

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.11.2004

Coram:

The Honourable Mr.MARKANDEY KATJU, Chief Justice

and

The Honourable Mr.Justice N.V.BALASUBRAMANIAN

Writ Appeal No. 3993 of 2004

and

W.A.M.P.No. 7496 of 2004

V. Kuppusamy Reddiar

:: Appellant

Vs.

1. The Collector
Villupuram - Ramasamy
Padayatchiar District,
Villupuram.

2. The Special Tahsildar (ADW)
Tindivanam.

::

Respondents

Appeal filed under Clause 15 of the Letters Patent against
the order passed in W.P.No. 14207 of 1996 dated 25.10.2002.

For Appellant

:: Mr.Ashok Viswanath

For Respondents

:: Mr.V.Raghupathy
Government Pleader

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J U D G M E N T
(The Judgment of the Court was delivered by
The Honourable The Chief Justice)

This writ appeal has been filed against the impugned judgment of the learned single Judge dated 25.10.2002.

2. We have heard the learned counsel for the parties, and have perused the impugned judgment and other papers on record.

3. The writ petitioner had prayed for a writ of Certiorari to call for the records of the first respondent and to quash the impugned notice under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 (in short 'the Act'). Under the said Act, the respondents initiated proceedings in respect of the land in question, as the same was required for a Harijan Welfare Scheme. Notice under Section 4(2) of the Act was served in Form-I by the second respondent on the petitioner, and the petitioner submitted his objections. The second respondent over-ruled the objections and submitted a report to the first respondent, who in turn observed that the objections were without merits and ordered acquisition of the petitioner's land. Accordingly, a notification under Section 4(1) of the Act was published and an award notice was served on the writ petitioner, after which the petitioner came to this Court.

4. The learned single Judge dismissed the writ petition holding that the acquisition was not liable to be interfered with as the provisions of Section 4(1), as well as Section 4(2) of the Act have been followed strictly.

5. In this writ appeal, the learned counsel has submitted that the learned single Judge has not considered one of the legal points, which was taken before the learned single Judge namely, that the Tamil Nadu Act 31 of 1978 was invalid, as it was repugnant to the law subsequently made by Parliament which had enacted Land Acquisition (Amendment) Act No. 68 of 1994 to amend the Land Acquisition Act 1 of 1984. Although, this point has not been discussed by the learned single Judge, in the interest of justice, we have permitted this point to be raised before us, as it is purely a legal and constitutional point.

6. The Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 has been upheld by the Supreme Court in State of Tamil Nadu Vs. Ananthi Ammal (AIR 1995 SC 2114). Section 2 of the Act states that this Act is for giving effect to the policy of the State towards securing

the principles laid down in Part - IV of the Constitution, and in particular Article 46 of the Constitution of India.

7. Article 46 states:-

"Promotion of Educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections:- The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation"

8. Section 3(g) of the Act defines Harijan Welfare Scheme as follows:-

"Harijan Welfare Scheme" means any scheme for provision of house-sites for Harijans for constructing, extending or improving any dwelling-house for Harijans or for providing any burial or burning grounds for Harijans or for providing any pathway leading to such dwelling-house, burial or burning grounds, or for providing any other amenity for the benefit of Harijans"

Under Section 4(1) where the District Collector is satisfied that for the purpose of a 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. Under sub-section (2) of Section 4 before publishing a notice under sub-section (1), the District Collector or any officer authorized by him has to issue show cause notice to the owner or other interested person. Under Section 5 when notice under Section 4(1) is published in the gazette, the land vests in the Government free from all encumbrances.

9. The Constitutional scheme is very clear. It aims at equality. (vide Articles 14 to 18 of the Constitution of India). However, the Founder Fathers of our Constitution in their wisdom realized that there were certain historically disadvantaged communities, which had been oppressed for thousands of years, and for whom compensatory state action was called for. One of these historically disadvantage communities are Scheduled Castes and Scheduled Tribes and hence, special provisions were made for them in Article 15 (4), 16(4), 16(4A) and other provisions in the

constitution. This was necessary otherwise these historically oppressed classes would not be able to come up to the level of other classes of people, and thus inequality would continue. The Tamil Nadu Act 1978 was obviously made with this historic situation in mind.

10. Learned counsel for the appellant contended that Tamil Nadu Act No. XXXI of 1978 may have been valid initially, but after Parliament enacted the Land Acquisition (Amendment Act, 1984) it became unconstitutional, as it was inconsistent with the Land Acquisition Act, as amended in 1984, and hence void in view of Article 254 of the Constitution. We do not agree. In our opinion there is no inconsistency between Tamil Nadu Act 1978 and Land Acquisition Act, even after its amendment by Parliament by the Amendment Act, 1984.

11. It may be mentioned that the Tamil Nadu Act 1978 is a special law for the welfare of harijans, whereas the Land Acquisition Act is a General Act for acquiring land for public purpose, and it is not limited to acquiring land for harijan welfare. It is well settled that a special Law overrides the general law. Hence, it cannot be said that the Tamil Nadu Act, 1978 is void.

12. Moreover, in our opinion, acquisition of land for harijan welfare is included in the definition of 'public purpose' in section 3(f) of the Land Acquisition Act, as amended by 1984 amendment.

13. It may be noted that in the Land Acquisition Act, as amended in 1984, the language used is "the expression "public purpose", includes," Thus, the definition of "public purpose" is inclusive and not exhaustive. Hence, the 'public purposes' mentioned in the various sub-clauses of Section 3(f) cannot be deemed to be the only 'public purpose' for which land can be acquired under the Land Acquisition Act.

14. Apart from that, sub-clause (v) of Section 3(f) states:-

"the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State"

15. It is well known that the people belonging to Scheduled Castes and Scheduled Tribes are mainly poor or landless. They have been oppressed for thousands of years and all kinds of atrocities have been inflicted on them by the so-called upper castes. It is for this reason that Compensatory State action is required to up-lift them and bring them up to the level of so-called upper castes. In the modern age, equality is one of the highest values and discrimination against Scheduled Castes and Scheduled Tribes can no longer be tolerated if our country has to remain united and progress. Hence, the Tamil Nadu Act 1978 was a salutary measure in the interest of the nation, and it cannot be said to be void after the enactment of Land Acquisition (amendment Act) 1984.

16. In the result, the writ appeal is dismissed. No costs. Consequently, W.A.M.P is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

pv/

Copy to:

1. The Collector
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Padayatchiar District,
Villupuram.
2. The Special Tahsildar (ADW)
Tindivanam.

1 cc to Mr. Ashok Viswanath, Advocate, SR. 51893
1 cc to The Govt. Pleader, High Court, Madras. SR. 51705

W.A.No. 3993 of 2004

NTK (CO)
kk 28.12.04

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