

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.22668 OF 2011

ORDER:

The petitioners assail notification Rc.No.1369/2010 G4 dated 16.06.2010 under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') published in the Andhra Pradesh Gazette Part-I Extraordinary on 19.06.2010 and draft declaration Rc.No.1369/10 G4 dated 24.06.2011 under Section 6 of the Act, as illegal, arbitrary and contrary to the Mandatory provisions of the Act.

Section 4(1) notification dated 16.06.2010 was issued acquiring petition land for providing house sites to the displaced persons in the construction of Vamshadhara Dam Phase-2, Stage-2. The petitioners are shown as owners of small extents of land in Section 4(1) notification dated 16.06.2010. Though the petitioners assail the notification under Section 4(1) and draft declaration under Section 6 on various factual grounds, I am not considering all the objections raised by the petitioners. It is suffice to consider the present writ petition on the legal objections urged under Section 6 proviso to the Act and illegal/improper enquiry under Section 5-A of the Act.

The case of the petitioners is that the respondents are required to publish draft declaration within one year from the date of publication of notification under Section 4(1) of the Act. In the case on hand, the last of the date of paper publication is on 19.06.2010. The draft declaration shall be within one year from that date. The respondents published draft declaration on 25.06.2011 and consequently, Section 4(1) notification and Section 6 declaration fail and are to be set aside.

The 3rd respondent filed counter affidavit and replies that the gazette is dated 19.06.2010, paper publication is dated 19.06.2010 and the draft declaration was published on 25.06.2011. Therefore, he contends that if the last date of 4(1) notification is taken into consideration, the draft declaration dated 25.06.2011 is not contrary to Section 6 of the Act. The first objection of petitioners is not tenable and

rejected. Section 5-A of the Act provides opportunity to owners in opposing acquisition. The importance of Section 5-A enquiry is no more *res-integra*. *Prima facie* the draft declaration is issued without a proper and legal enquiry under Section 5-A of the Act. On the question of affording opportunity to the petitioners in 5-A enquiry, the reply is that the land owners/interested persons failed to file objections against the acquisition. There was no reference to date of issue of notice under Section 5-A, date of enquiry etc., or date on which enquiry under Section 5-A of the Act was conducted. The District Collector on 24.06.2011 passed orders under Section 5-A (2) of the Act to proceed further by issuing draft declaration. As stated above, the right under Section 5-A of the Act is considered by a catena of decisions of the Apex Court as well as this Court. In the case on hand admittedly Section 6 declaration is issued without conducting enquiry under Section 5-A of the Act. Though the main objections of the writ petitioners are both against the Section 4(1) notification and Section 6 declaration, after considering the stand taken in the counter affidavit and material available on record, I consider it appropriate to set aside the draft declaration dated 24.06.2011 alone. The 3rd respondent is directed to issue notice to petitioners, receive objections, conduct enquiry under Section 5-A of the Act and pass appropriate orders.

The writ petition is allowed as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

S.V.BHATT, J

Date:26.03.2015

Stp