

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.2.2005

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

W.P.No.1940 of 1998

Jayanandan

.. Petitioner

Vs

1. The State of Tamilnadu
rep. by Secretary to Government
Adi Dravidar Welfare Department
Ramanathapuram.
2. The District Collector
Adi Dravidar Welfare Department
Ramanathapuram.
3. The Special Tahsildar
Adi Dravidar Welfare Department
Ramanathapuram.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India
for the relief as stated therein.

For Petitioner : Mr.M.Maharaja
for M/s.S.Sundaresan
For Respondents: Mr.Suresh Viswanath
Government Advocate

ORDER

Heard both sides.

2. The petitioner seeks a writ of Mandamus to forbear respondents from proceeding further in pursuance of the notice of the third respondent in Na.Ka.No.A/256/95, dated 7.1.1997 and in furtherance of Government Gazette notification of Ramanathapuram District in Gazette No.8, Page 3, dated 17.7.1996 without issuing proper notice and enquiry as contemplated under the Tamilnadu Act 31 of 1978.

3.1. Mr.M.Maharaja, learned counsel for the petitioner submits that the objection of the petitioner to the notice issued under Section 4(2) of the Tamilnadu Acquisition of Land

for Harijan Welfare Schemes Act, 1978 (for brevity "the Tamilnadu Act 31 of 1978") was not properly considered by the respondents.

3.2. The learned counsel for the petitioner further submits that when poromboke lands are available very adjacent to the lands of the petitioner, which are sought to be acquired, the authorities ought to have preferred the said poromboke lands instead of acquiring the lands of the petitioner.

4. The notice under challenge in this writ petition dated 7.1.1997 was concededly issued under Rule 5(i) of the Tamilnadu Acquisition of Land for Harijan Welfare Schemes Rules, 1979 (for brevity the "Rules"). Rule 5(i) of the Rules reads as follows:

"Rule 5: Procedure for determining the amount:

(1) Immediately after the publication of the notice under sub-section (1) of Section 4 of the Act in the District Gazette by the District Collector, the prescribed authority shall serve a notice in Form III to the owner and to all persons interested to appear before him on a day to be specified which shall not be earlier than fifteen days after the publication of notice under sub-section (1) of Section 4 of the Act for inquiry. The notice shall also be displayed at prominent places or near the land under acquisition."

5. The notice issued under Rule 5(i) of the Rules to the land owner or to the person interested in the land is for the purpose of determining the amount payable.

6. It is not in dispute that the petitioner was given an opportunity under Section 4(2) of the Tamilnadu Act 31 of 1978. The grievance of the learned counsel for the petitioner is that the objection made by the petitioner to the said notice under Section 4(2) of the Tamilnadu Act 31 of 1978 was not properly appreciated by the respondents.

7. What is required under Section 4(2) of the Tamilnadu Act 31 of 1978 is only subjective satisfaction of the respondents, and ordinarily it is not open to the Court to make a scrutiny of the propriety of that satisfaction on an objective appraisal of facts. When the Government takes a decision, taking all relevant considerations into account and issues notification accordingly, the same should not be interfered with by the court unless the court comes to the conclusion that the appropriate authority had not applied its mind to the relevant factors or that the decision has been taken by the appropriate authority mala fide. Therefore, the overruling of the objections raised by the petitioner, by itself, will not vitiate the proceedings.

8. It is a trite law that it is the absolute discretion of the State to select a particular site under the power of eminent domain for the provision of the house sites to the poor and downtrodden of any community, and neither the owner of the land nor the beneficiaries can have any say in the matter.

9. Be that be, in the instant case, the petitioner has not chosen to challenge the notification under Section 4(1) of the Tamilnadu Act 31 of 1978 till date. Without challenging the said notification, which was issued as early as 17.7.1996, it may not be proper for this Court to grant the relief as prayed for, as the same would otherwise nullify the proceedings dated 17.7.1996 itself, which had become final. It is, therefore, a clear case of laches on the part of the petitioner in approaching this Court.

10. Moreover, it is a settled law that Courts should be slow to interfere with the acquisition proceedings where the land owners have not challenged the acquisition proceedings immediately after their publication and take their chance in the award proceedings. The Apex Court, time and again, held that writ petition challenging the acquisition proceedings is liable to be dismissed on the ground of delay and laches if challenge is not made within a reasonable time, and that the land owner cannot sit on the fence and allow the State to complete the acquisition proceedings and then attack the notifications on the grounds which were available to him at the time when these were published as otherwise it would be putting a premium on dilatory tactics.

11. For the reasons aforesaid, finding no merits, this writ petition is dismissed. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

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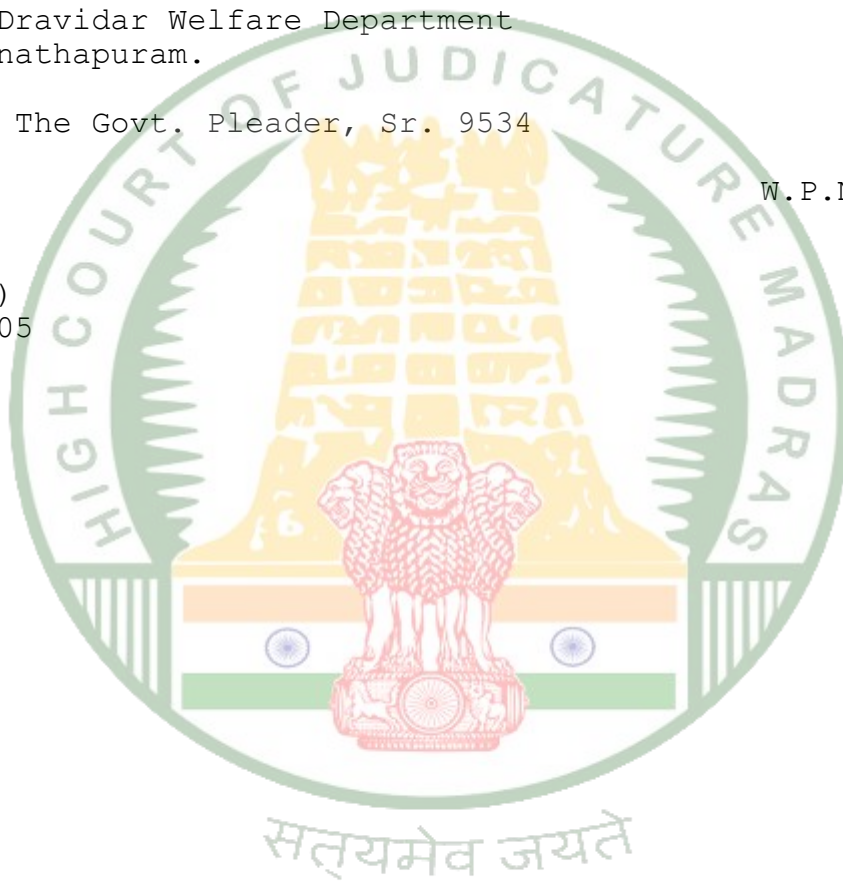
To:

1. The Secretary to Government
Adi Dravidar Welfare Department
Ramanathapuram.
2. The District Collector
Adi Dravidar Welfare Department
Ramanathapuram.
3. The Special Tahsildar
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1 cc to The Govt. Pleader, Sr. 9534

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