

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.36335 OF 2013

ORDER:

The writ petition is filed with the following prayer:

“....to issue any appropriate Writ, order or direction preferably a writ in the nature of Writ of Mandamus, declaring the action of the 1st respondent publishing the 4(1) Notification on 14.11.2013 in daily news papers proposing to acquire lands at Kesarapalli village, Gannavaram Mandal, Krishna District having delegated the powers to the 2nd respondent and without publishing the same in the official Gazette as required under the Land Acquisition Act, 1894, as intentional, illegal, arbitrary, mala fide, and contrary to the provisions of the Act and consequently set aside the Sec.4(1) notification issued by the 1st respondent as illegal, in the interests of justice.”

The petitioners claim to be owners and possessors of lands in Sy.Nos.249 and 250 of Kesarapalli village, Gannavaram Mandal, Krishna District. Through the impugned draft notification, the respondents are proposing to acquire the agricultural land of petitioners. The challenge is against draft notification dated 14.11.2013.

The brief circumstances leading to filing of writ petition are as follows:

On 14.02.2007, the 1st respondent entered into Memorandum of Understanding with the 4th respondent for expansion of the existing Gannavaram Airport near Vijayawada. Through G.O.Rt.No.233, Infrastructure & Investment (Airports) Department, dated 04.11.2013, the Government of Andhra Pradesh issued draft notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') for the purpose of acquiring land for the proposed expansion of Gannavaram Airport. On 14.11.2013, the draft notification was published in Andhra Jyothi, Vartha Telugu daily newspapers and also in the Hindu daily newspaper.

The 3rd respondent through letter Rc.No.B/1225/2013 dated 13.11.2013 addressed

letter to the Advertising Managers, Vaartha and Andhra Jyothi dailies for publication of draft notification in daily newspaper. It is stated that the said letter does not indicate whether there was any publication in the District Gazette before publishing the draft notification in newspapers. At the instance of the then local Minister, the draft notification was hurriedly published in the newspapers by giving go bye to the mandatory provisions of the Act. Reference to operation of new Act i.e., the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013) is made by the petitioners to state that initiation of proceedings under the Act is only to deny the valuable rights of petitioners available under Act 30 of 2013. The respondents are proposing to acquire the lands under the old Act, which is against the scheme of Acquisition Act and unconstitutional.

The legal objections against the draft notification under Section 4(1) of the Act are that the draft notification was not published in the locality or in the District Gazette. The action of respondents is illegal and *non est* in the eye of law.

The 3rd respondent filed counter affidavit. By way of reply it is stated that the Airport Director, Airports Authority of India, Vijayawada, submitted requisition for acquisition of an extent of Ac.465.00 cents of land in Buddavaram, Kesarapalli and Ajampudi villages of Gannavaram Mandal for expansion of the existing Gannavaram Airport. The Tahasildar, Gannavaram submitted draft notification proposals under Section 4(1) of the Act for acquisition of Ac.121.97 cents at Kesarapalli Village of Gannavarm Mandal to the 2nd respondent/District Collector, who in turn submitted proposal to the Special Secretary to Government, Infrastructure and Investment (Airport) Department, A.P., Hyderabad. Through G.O.Rt.No.233, Infrastructure & Investment (Airports) Department, dated 04.11.2013, the Government of Andhra Pradesh issued draft notification under Section 4(1) of the Act, publishing the same in Andhra Pradesh State Gazette and also in Andhra Jyothi Telugu daily dated 14.11.2013, Vaartha Telugu daily dated 14.11.2013 and in the locality on 16.11.2013.

Notice dated 17.12.2013 in Form III under Section 5-A of the Act was issued to all

the land owners covered by 4(1) Notification fixing the date of enquiry from 02.01.2014 to 04.01.2014. In the case on hand, the enquiry under Section 5-A of the Act was conducted on 04.01.2014. The petitioners neither filed objections nor attended the enquiry under Section 5-A. The petitioners, without availing the opportunities under the Act, filed the present writ petition. The writ petition is not maintainable.

As per the requisition, an extent of Ac.243-79 cents in R.S.Nos.422/2, 423/2 etc., was identified in Buddavaram Village and Ac.115.11 cents in R.S.No.1/2 etc., of Ajjampudi Village in Gannavaram Mandal. The Tahasildar, Gannavaram submitted draft notification proposals for acquisition of Ac.196.56 cents in Buddavaram Village and Ac.112.49 cents in Ajjampudi Village of Gannavaram Mandal. Accordingly, through G.O.Rt.No.233, Infrastructure & Investment (Airports) Department, dated 04.11.2013, the Government of Andhra Pradesh approved the draft notification. Though the draft notification under Section 4(1) of the Act was issued under the Land Acquisition Act, 1894, the claim of petitioners for compensation would be considered under Section 24(1)(a) of the Act 30 of 2013. There is no illegality or irregularity in publication of draft notification.

Sri K.V.Bhanu Prasad, learned counsel for the petitioners, having regard to the scope of judicial review against draft notification under the Act, contends that issuance of Section 4(1) notification firstly is not preceded by gazette publication, the notification is not published in daily newspapers and that the substance of Section 4(1) is not published in the locality and the notification is vitiated by infirmities. The objections raised by the petitioners are replied in the counter affidavit of respondent No.3 and the objections can be examined by considering the record.

The original file of subject land acquisition is made available for inspection. It is required to be noted that in W.P.No.6487 of 2015 this Court has considered similar objections against Section 4(1) notification and after examining the record has rejected the objection against Section 4(1) notification. The reasons stated in the said order are applicable with equal force to the case on hand and by following the same reasoning, the objections

against Section 4(1) notification are rejected. It is matter of record that the respondents conducted 5-A enquiry on 04.01.2014 and the Sub-Collector, Nuzvid forwarded the report to the District Collector, who in turn forwarded the report to Government for appropriate decision. On 06.08.2014, the enquiry report or the objections, as the case may be, have been considered and a decision forwarding the objections was also taken. No illegality or irregularity is made out against Section 4(1) notification.

The writ petition is, accordingly, dismissed. There shall be no order as to costs.

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

S.V.BHATT, J

1st May, 2015

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