000 and yet, the enquiry had been fixed to be held on 8.1.2001 without giving sufficient time to the petitioners to file effective objections in accordance with the procedure contemplated under the Act. It is also contended that even though all the three petitioners had jointly interested in the disputed land, notice was served on petitioner No.1 alone and no notice had been served on the petitioners 2 and 3. It is further contended that since vast extent of vacant land had been acquired and house sites had been provided to Adi-dravidars there was no necessity for fresh acquisition, the land was being sought to be acquired. It is further contended that the second respondent who is the authority contemplated under the statute to take a decision regarding acquisition of land has not applied his mind and has not considered the objections filed on behalf of the petitioner No.1 and has mechanically signed the proposal forwarded by the subordinate officers for acquisition of the land and for issuing notification under Section 4(1).

2. Even though a formal counter has not been filed on behalf of the respondents, at the time of hearing, the respondents have produced the entire records. The High Court office prepared the translated copy of the relevant records. The main contention of the petitioners is to the effect that even though an enquiry was held by respondent No.3 as contemplated under Section

4(2) of the Act, thereafter, the matter has been mechanically dealt with by the respondent No.2 while directing issuance of notification under Section 4(1) of the Act without proper application of mind to the relevant materials on record including the objections filed on behalf of the petitioner No.1 It is emphasized that the Collector while deciding the matter is required to apply his independent mind and come to his own independent conclusion and the Collector is not expected to act as a mere rubber stamp to prove the proposal made by the Special Tahsildar.

3. Section 4 of the Act is extracted 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.

(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.

A perusal of the aforesaid provision makes it clear that after issuance of notice under Section 4(2) of the Act and after receipt of the objections from the concerned persons an enquiry may be held by the Collector himself or by an officer authorised by the Collector. In the present case, the personal enquiry was held by the officer authorised by the Collector and thereafter, the said officer submitted the report before the Collector. Under Section 4(3) of the Act, the Collector is required to take a decision as to whether land should be acquired or not. It is obvious that while taking such a decision the Collector is required to consider all the relevant aspects including the report of the Officer who has conducted the enquiry. However, the Collector is also required to apply his mind to the objections raised by the land owners. The Collector cannot mechanically append his signature to the proposal for acquisition of land. Even though the Special Tahsildar submits a report rejecting the objections of the land owners, the Collector has to apply his independent mind to the entire facts and circumstances including the objections filed by the objectors.

4. In the present case, the relevant records indicate that after holding the enquiry the Special Tahsildar had recommended that the land may be acquired. A perusal of the record indicates that the Collector seems to have mechanically accepted the proposal. There is no material available on record to show that in fact, the Collector has applied his independent mind to the entire facts and circumstances including the objections filed on behalf of the petitioners. It is of course true that the Special Tahsildar had recommended that the objections are not acceptable. But, under the Act, the statutory duty is cast on the Collector to take an independent decision in the matter. Neither in the official record nor in the final order passed by the Collector there is any indication regarding independent consideration by the Collector, more particularly, with respect to the various objections raised on behalf of the petitioners. It is obvious that the matter has been dealt with rather mechanically by the Collector.

5. The learned counsel appearing for the petitioners has placed reliance upon the two decisions of this Court in support of his contention that the Collector is required to act independently by application of mind before passing the order in 2001 (1) M.L.J. 328 (S.K. THIRUGNANASAMBANDAM AND OTHERS V. THE GOVERNMENT OF TAMIL NADU AND OTHERS). The learned single Judge has observed in the said decision in paragraphs 16 and 18 as follows:

`16. So, from the above said decision if the authorities concerned did not apply their mind to the issue on which the order is passed, such order cannot be sustained. In the present cases, as contemplated under Sec.4(3)(b) of the Act, the Collector has to consider the report of the officer authorised and then he has to pass order as he may deem fit. But there is no such consideration by the Collector with reference to the report in the impugned order itself, and it cannot be said that the same has been discussed by the clerk at the Collectorate officer in the note file and that is enough. The consideration must be stated by the Collector himself in the order.'

18. From the abovesaid decision also, it is very clear that the Collector has not considered the report of the authorised officer while passing the order in question. Had the Collector carefully considered the report, he would have applied his mind regarding the valid objections raised by the petitioners. The petitioners have specifically stated that lands of the Government are available, and, in the lands sought to be acquired, there are coconut trees. Though the Collector has taken a decision to acquire the lands in question for the purpose of implementing the scheme, the Statute cast upon the Collector the duty of considering the report of the authorised officer, if he has authorised somebody to do his duty, as contemplated under Sec.4(3) (b) of the Act. Such consideration should be effective for the purpose for which it has been provided for. Under the Act, it is the duty of the Collector to call upon the owner or other persons to show cause as to why their lands should not be acquired and pass orders by himself on the cause so shown. An alternative also is provided to depute that function to the authorised officer. When he deposes his function, the Collector should be more careful while taking decision, and, by applying his mind, should pass orders with valid reasons. He cannot simply approve the report of the officer authorised by him.'

The ratio of the aforesaid decision is also applicable to the present case. It seems that the Collector has merely appended his signature on the suggestions given in the office note or in the cyclostyled form that has been issued. There is nothing to indicate that the Collector has independently applied his mind. As already indicated, the petitioner No.1 has indicated about the availability of the alternative site and the fact that there was no necessity to acquire any land as houses have already been provided to Adi-dravidars. There is nothing to indicate that the Collector has considered independently all these aspects including the contentions and the objections raised on behalf of the petitioners. A similar view had been taken in the decision reported in 2001 (3) C.T.C. 649(G.RAMAKRISHNA NAIDU (DECEASED)AND TWO OTHERS V. THE DISTRICT COLLECTOR, NORTH ARCOT AMBEDKAR DISTRICT, VELLORE).

6.Following the aforesaid decisions and keeping in view the facts and circumstances of the case, I am inclined to allow the writ petition and quash the notification under Section 4(1) of the Act. Since the notification under Section 4(1) is quashed, other consequential steps taken during the award enquiry are automatically quashed. However, it is made clear that it would be open to the concerned authorities to initiate fresh steps for acquisition of land in accordance with law if there is any necessity.

7.The learned counsel for the petitioners had also raised the question that no opportunity of hearing had been given by the Collector before taking decision in the matter and the principles of natural justice had not been followed. For the aforesaid purpose he has relied upon the decision of a Division Bench of this Court reported in 1997 T.L.N.J. 311 (THIRUMATHI PUSHPA BAI BAINSINGH V.DISTRICT COLLECTOR, TIRUNELVELI KATTABOMMAN DISTRICT) corresponding to 1998 (1) C.T.C. 28 1. However, the aforesaid decision has been subsequently distinguished by the learned single Judge in a decision reported in 1999 (2) M.L.J. Page 506 (S.SANNASI AND OTHERS V. THE DISTRICT COLLECTOR, PUDUKKOTTAI AND ANOTHER). In view of the fact that the notification is found to be illegal and defective for the reasons already indicated, it is not necessary to consider the question as to whether the Collector is required to comply with the principles of natural justice before taking a decision regarding issuance of notification under Section 4(1) of the Act.

8.For the reasons indicated above, the writ petition is allowed. No costs.

Index;yes
Internet;yes

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To

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3.The Special Tahsildar
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