

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2005

Coram

The Honourable Mr. Justice P.K.MISRA

Writ Petition Nos.5470 and 5471 of 1998

W.P.No.5470 of 1998

V.Amsam

... Petitioner

vs.

1. The District Collector of Tuticorin District, Tuticorin.
2. The Special Tahsildar (Land Acquisition), Adi-Dravidar Welfare Schemes, Kovilpatti.

... Respondents

W.P.No.5471 of 1998

Parthiban

... Petitioner

vs.

1. The District Collector, Tuticorin.
2. The Special Tahsildar (LA), Adi Dravidar Welfare, Kovilpatti.

... Respondents

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarai calling for the records under Reference No.NA.Ka.AN6/15470/97 dated 28.4.1997 (as referred in 5(1) Notice) on the file of the first respondent and published in District Gazette of Chidambaranar District dated 31.3.1997 and to quash the same.

For petitioners: Mr.K.Srinivasan

For respondents: Mr.M.G.H.Varadarajan,
Addl.Government Pleader

J U D G M E N T

The present Writ Petitions have been filed challenging the land acquisition proceedings and notifications thereto under Section 4(1) of the Tamil Nadu Land Acquisition for Harijan Welfare Schemes (1978, Act 31 of 1978), hereinafter referred to as the Act.

2. The petitioner in W.P. No.5470 of 1998 viz., Amsam is the wife of D. Vidyasekarapandian. She claims that she is the owner of the land in Survey No.479/1 to an extent of 5.38.0 hectares, Survey No.480/1 to an extent of 0.87.5 hectare and Survey No.480/2 to an extent of 0.35.0 hectare in Pandavarmangalam Village, Kovilpatti Taluk. She also claims that she is the owner of the land in Survey No.478 in the very same Village and the next adjoining land belongs to her husband, in which, an industry named "Bharat Chemical Industries" has been set up by the petitioner and three others for the purpose of manufacturing lime powder and other chemicals. It is further claimed that residential quarters for the employees of this factory had been constructed in the land in Survey No.479/1 and there is also a tamarind thope in the said land. Other lands have been used for agricultural and horticultural purposes as well as dairy farm.

3. Notice under Section 4(2) read with Rule 3(1) of the Rules framed under the Act dated 15.12.1996 was served on the petitioner on 1.1.1997 in respect of the lands under Survey Nos.479/1, 4792/2, 481, 482/1 and 482/2. In the said notice, it was indicated that the enquiry would be held on 10.1.1997. The petitioner filed an application dated 4.1.1997 requesting for sufficient time to file objection and prayed for time till 1.2.1997. Subsequently, the petitioner sent a detailed objection dated 18.1.1997, which was received by the respondents on 20.1.1997. The petitioner claims that because of the letter dated 4.1.1997, no enquiry was conducted on 10.1.1997 and the petitioner was awaiting for further communication regarding enquiry.

4. It is further claimed by the petitioner that additional objection was filed indicating that the Panchayat Union had granted approval for the purpose of putting up

construction and the factory had been registered as the Small Scale Industry. It was further indicated that the land in Survey No.479/2 did not belong to the petitioner and Survey No.481 belonged to her son. However, no reply was received by the petitioner. Long thereafter, she received a communication dated 22.7.1997 stating that the first respondent had decided to acquire the lands and notification under Section 4(1) of the Act had been published in the District Gazette on 31.3.1997. As per the aforesaid communication, the petitioner was required to appear for enquiry on 22.8.1997 before the second respondent. Obviously, such notice was relating to the award enquiry, which was served on the petitioner on 26.7.1997. She submitted her objections on 16.8.1997 objecting to the acquisition on the ground that about 100 acres of poramboke lands were available very near to the existing place, where the Adi Dravidars were residing. It is claimed that no further communication was served on the petitioner.

5. The notification under Section 4(1) of the Act has been challenged by the petitioner mainly on the ground that as per Form-I, Rule 3(i) of the Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act 1978, 15 days time is available for filing of objections after service of notice and the oral enquiry is required to be conducted only after such opportunity of filing of objection but the notice was served on the petitioner on 1.1.1997 indicating that 10.1.1997 was the date of enquiry without giving 15 days time to file objection. It is, thus, contended that the very notice in Form-I is not in accordance with the Rules and has stated that the acquisition was invalid. It is further contended that even though she had filed objections on 18.1.1997, which was received by the authorities on 20.1.1997, no further communication regarding any enquiry had been made and her objection had not been considered. It is further contended that the second respondent viz., the Special Tahsildar was supposed to hold the enquiry and he had to submit the report before the District Collector. However, copy of such report was never served on the petitioner.

6. It is further contended that though notice in respect of Survey Nos.479/1, and 479/2 refers to the petitioner, she was not the owner of the land in Survey No.479/2. However, Survey Nos.482/1 and 482/2 belongs to the petitioner, which was indicated in the notice as it belongs to her mother-in-law, Chellathaiammal, who had died long back in the year 1984. On the basis of such averments, the petitioner has prayed for quashing the notification dated 31.3.1997 and the records in Na.Ka.AN6/15470/97 dated 28.4.1997.

7. An ex-parte interim order has been passed. Subsequently, on behalf of the respondents, a petition to vacate the stay was filed. The stand of the respondents is reflected in the counter affidavit, which was filed along with the Vacate Stay Petition. In the Counter affidavit, it is indicated that for the purpose of providing house sites for Adi Dravidar families, there was requirement to acquire the lands and therefore, steps were taken in accordance with the provisions of the Act on the lands in respect of Survey Nos.479/1, 4792/2, 481, 482/2 and 482/2. It is indicated that in the counter affidavit, as per revenue records, the petitioner was the owner in respect of the lands in Survey Nos.479/1 and 4792/2; whereas one Parthiban, the son of the petitioner was the owner in respect of Survey No.481 and one Chellathaiammal, the widow of Duraisamy Nadar was the owner of the lands in respect of Survey Nos.481/21 and 482/2. Notice in Form-I under Section 4(2) of the Land Acquisition Act 39/1978 was issued to the above pattadars and they were informed to appear for enquiry on 10.1.1997. Such notice was sent by Registered Post. It is claimed that Parthiban, who has filed the connected Writ Petition No.4571 of 1998 refused to receive the notice. The petitioner in W.P. No.4570 of 1998 was served on 1.1.1997 and the notice sent to Chellathaiammal was returned unserved as she was already dead. The petitioner viz., Amsam had sent an objection petition, which was received in the office on 8.1.1997 requesting time till 1.2.1997. Neither the pattadars nor any interested persons had appeared for enquiry on 10.1.1997. The objection filed by the petitioner was received on 20.1.1997 but the same was found routine in nature and was over ruled. It had been communicated that Survey No.479/2 had been sold to one Kasinathan on 3.1.1997 but notice had been served on 1.1.1997. It is further stated that notice in Form-I was sent to the said Kasinathan on 13.2.1997, which was returned without being served. However, no objection has been filed by Kasinathan. One Ganesan in his petition has stated that the lands in Survey Nos.482/1 and 482/2 belonged to the Charity to be maintained by the grand son of Chellathaiammal but no such documentary evidence was produced at the time of enquiry but the enquiry revealed that such lands were under the enjoyment of Vidyasekarapandian, the son of Chellathaiammal (husband of the petitioner, Amsam). The name of the aforesaid person viz., Vidyasekarapandian was included in the notification under Section 4(1). It is further claimed that Parthiban, son of the other petitioner did not file any objection nor had appeared at the enquiry. Subsequently, report was submitted by the Special Tahsildar and the Collector approved such proposal on 18.3.1997 and published the notification on 31.3.1997 under Section 4(1) of the Act. Such notification has been publicized in the Village on 9.4.1997. After receipt of the objection dated 18.1.1997, the Special Tahsildar - Adi Dravidar Welfare inspected the lands in Survey No.479/1 on 19.2.1997 and

found that "...the objections were flimsy and frivolous and the objections were raised only with an intention to withhold the land acquisition proceedings". The objections were also brought to the notice of DRDO. He also inspected the land and found the land is suitable for acquisition and hence the notification has been published in the District Gazette. The petitioner had also filed objections even after receipt of notice in Form III, which was meant only for the purpose of showing their apportionment. But, the petitioner had raised objections regarding the very acquisition itself, which was not contemplated. It is further stated that there is no provision under the Act for supply of report of the enquiry officer and the provisions of the Act has not been violated. It is stated that the award had been passed on 10.3.1998 and the possession was taken on 26.3.1998 and Pattas were distributed to the Adi Dravidars.

8. In W.P. No.5471 of 1998, which has been filed by the son of the petitioner in W.P. No.5470 of 1998, the contention is that no notice was ever served on the petitioner. The stand of the Government is that the notice was refused by such person. In reply affidavit, it has been stated that no such notice has ever been refused by him. A Certificate issued by the Post Master has been produced stating that D.Parthiban, S/o. D. Vidyasekarapandian has not refused to receive any letter addressed to him from 1.12.1996 till 21.9.1998 as the date on which the said Certificate was issued.

9. So far as W.P. No.5471 of 1998 is concerned, the contention, which is required to be considered is relating to the absence of proper notice under Section 4(2) of the Act read with Rule 3(i) of the Rules. Section 4(1) empowers the District Collector to acquire any land if he is satisfied that the land is required for any Harijan Welfare Schemes, such acquisition can be effected by publishing notice in the District Gazette. However, as contemplated under Section 4(2), before publishing such notice under Section 4(1), the District Collector or any Officer authorised by the District Collector shall call upon the owner or any other person who may be interested in such lands to show cause why such land should not be acquired; whereas as per Section 4(3)(a), the District Collector where he himself calls upon the owner to show cause, he is required to pass such orders as he may deem fit on the cause so shown; and whereas under Section 4(3)(b) where the authorised officer calls upon the owner to show cause, such officer is required to make a report to the District Collector containing his recommendation on the cause so shown for the decision of the District Collector. Thereafter, the District Collector may pass such orders, he may deem fit. Ultimately, it is the District Collector who is to take a decision.

10. The contention to the effect that the authorised officer is required to furnish a copy of his report has been answered in the negative in the decision reported in 1999 (III) CTC 293 (S.Sannasi and two others vs. The District Collector, Pudukkottai and another). Therefore, such contention raised by the petitioner is not acceptable.

11. However, the contention relating to non-compliance of the provisions containing under Section 4(2) appears to be on a stronger ground. It is, of course, true that in the present case, such notice was sent, which was served on the petitioner viz., Amsam on 1.1.1997. The notice is required to be made under Rule 3(i), which contemplates service of notice in Form-I individually on the owner or on persons interested in the land. If the owner or the other person interested resides elsewhere, then, such notice shall be sent by Registered Post (Ack.Due) to the last known address of the owner. Form - I, itself contemplates that notice is given directing all persons interested or the person concerned to lodge before the Collector or the authorised officer any objection within 15 days after service of the notice. The Form further indicates that statement of objections if received after expiry of the time stipulated is liable to be summarily rejected. It also indicates the statement of objections, if any, received within the time stipulated will be enquired into at a particular place and such person will be at liberty to appear in person or represent by pleader and adduce any oral or documentary evidence. Therefore, it is apparent from the Form of notice that a person can file objections within 15 days and there would an oral enquiry on a particular date. In the present case, it is not in dispute that the notice was served on 1.1.1997 and it was indicated that the enquiry was to be held on 10.1.1997. It is however clear that 15 days time was not given for filing of objections. In the face of such a defective notice, the request of the petitioner for grant of sufficient time to file objection, cannot be found fault with. It is of course true that the petitioner had prayed for time till 1.2.1997, whereas the Rule contemplates 15 days time to file the objection.

12. Be that as it may, on such request made on 4.1.1997, no further order was passed. The objection dated 18.1.1997 was in fact received on 20.1.1997 and no further date was fixed for any oral enquiry.

13. In the counter affidavit, it has been indicated that the objection was over ruled on the ground that such objection was of routine in nature. It is difficult to appreciate such a stand taken in the counter affidavit when in

the objection various reasons were indicated. Law is well settled that the requirement relating to the issuance of proper notice must be complied with strictly. Since the notice, in the present case, did not give 15 days time for filing of objection, it must be taken that such notice was defective in nature. It is, of course, true that the objection was not filed within 15 days from the date of receipt of notice but when the notice served itself was defective and inconsistent, the petitioner cannot be found fault with merely because she had not strictly followed the time.

14. The land acquisition insofar as it relates to the land belonging to the petitioner in W.P. No.5470 of 1998 is liable to be held as invalid on the aforesaid ground. This direction is with relation to Survey No.479, which admittedly is recorded in the name of the petitioner. So far as the lands in the name of dead person is concerned, the petitioner has failed to indicate as to how she had inherited such property. Therefore, this direction is confined to the land, which is admittedly recorded in the name of the petitioner.

15. So far as W.P. No.5471 of 1998 is concerned, the specific case of the petitioner is that no such notice was ever served. However, the respondents have taken the stand that the petitioner has received such notice. However, in the face of the clear denial by the petitioner in the affidavit in support of the Writ Petition as well as reply affidavit and in the face of the Certificate issued by the concerned postal authority, it is difficult to accept the stand of the respondents. Moreover, no registered cover has been produced in this Court by the respondents to indicate that, in fact, such postal cover properly addressed to the petitioner was returned with the endorsement of refusal. Therefore, the stand of the petitioner is acceptable and the proceedings insofar as the land standing in his name is also required to be quashed. Accordingly, both the Writ Petitions are allowed in part in respect of the land standing in the name of the petitioners. No order as to costs.

asvm/dpk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

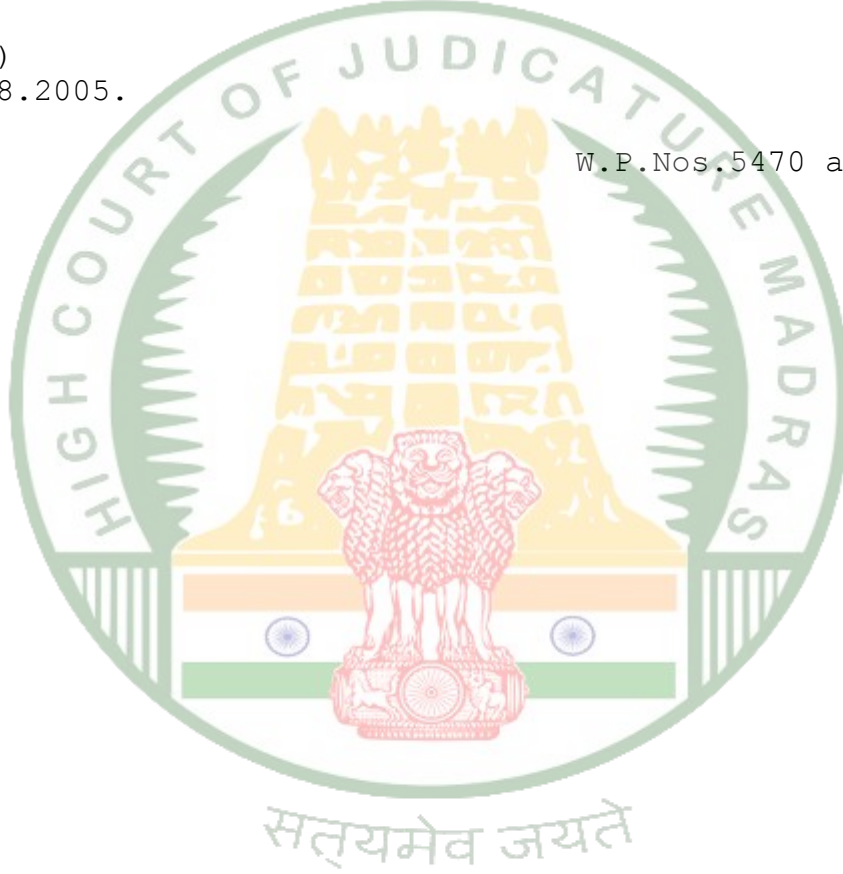
To

1. The District Collector of
Tuticorin District,
Tuticorin.
2. The Special Tahsildar
(Land Acquisition),
Adi-Dravidar Welfare Schemes,
Kovilpatti.

+1 CC to Mr.K.Srinivasan, Advocate, SR No.32046 & 32045.

JSK(C.O)
BG/05.08.2005.

W.P.Nos.5470 and 5471/199845



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