

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.7443 OF 2015

ORDER:

The petitioners pray for Mandamus declaring the action of 1st respondent in conducting Section 5-A enquiry under the Land Acquisition Act, 1894 (for short 'the Act 1 of 1894'), the resultant proceedings No.G3/3826/2008 dated 02.03.2015, draft declaration dated 10.03.2015 and Award No.2/14-15 dated 13.03.2015 and taking forcible possession of land in an extent of Ac.4-24 cents in Survey No.117/1A etc. of Yerraguntla Village and Mandal, Kadapa District for a purpose other than notified under Section 4(1) of the Act 1 of 1894, as contrary to common order dated 07.02.2014 in W.P. No.27429 of 2008 and batch, illegal, unconstitutional and contrary to Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act 30 of 2013'). Petitioners alternatively pray for a direction to respondents 1 to 4 to follow due process of law by initiating land acquisition proceedings for acquiring petition land and pay compensation together with benefits under Act 30 of 2013.

The draft notification under Section 4(1) of Act 1 of 1894 was published in District Gazette No.225 dated 19.08.2008 to acquire an extent of Ac.119.67 cents of patta land at Yerraguntla Village for providing house/sites to weaker sections under a welfare scheme implemented by the State Government. The petitioners filed objections against proposed acquisition in the enquiry held under Section 5-A of Act 1 of 1894. The objections were rejected through proceedings G3/3526/2008 dated 07.11.2008. The land owners filed W.P. No.27429 of 2008 and batch assailing the draft notification dated 19.08.2008 and draft declaration dated 18.11.2008. It is not in dispute that the petitioners herein filed writ petition challenging proceedings No.G3/3526/2008 dated 07.11.2008. On 07.02.2014, writ petition Nos.27429 of 2008 and batch were disposed of setting aside the order refusing objections against acquisition. The relevant portion of common order reads as follows:

"A reading of the principles laid down by the Hon'ble Apex Court and this Court would make very much manifest that it is obligatory on the part of the respondent authorities to consider the objections with a pragmatic approach. Right to property is a Constitutional right as enshrined under Article 300-A of the Constitution of India, which mandates that no citizen shall be deprived of his/her property except in accordance with the procedure established by law. The citizens cannot be divested of their private properties without payment of just compensation to them. A reading of the orders passed by the District Collector, rejecting the objections candidly shows that the District Collector simply affixed the seal on the remarks submitted by the Land Acquisition Officer and the application of mind is totally and conspicuously absent in the present matter. It is also the case of the petitioners herein that the alternative site at Valasapalli was also proposed by the land owners and the same also is required to be taken into consideration while deciding the suitability and inevitability of the acquisition of the present land. The said aspect is certainly an important and significant aspect which the District Collector is required to consider. The District Collector except stating that the objections raised by 18 petitioners have been examined and after examining the ground reality and field records, the objections are rejected and no Government lands are available, as such, the present site is selected, did not assign any other reasons to show the inevitability of the acquisition of the subject land. Petitioners herein are farmers and it is also the plea of the majority of the petitioners that they are small farmers. Farmers are the backbone of our Indian economy and in the process of urbanisation, the agriculture is getting crippled day by day and the number of farmers growing the food grains is also getting diminished, as such, to the extent possible, barring inevitable situation, compulsory acquisition of agricultural lands, thereby creating shortage of food production should be averted and avoided. The indiscriminate acquisition may sometimes lead to unrest in the society. Compulsory acquisition may also lead to displacing the farmers from their native villages, which may lead to severance of bond from native habitation, which would disturb the social network and ultimately result in unwanted and unhealthy excessive urbanisation.

This Court is of the opinion that the District Collector while rejecting the objections failed to adhere to the mandatory provisions of the Act and there is no objective consideration of the objections raised by certain land owners. Except putting a seal for the remarks of the Revenue Divisional Officer, the District Collector did not look into the matter from pragmatic point of view. Therefore, this Court is of the opinion that fresh consideration of the objections of the petitioners is inevitable in the matter.

For the aforesaid reasons and having regard to the principles laid down by the Hon'ble Apex Court and this Court in the above referred judgments, the impugned proceedings No.G3/3526/2008, dated 07.11.2008, of the District Collector, Kadapa and the consequential award No.34/2009 are set aside and the respondent authorities are directed to hold 5(A) enquiry after giving notice and opportunity of being heard to the petitioners herein and to proceed in accordance with law. Till such exercise is undertaken and finalised, status quo as on today shall be maintained by the parties to the present litigation."

With the remand, through the order dated 07.02.2014 by this Court to 1st respondent herein, notice of enquiry under Section 5-A dated 17.01.2015 was issued. The enquiry was scheduled on 24.01.2015. The 1st respondent has received objections and recorded statements of the land owners. It is borne out from the material available on record that the learned Advocate representing land owners stated that the owners of extent of Ac.4-24 cents will be persuaded to agree for acquisition of an extent of Ac.4.24 cents for laying approach road to Railway New Bridge. The 1st respondent through proceedings No.G3/3826/2008 dated 02.03.2015 rejected the objections and held that the land covered by draft notification under Section 4 of Act 1 of 1894 is required for the public purpose of providing houses under the welfare scheme referred to above.

In the present writ petition, the petitioners assail the passing of Award No.2/14-15 dated 13.03.2015 and taking forcible possession of petition land for a purpose different from what is stated in Section 4(1) notification. The memo filed by petitioners and the submissions of Sri G.Rama Sharma that insofar as acquisition of Ac.4-24 cents of land is concerned, his clients will cooperate with the respondents but the respondents are under legal obligation to acquire the land strictly in accordance with law or by way of negotiations but not in a high handed way are recorded. It is contended that by stating urgency, the respondents without serving notices on petitioners in the award enquiry cannot firstly proceed with award enquiry or pass the award impugned in the writ petition. Hence, the averments necessary for consideration of the instant objections are referred to.

Through proceedings No.G3/3826/2008 dated 02.03.2015, the objections raised in the enquiry under Section 5-A are overruled. On 10.03.2015, the 1st respondent got the draft declaration under Section 6 published in Eenadu daily. On 13.03.2015, Award is passed and on 13.03.2015 possession is alleged to have been taken from petitioners with the assistance of Police/respondent Nos.5 and 6. Hence, the writ petition.

The 1st respondent filed counter affidavit as well as additional counter affidavit and opposed the writ prayer. The 1st respondent produced the original record as per the docket order dated 23.04.2015 and is also present in the Court at the time of hearing. The original file made available is examined to appreciate the procedure followed from 10.03.2015 till 13.03.2015 i.e. the alleged date of passing impugned Award, directing the Tahsildar to handover possession and actual handing over of possession to Executive Engineer, Housing Board. The possession alleged to have been given on 13.03.2015 to the Executive Engineer, Housing Board, Proddatur can be accepted if the preceding acts namely passing Award on 13.03.2015, holding of enquiry etc. are legal and in accordance with Act 30 of 2013. The power to take advance possession is provided under Section 17(4) of Act 1 of 1894. With the direction issued by this Court to conduct enquiry under Section 5-A of Act 1 of 1894, the possession alleged to have been taken on 13.03.2015 cannot be considered as advance possession taken by the respondents by dispensing with enquiry under Section 5-A of Act 1 of 1894. The possession can be claimed as prescribed by law. In the case on hand, the Award must conform to the requirements of Act 30 of 2013, for Act 30 of 2013 is in force from 01.01.2014. Section 24 of Act 30 of 2013 reads as follows:

"Section 24: Land acquisition process under Land acquisition Act, 1894 shall be deemed to have lapsed in certain cases: (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894).-

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the Act.

(Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then. All beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act."

Sections 21 to 37 deal with the award enquiry and the time within which the award has to be passed and the matters connected therewith.

Section 21 reads as follows

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Section 23 prescribes the enquiry and land acquisition award by Collector. In the case on hand, Section 24(1) of Act 30 of 2013 has bearing.

Section 24(1) Reads as follows:

" (1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894).-

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed."

As in the case on hand, no Award is passed as on 01.01.2014, the provisions of Act 30 of 2013 relating to determination of compensation shall apply. Therefore, the Award enquiry should be under Act 30 of 2013 but not under Act 1 of 1894. Section 38 of Act 30 of 2013 comes in to operation with the determination of compensation by the Land Acquisition Officer.

Section 38 reads as follows:

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The ex-proprietary legislation in Act 1 of 1894 is repealed and replaced by Act 30 of 2013. The procedure prescribed by law shall have to be strictly followed by respondents to attach legality to their official acts. In this background, the case of respondents is examined.

The respondents filed counter affidavit justifying the Award dated 13.03.2015 and contend that the procedure stipulated by law is followed. It is the case of respondents that on account of non-cooperative attitude of the petitioners, the 1st respondent proceeded to conduct *ex parte* enquiry and passed Award on 13.03.2015. The statements in counter affidavit are not considered in detail, for the record sufficiently discloses the breach of every norm and safeguard provided by both the Acts. Further, the undue haste in taking possession of petition land speaks volumes against legitimacy to these actions. Admittedly, the 1st respondent issued notices dated 11.03.2015 under Sections 9(3) and 10 of Act 1 of 1894 for determination of compensation. The Award enquiry notice informs the scheduled enquiry as 13.03.2015. Without considering the applicability of Act 1 of 1894 w.e.f. 01.01.2014, still the notices do not conform to the requirements of Act 1 of 1894 either. On 12.03.2015, notices are allegedly published and on 13.03.2015 part Award for an extent of Ac.4-24 cents was passed. The 1st respondent claims to have issued notices under Section 12(2) of Act 1 of 1894. As there was refusal to receive notices under Section 12(2) of Act 1 of 1894 on the very same day taking possession was claimed and possession handed over to Executive Engineer, Housing Board, Proddatur who in turn handed over the same to R & B Department. Section 38 of Act 30 of 2013 provides for payment of full compensation before taking possession. Therefore, the notices under Section 12(2) of Act 1 of 1894 render no assistance to respondents to render the possession legal. On 14.03.2015, R & B Department started laying the approach road. On 17.03.2015, compensation amount in terms of Award dated 13.03.2015 was deposited in civil Court. There is no tender or refusal by owners to deposit the determined compensation in civil Court.

This Court after perusing the original record is compelled to observe that the 1st respondent has thoroughly misused his power conferred by ex-proprietary legislations. The original file discloses that on 11.03.2015 notices under Section 9(3) were stated to have been taken out for service on the petitioners herein. The refusal of service of notices was recorded. The enquiry is scheduled on 13.03.2015 at 10.00 a.m. The M.R.I. returns the notices by affixture on the houses of the petitioners. By reference to the alleged service on 11.03.2015 and the publication of notice at conspicuous place on 12.03.2015, the Award dated 13.03.2015 is passed. Reflecting on the events as borne out by the record, this Court is compelled to hold that the respondents have initiated award enquiry under a repeal Act viz., Act 1 of 1894. The respondents have not followed the mandatory procedure stipulated by Act 30 of 2013 in the award enquiry, determination of compensation, payment of compensation and taking of possession from the land owners. The Award though refers to determination of compensation under Act 30 of 2013, the Award cannot be considered as a legal and binding on petitioners. The 1st respondent in the name of urgency and public purpose as is evident from the original file has exhibited extraordinary enthusiasm and cooperation in changing the public purpose from providing houses to laying approach road passes award and claims possession of petition land without paying compensation, much less serving notices on the interested persons in the award enquiry. These are not *bona fide* acts performed by the 1st respondent. This Court would have certainly further proceeded to examine the matter to determine whether appropriate findings are to be recorded against the 1st respondent and the District Collector, Kadapa under Section 84 of Act 30 of 2013

and leave it open to the petitioners to work out their remedies against erring officers in a properly instituted complaint. Learned counsel for the petitioners made a statement that the grievance in the writ petition is illegality in the Award and the petitioners are intended in protecting their rights but not serious about penal provisions under Section 84 of the Act, hence, without further consideration of this aspect of the matter, the discussion is concluded.

The passing of Award in the case on hand is illegal and unconstitutional. Any act done contrary to the procedure stipulated by law vitiates the actions and such action shall be held as depriving right and interest of a person contrary to the procedure stipulated by law. On the ground of being illegal, unconstitutional and arbitrary, the Award dated 13.03.2015 is set aside and the possession alleged to have been taken on 13.03.2015 is illegal and inoperative. The 1st respondent is given liberty to proceed in the matter of determination of compensation in accordance with Act 30 of 2013 and the *status quo* as on today shall be maintained in all aspects till Award is passed, compensation is paid to the petitioners under Act 30 of 2013 and possession taken in accordance with law.

The writ petition is allowed and matter is remanded. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT,J

Date: 01.05.2015

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