

(2011) 07 MAD CK 0205

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 10642 of 2005

Gopinath Alais
Muthukumaraswamy
Thiagarajan

APPELLANT

Vs

The District Collector, Madurai
District and The Special Tahsildar
(Land Acquisition Adi-Dravidar
Welfare Circle-I)

RESPONDENT

Date of Decision: July 5, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act, 1978 - Section 31, 4(1), 4(3)

Hon'ble Judges: Vinod K. Sharma, J

Bench: Single Bench

Advocate: K. Srinivasan, for the Appellant; S. Barathy, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vinod K. Sharma, J.

The Petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 and 227 of the Constitution of India, praying for issuance of a writ, in the nature of certiorari, to quash the notification in Na.Ka.Adi.4/57749/05, dated 26.09.2005, published in Madurai District Gazette, dated 27.09.2005, u/s 4(1) of the Tamil Nadu Acquisitions of land for Harijan Welfare Schemes Act 31 of 1978.

2. The Petitioner is the owner of the land falling in Survey No. 97 to the extent of 0.12.5 Hectares at Pettai Village, Vadipatti Taluk, Madurai. It is pleaded that the land

though described as punja lands in the revenue records, but it is provided with irrigation facilities wherein the ancestors, the sister of the Petitioner, and the Petitioner have planted coconut trees. The Petitioner was issued a notice by the 2nd Respondent, dated 22.08.2005, which was received by the Petitioner on 01.09.2005 calling him to show cause as to why the land falling in survey No. 97, Pettai Village, Vadipatti Taluk, Madurai District, covering an extent of 0.12.5 Hectares need not be acquired for construction of Sholavandan Adi Dravida Welfare Ladies Students Hostel. Liberty was given to the Petitioner to file objection by 6.09.2005. The Petitioner filed the objection on the date fixed and challenged the classification of land. The objections filed by the Petitioner were not accepted, and by way of notification, issued u/s 4(1) of the Act, the land was acquired.

3. The case of the Petitioner is that without considering the objections filed by the Petitioner and Ors. on the basis of the report submitted by the 2nd Respondent, notification u/s 4(1) of the Tamil Nadu Acquisitions of Land Harijan Welfare Schemes Act 31 of 1978 was issued.

4. The notification is challenged by the Petitioner, by submitting that the notification issued is in violation of statutory provisions of law, as the 1st Respondent failed to give notice of 15 days, before taking a decision to issue the notification.

5. It is the contention of the learned Counsel for the Petitioner, that there is No. proof of delegation of power by the 1st Respondent to the 2nd Respondent as contemplated u/s 4(3)(b) of the Act. In the absence thereof, it was not open to the 2nd Respondent to conduct an enquiry.

6. It is the contention of the learned Counsel for the Petitioner that the notification, issued was not in the statutory form.

7. On the contentions raised herein above, it is prayed that the notice of acquisition be quashed.

8. The learned Counsel for the Petitioner also challenged the acquisition on the ground that the object of acquisition stands achieved as the Government acquired the adjacent lands and built the hostel building thereon.

9. The writ petition is opposed by the learned Counsel for the State, by contending that after the issuance of necessary notification and holding an enquiry, the notification was issued. It is not open to the Petitioner at this stage, to challenge the acquisition. It is also contended that even prior to the filing of the writ petition, the award stands passed.

10. It is also the contention of the learned Counsel for the State, that the land is still required for constructing hostel, as number of girls are still staying in the school, who are to be accommodated in the hostel. It cannot be said that object stands achieved, as contended by the learned Counsel for the Petitioner.

11. On consideration, I find No. force in the contentions raised by the learned Counsel for the Petitioner.

12. The contention of the learned Counsel for the Petitioner, that minimum notice of 15 days is required is not borne out either from section, or from the rules framed there under.

13. It is admitted case of the Petitioner himself that the notice was received and objections filed, it cannot therefore be said that on account of the short period for filing objection, any prejudice has been caused to the Petitioner.

14. The other contention of the learned Counsel for the Petitioner, that the 2nd Respondent had No. right to hold an enquiry, also cannot be sustained. The reading of Section 4(3)(b) shows, that it is within competent of the 1st Respondent, to hold an enquiry or authorize any other officer. No. notification is required to be issued for that purpose, as be contended.

15. The records further shows, that the decision was taken by the District Collector himself, on consideration of the report, submitted by the 2nd Respondent and taking into consideration the objections. No. ground is made out to quash the notification.

16. The learned Counsel for the Petitioner contended, that the Respondents have not served the copy of the award so far. The Petitioner is therefore handicapped to challenge the award, as the compensation awarded may or may not be adequate.

17. It is admitted that so far the Respondents have not served the copy of the award. The learned Counsel for the State is directed to furnish a copy of the award to the Petitioner, within a period of 15 days of receipt of certified copy of this order.

18. On receipt of the copy of award, it is open to the Petitioner to proceed further in accordance with law, if so advised. The writ petition is ordered to be dismissed for the reasons stated herein above. No. costs.