

HON'BLE SRI JUSTICE S.V.BHATT
WRIT PETITION No.22024 OF 2013

ORDER:

The petitioner prays for Mandamus declaring the action of respondents in acquiring A.C. Shed, Ice Plant in Survey No.327/I/B/2 of Angaluru Village, Gundlavalleru Mandal, Krishna District, as illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India and further prays for setting aside the notification issued by 2nd respondent in RC.No.G1/2236/2012 dated 22.08.2012 and the consequential notification in RC.No.G1/2236/2012 dated 02.05.2013 published on 21.05..2013.

The matter arises under the Land Acquisition Act, 1894 (for short 'the Act'). The subject matter of the writ petition is R.S.No.327/I/B/3 of Angaluru Village. A. Kesava Rao/petitioner claims to be the owner and possessor of petition land. The petitioner claims to be running a commercial establishment in the petition land. It is alleged that in the 1st week of June, the employees of Gram Panchayat and R & B inspected the ice factory and enquired with the employees about the removing the machinery etc. from the petition land. On coming to know these enquiries, the petitioner visited the office of Revenue Divisional Officer/Land Acquisition Officer. The petitioner was informed that the land belonging to petitioner is acquired under the Act. On further verification, the petitioner has come to know that on 29.08.2012 notice in Form 2-A under Section 4(1) of the Act was issued by the 2nd respondent. In the 4(1) notification, the property under acquisition is described as follows:

Particulars of wet land/Dry	Survey No./Sub Divn.No.	Name of Pattadhar	Experiencer	Extent of receiving land	Cultivating the land or Banjaru land	Trees, constructions etc.,

WET	317/15(P)	Pallabotu Venkata Subbaiah	Veerabachineni Jagan Mohan Rao	0.02	Not cultivating land	In a part of house contents of A.C. Sheet
Wet	327/IB (P)	Duggirala Nageshwar Rao	Duggirala Nageshwar Rao	0.37	Cultivating land	TadiTrees-3 Coconut Trees-3 Neem Tree-1 Teku Trees-4 Jamaoil Trees-3 In some part of A.C.Sheet (Ice Plant)

On 02.05.2013, draft declaration under Section 6 of the Act was published in Gazette. On 21.05.2013 draft declaration was published in the local newspapers. In the draft declaration, the property under acquisition has been described as follows:

District: Krishna District

Mandalam:Gudlavalleru

Village:Angaluru

Particulars of wet land/dry	Survey no./sub Divn.No.	Name of Pattadhar	Experiencer	Extent of receiving land	Cultivating the land or Banjaru land	Trees, conustrctions etc.
Wet	317/15B	Pallabotu Venkata Subbaiah	Veebachineni Jagan Mohan Rao	0.02	Not cultivating land	In a part of house contents of A.C.Sheet
Dry	327/IB2	Duggirala Nageshwar Rao	Adusumilli Keshava Rao	0.22	Cultivating land	Tadi Trees-3, Coconut Trees-3, Neem Tree-1, Teku Trees-4, Jamaoil Trees-3
Dry	327/IB2	Duggirala Nageshwar Rao	Adusumilli Keshava Rao	0.15	Cultivating land	Some part in A.C. Shed (Ice Plant)

The case of petitioner is that Duggirala Nageshwar Rao is owner of neighboring land in Survey No.327/I/B(P). The neighboring

land owner is possessed of Ac.0-37 cents. The authorities under the wrong impression have shown the name of Duggirala Nageshwar Rao as the absolute owner of the properties under acquisition. Accordingly, in the 4(1) notification dated 29.08.2012, Duggirala Nageshwar Rao is shown as Pattadar and in the column meant for other details reference to A.C. Shed Ice Plant is also made. Duggirala Nageshwar Rao is not the owner of Ice factory and the plot covered by Ice factory. The issuance of 6 declaration, it is contended, is illegal and unconstitutional and consequently the property belonging to the petitioner cannot be acquired by reference to 4(1) notification dated 29.08.2012 and 6 declaration dated 02.05.2013. Hence, the writ petition.

The possession of petitioner is protected by this Court through order dated 27.08.2013.

The 3rd respondent filed counter affidavit. By way of reply, it is stated that an extent of Ac.3-50 cents of land in R.S.Nos.317/15 in Angaluru Village, Gudlavalluru Mandal, Krishna District has been proposed for acquisition for widening and strengthening of Pedana-Nuziveedu-Vissannapeta Road in Krishna District. The petition land in an extent of Ac.0-15 cents is covered by the alignment of proposed acquisition. The dates of Sections 4 (1) and 6 are admitted.

It is further stated that in the notification under Section 4(1) of the Act, D.Nageshwar Rao was shown as pattadar and enjoyer against Ac.0-37 cents in R.S.No.327/IB(P). The said Nageshwar Rao filed objections in 5-A enquiry *inter alia* it is contended by D.Nageshwar Rao that he owns Ac.0-50 cents in R.S.No.327/IB. As against Ac.0-37 cents proposed for acquisition there is no construction in his land. AC Shed and Ice Factory are stated as belonging to A. Kesava Rao/petitioner herein. Therefore, the 3rd respondent admits

that the land proposed to be acquired belongs to both D. Nageshwar Rao and A. Kesava Rao/petitioner herein. In spite of knowledge of the interest of petitioner herein, the 3rd respondent did not issue notice to petitioner. Still it is contended that the writ petitioner has not filed objections in Section 5-A enquiry conducted, therefore, it has been shown as Ac.0-22 cents of D.Nageshwar Rao and Ac.0-15 cents of Kesava Rao belonging to these owners. Accordingly the draft declaration dated 02.05.2013 is published in the local newspapers.

The 3rd respondent admits that an extent of Ac.0.15 cents is covered by the land belonging to the petitioner. It is however, stated that the initiation of land acquisition proceedings is strictly in accordance with the Act and the petitioner failed to avail opportunity of enquiry under Section 5-A of the Act, therefore, no exception can be taken for draft declaration. Notices have been issued to all the interested persons and 13 objection petitions have been received. The definite case of the 3rd respondent is that the petitioner ought to have filed objections to the notice issued for enquiry under Section 5-A. The failure disentitles the petitioner to urge any grounds against the land acquisition proceedings. It is further stated that the proposed acquisition is required in public interest and respondents pray for dismissal of the writ petition.

Sri K.S.Murthy, leaned counsel for the petitioner contends that the acquisition of petitioner's land in an extent of Ac.0-15 cents is admittedly without recourse to law, arbitrary and unconstitutional. The issuance of notice to D.Nageshwar Rao who is also owner in Survey No.327/IB cannot be treated as either notice to petitioner or that the 3rd respondent issued notice to the interested persons after having knowledge of petitioner's interest in an extent of Ac.0-15 cents. He contends that once it is brought to the notice of 3rd respondent that in

the proposed acquisition not only D. Nageshwar Rao but, P.Kesava Rao/writ petitioner has subsisting interest, nothing prevented the 3rd respondent to issue notice of enquiry under Section 5-A to petitioner and pass appropriate orders. Further from the extent held by Nageshwar Rao or petitioner herein, the possibility of assuming that the land belonging to D.Nageshwar Rao is acquired cannot be ruled out. The declaration under Section 6 is illegal and liable to be set aside.

The learned Government Pleader has substantially reiterated the stand taken by the 3rd respondent in the counter affidavit. The learned Government Pleader further adds that with the showing of petitioner's name in draft declaration dated 02.05.2013 the petitioner can work out his right for compensation in the award enquiry and it cannot be held that the petitioner's rights are affected without recourse to law.

Having considered the case of respective parties and the factual and legal submissions, the following point arises for consideration?

Whether non-mentioning of petitioner's name in 4(1) notification or non-issue of notice in the enquiry under 5-A in spite of knowledge of petitioner's interest in the acquired land and draft declaration dated 02.05.2013 is legal and valid? If not what is the relief to which the petitioner is entitled to?

The parties are not joining issue on facts. In this writ petition, the petitioner is concerned with the proposed acquisition of Ac.0-15 cents out of total extent of Ac.0-37 cents in Survey No.327/IBP. The 3rd respondent has shown the name of D.Nageshwar Rao as the owner, possessor and enjoyer of the structures covered by a portion of

Ac.0-37 cents. In the enquiry under Section 5-A, it has been specifically brought to the notice of 3rd respondent that petitioner is interested person as according to the alignment the respondent is acquiring land in an extent of Ac.0-15 cents belonging to petitioner as well. The 3rd respondent having come to know that interested persons are not heard in Section 5-A enquiry and issued notice to petitioner as well. Had it been a case whether alleged person interested is not shown in revenue record, the 3rd respondent can proceed to hear the persons who are shown as owners or persons interested in the subject matter of acquisition. In the case on hand, not only the petitioner is shown in the revenue records, but the other owner having regard to the alignment, restricted his claim to the extent of Ac.0-22 cents. In such eventuality, after taking note of details given by Nageshwar Rao inclusion of petitioner's name in draft declaration without notice to him is certainly illegal. The issue of notice to interested persons is considered in detail in the decisions reported in **S.Palani Velayutham v. District Collector, Tirunelveli, Tamil Nadu**^[1], **P.C. Thanikavelu v. The Special Deputy Collector for Land Acquisition, Madras**^[2] and **Pon.Elangovan v. State of Tamil Nadu**^[3].

In **S.Palani Velayutham.s** case, it is held as under:

“A “person interested” no doubt would include all persons claiming an interest in the compensation on account of the acquisition of land, including the vested remaindermen. On the other hand, “a person known to be interested” refers to persons whose names are recorded in the revenue records, as persons having an interest in the acquired lands, as the owner, sharer, occupier or holder of any interest. They are entitled to notice.”

In **P.C. Thanikavelu's** case, it is held as under:

“ .. if it is brought to the notice of the Collector by the erstwhile land owner or by any other person including the present owner thereof, of the

names of interested persons, the Collector as a statutory functionary cannot decline to afford an opportunity to the person who is really interested in the land and, close the enquiry. When such information is brought to the notice of the Collector, it is needless to say that the principles of natural justice enjoin upon him an obligation to issue notice to the person who is found to be really interested in the land even though his name may not be found entered in the revenue records.”

In **Pon.Elangovan**’s case, it is held as under:

“ ..even without any enquiry, much less roving enquiry, the authorities were informed by means of objections that lands had already been sold away. The infirmity is that despite the same, they have not cared to issue notice under Section 4(1) to the land owners and also to allow them to participate in the subsequent enquiry under Section 9 of the Act.”

By applying the requirement laid down in the above citations, this Court is of the view that the draft declaration dated 02.05.2013 published in Newspaper on 21.05.2013 is illegal and liable to be set aside.

Accordingly the draft declaration dated 02.05.2013 is set aside and the writ petition is allowed as indicted above. The respondents are free to proceed in the matter in accordance with law. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date: 06-03-2015

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[\[1\]](#) 2009 (10) SCC 664

[\[2\]](#) 1989 1 LW 232

[\[3\]](#) 2009 (5) CTC 661