

(2009) 12 MAD CK 0119

Madras High Court

Case No: Writ Petition No. 4029 of 2003

Sri Meenakshi Mills Limited now
called Gujarat Heavy Chemical
Limited

APPELLANT

Vs

The Special Tahsildar, Harijan
Welfare Scheme and The District
Collector, Collectorate

RESPONDENT

Date of Decision: Dec. 11, 2009

Acts Referred:

- Land Acquisition Act, 1894 - Section 4(1), 4(2)

Hon'ble Judges: N. Kirubakaran, J

Bench: Single Bench

Advocate: R. Krishnamoorthy, for the Appellant; P. Gurunathan, Government Advocate
for Respondents 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N. Kirubakaran, J.

The Writ Petition has been filed challenging the proceedings for land acquisition and it would affect the peaceful enjoyment of the balance land measuring 6.51 Acres of the Petitioners land. The land originally belonging to the company called Sree Meenakshi Mills Limited which was declared as "SICK UNIT" under the provisions of the Sick Industrial Companies (Special Provisions) Act 1985. The scheme of merger was sanctioned and pursuant to the said orders of the BIFR dated 26.11.2001 and 29.05.2002 and the Sree Meenakshi Mills Ltd stands merged with Gujarat Heavy Chemicals Ltd with effect from 01.04.2001 and also directed to change the scheme from residential properties scheme to Industrial properties scheme under the provisions of Sick Industrial Company Act 1985.

2. The lands belonging to the Petitioner was proposed to be acquired for providing house site patta to the poor houseless Adi Dravidar people of Paravai Village. Show cause Notice u/s 4(2) of the Land Acquisition Act was issued on 15.04.2002 and got served upon the land owner through the village Administrative Officer of Paravai Village on 17.04.2002. On 10.05.2002 a reply was given on behalf of the sick Company through counsel informing about the BIFR proceedings. The enquiry was conducted by Special Tahsildar, namely the first Respondent.

3. Pursuant to the enquiry, draft notification u/s 4(1) of the Land acquisition Act was approved by the Collector, Madurai vide proceedings Roc. No. 84073/2002/L.7/ dated 14.10.2002 and the same was published in the Tamil Nadu Government Gazette Special Edition No. 37, dated 22.10.2002. Challenging the same, the present Writ Petition has been filed.

4. Mr. R. Krishnamoorthy, the learned Senior Counsel appearing for the Petitioner submitted that a show cause notice was served on the present owners as ex-director Thiyagaraja Chettiar expired in 1973. However, a reply dated 10.05.2002 was given pursuant to the notice dated 15.04.2002 and the said reply was given by the counsel on behalf of the Petitioner.

5. The learned Senior Counsel contended that the objection was raised by way of the reply and Petitioner's counsel appeared before the first Respondent to press the objections. Without considering the objection, the second Respondent approved the draft notification u/s 4(1) of the Act.

6. The learned Senior Counsel further submitted that the impugned order would go to show that the first Respondent did not apply his mind properly and mechanically dealt with the matter and hence proceedings are vitiated. Further he submitted that no report by the authority, namely first Respondent, was furnished to the Petitioner. If the above said recommendation was furnished to the Petitioner, he would have made further representation. Non furnishing of the report by the authorized officer would also vitiate the proceedings and it also causes prejudice to the Petitioner.

7. Mr. P. Gurunathan the learned Government Advocate would submit that after following due process of law prescribed under the Land Acquisition Act, the proceedings were initiated. In fact, after getting the recommendations from the authorized officer, the second Respondent District Collector approved 4(1) notification. Moreover the lands are acquired only for allotting lands to weaker sections of the society namely Harijan Welfare Schemes Act, 1978. The public interest is involved in this matter and the Government is intended to help the weaker sections. Hence he prays for dismissal of this Writ Petition.

8. A perusal of the pleadings as well as the records would go to show prove that objection was raised by the Petitioner on 10.05.2002, Wherein the reference before BIFR was elaborately stated.

9. It is the specific stand of the Petitioner in the Writ Petition in paragraph 10 of the affidavit that the Special Tahsildar sent a report to the Second Respondent for his decision without marking a copy to the Petitioner and the Second Respondent has passed an order dated 14.10.2002".

Whereas in the Counter Affidavit in paragraph 6 filed by the first Respondent it has been stated as follows:

With regard to the averments made in Para 8,9 and 10 of the affidavit. I state that the contention of the Writ Petitioner that he had Respondent to that notice and made objections through Advocate and requested to drop the land acquisition proceedings are denied as false

It is seen from the records that the first Respondent in page 2 of his recommendations in mentioned as follows:

10. Hence, the Counter Affidavit filed by the first Respondent is contrary to the records and the counter affidavit specifically stated that no objection was filed through Advocate. It is nothing but misleading of the Court. The objections should have been considered and given reasons and the first Respondent did not over rule the objections. However the report proceeds on the basis that as though there was no objection from the land and it only would go to show that non application of mind on the part of the first Respondent and the first Respondent mechanically and casually passed the order. Therefore the entire proceedings got vitiated is liable to be set aside.

11. As far as the furnishing of copy of the report to the Petitioner is concerned, the Petitioner was not furnished with a copy of the recommendations from the first Respondent pursuant to the enquiry conducted by the first Respondent. No where in the counter the point was met by the Respondent.

12. The first Respondent did not choose to give a copy of the recommendations addressed to the District Collector to the Petitioner. Non furnishing of copy of the report for recommendation of the authorized officer definitely prejudice the Petitioner, as the Petitioner lost the last chance of giving further representation giving details of prejudice caused due to acquisition. A full Bench of this Court in [R. Pari Vs. The Special Tahsildar, Adi Dravidar Welfare and The District Collector](#), held that the owner should be furnished with a copy of the report/recommendation of the authorized officer. In this case no such a recommendation was furnished to the Petitioner and there by denying further representation to the Collector.

13. As stated above, the objections of the Petitioner was not considered by the first Respondent. In view of that, the entire proceedings are vitiated. Apart from that non furnishing of the recommendations also vitiated the impugned proceedings.

14. In the result the Writ Petition is allowed and the impugned proceedings are quashed. No costs.