

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.16349 OF 2012

ORDER:

Heard Sri K.S.Murthy, learned counsel for petitioner, Government Pleader and Sri S.S.Verma, learned counsel for 5th respondent.

The petitioner invokes the jurisdiction of this Court under Article 226 of the Constitution of India for a writ of Mandamus declaring the action of respondents in taking away the land in an extent of Ac.2560.8 sq.yards in Sy.No.269/2 of Bhimavaram Village, Vatsavai Mandal, Krishna District in the name of already laid National Highway 9, though the Government land is available adjacent to National Highway, as illegal and unconstitutional.

The petitioner prays for setting aside the notifications dated 07.04.2011 and 12.05.2011 under the National Highways Act, as illegal, arbitrary and unconstitutional.

The case of petitioner is that he is a small farmer owning Acs.4-00 of land in Manchili Village. The petitioner purchased an extent of 2560.8 sq. yards covered by Sy.No.269/2, Bhimavaram Village, Vatsavai Mandal, vide registered sale deed dated 11.03.2010. The said land is covered by house plots. The petitioner claims to be in actual and physical possession of the subject property. With a view to developing the subject house plots by making construction, the petitioner had undertaken steps including a visit of the subject property.

On 10.05.2012, the petitioner has come to know that the subordinate officers from the office of 1st and 2nd respondents have marked a portion of subject house plots for acquisition.

It is incidentally stated that the expansion of NH-9 into six lanes is completed and the subject house plot is 125 feet away from the edge of the expanded NH-9 and the subject land is not covered by road widening and not included in any notification under the Act. The land cannot be taken for expansion of NH-9 or for a toll gate as these are already in existence at the subject location and as a matter of fact, there is no need for taking the subject house plot for road expansion.

On 18.05.2012, the petitioner addressed letter to 1st and 2nd respondents by asserting that the subject house plot is covered by Sy.No.269/2 and is not notified under the Act. Therefore, the acquisition or unauthorized taking away of land from petitioner is illegal and unconstitutional. On his visit to the office of Tahsildar, it is stated that notification dated 19.02.2012 for acquiring the land was published in newspapers on 26.02.2012. It is a matter of record that the petitioner admits reference to Sy.Nos.269/1B, 2B, and 269/2 in the said notification. However, the objection is the notification does not contain the name of either petitioner or his predecessor-in-interest and for that reason, the proceedings, if any, against the petition land are bad in law.

On 21.05.2012, the petitioner sent representation requesting the 1st respondent to give information whether the subject house plot is covered by the notification dated 19.02.2012. The petitioner could get the publication of notification under Section 3-A of the National Highways Act dated 07.04.2011, which was published in newspapers on 12.05.2011. The notification under Section 3-A does not contain the names of petitioner or his predecessor-in-interest.

The petitioner further avers that the notification dated 12.05.2011 declares availability of maps of lands etc., on proposed acquisition and other details of lands with the Land Acquisition Officer/respondent No.2 and can be inspected at the office. Though the notification dated 12.05.2011 states that the details/ documents are available with the 2nd respondent, the 2nd respondent office does not have these details/documents and on the other hand, the 2nd respondent wanted the petitioner to secure the details/documents from the contractor. Therefore, it is contended that unless the plans with details are available with 2nd respondent, the acquisition of petition land cannot be presumed, unless it is actually available in the details already kept with respondent No.2.

The petitioner makes serious complaint against the mode and manner of acquisition of property under the National Highways Act. The failure to utilize the Government land on the opposite side in Sy.Nos.272, 273 and 274 to the extent of Ac.16-00 speaks the

lack of objectivity in acquiring private properties under the Act.

The invocation of urgency clause is untenable in law and fact.

The acquisition of land located 125 feet away from the expanded highway cannot be

sustained in fact. The real purpose of acquisition is not disclosed. The respondents are not ready to furnish whether the subject house plot is covered by the original acquisition or not. In the name of notifications already issued, it is stated, the respondents are trying to take away the subject house plots. Hence, the writ petition.

The legal objections against the notifications referred to above are that the notifications are too vague and no details are furnished with required sufficiency to enable the parties interested to file objections before the 2nd respondent. The respondents intend to rely upon the comprehensive plans referred in notice dated 19.02.2012. As a matter of fact, the requisitioning department did not make available the proposed plan of utilization or construction at acquired land. For want of these details in the office of respondent No.2, it cannot be contended that the procedure stipulated by law for acquiring the petitioner's land is followed. The petitioner complains that the threatened action of taking away the subject house plot is illegal and violative of Article 300-A of the Constitution of India. The petitioner relies upon the decision reported in **COMPETENT AUTHORITY v. BARANGORE JUTE FACTORY AND OTHERS**. The relevant paragraphs are as follows:

"While dealing with the question of brief description of land in the acquisition notifications, reference was made to some judgments of this Court where acquisition Notifications under Section 4 of the Land Acquisition Act had come up for consideration on account of challenge being leveled on ground of vagueness of the Notifications. In most of these cases, Plan of the area under acquisition was made part of the notifications to show that the requirement of description of land was met. This lead us to inquire whether there was any site plan forming part of the impugned Notification.

The availability of a Plan would have made all the difference. If there is a Plan, the area under acquisition becomes identifiable immediately. The question whether the impugned Notification meets the requirement of brief description of land under Section 3A(2) goes to the root of the matter. The High Court rightly observed: ".....It is just not possible to proceed to determine the necessity of acquisition of a particular plot of land without preparation of a proper Plan." The Appendix to the impugned Notification shows that in many cases small parts of larger chunks of land have been notified for acquisition. This is not possible without preparing a Plan. But where is the Plan? The Notification in question makes no reference to any Plan. Our attention was drawn to averments in pleadings by Writ Petitioners and replies thereto of the acquiring authority. The Writ Petitioners have pleaded that there was no Plan. Replies are vague and by way of rolled up answers. There is no specific reply. It is obvious that there was no Plan and therefore none was referred to in pleadings nor any thing was produced before Court at the hearing. Learned

counsel for the Competent Authority tried to submit before us that there was a Plan at the time of issue of the notification and the Writ Petitioners ought to have inspected it if they so desired. He further submitted that the Plan was produced before the High Court. We find that both these submissions are not sustainable as they are not correct.

A reference to the impugned Notification shows that there is no mention of any Plan. Without this how can anybody know that there was a Plan which could be inspected and inspected where? We are inclined to accept that there was no Plan accompanying the impugned Notification. During the course of hearing we were shown a Plan which we are unable to link with the impugned Notification. This was a 1996 P.W.D.Plan. The P.W.D. is a department of the State Government. The impugned Notification is by the Central Government. The NHAI is established under a Central Act. The Competent Authority under Section 3 of the Act is appointed by the Central Government. Therefore, this State Government Plan of 1996 (the impugned Notification is of 1998) is of no assistance. The impugned judgment of the High Court emphasises the need for a Plan. It is clear from the judgment of the High Court that no Plan was produced before it. The absence of any reference to a Plan in the impugned Notification and in fact non-availability of any Plan linked to the Notification, fortifies the argument that the description of the land under acquisition in the impugned Notification fails to meet the legal requirement of a brief description of the land which renders the Notification invalid.

The absence of plan also renders the right to file objections under Section 3C(1) nugatory. In the absence of a Plan, it is impossible to ascertain or know which part of acquired land was to be used and in what manner.....”

The respondents filed counter and a petition to vacate the interim order dated 06.02.2012. The respondents filed additional counter affidavit dated 09.09.2014.

The case of respondents is that the 2nd respondent received land acquisition proposals from the National Highway Authority of India for acquisition of land in Bhimavaram Village of Vatsavai Mandal and also Chillakallu Village of Jaggaiahpet Mandal.

The land acquisition proposals are for construction of toll plaza. Notification No.SO 709(E) dated 07.04.2011 under Section 3-A of the National Highways Act, 1956 was published for acquiring 66,047.04 sq. metres in the villages referred to above.

On 12.05.2011, notification dated 07.04.2011 was published in the newspapers. The 2nd respondent did not receive objections from either the persons interested or the land owners. An extent of 8296.35 sq. yards in Sy.No.269/2(p) was proposed for acquisition through the notification referred to above. The declaration under Section 3-D of the National Highways Act was published in Government of India Gazette

S.O.No.2631 (E) dated 25.11.2011. Thereafter, Section 3-G notification was published in the Hindu and Vartha newspapers requesting the land holders to appear before the LAO/RDO on 03.03.2012 with proof of title of acquired land for claiming compensation. On 03.03.2012, a few of the land owners appeared and filed documents in support of their claim for title and compensation. The matter was adjourned to 14.05.2012 to give another opportunity to the persons who have not filed claims.

The 2nd respondent further states that he received land acquisition proposals for an extent of Ac.20-68 cents consisting of Government land in an extent of Ac.6-20 cents and private land in an extent of Ac.14-48 cents for construction of toll plaza. The alienation proposals for Government lands are pending with the Government. The 2nd respondent is the authority for performing the acts under the Act. It is stated that the petitioner filed representation on 18.05.2012 complaining that the notification dated 07.04.2011 does not include Sy.No.269/2. The petitioner did not avail the opportunity of filing objection at the stage of notification under Section 3-A as well as declaration under Section 3-D, which was published on 25.11.2011. The purpose of acquiring the land for toll plaza expansion etc., are stated in detail in the counter affidavit. The petitioner will be paid compensation for acquiring the land in Sy.No.269/2 and the complaint that petitioner's land is taken away by force is incorrect and untenable.

This Court directed the 2nd respondent to file additional counter affidavit on the availability of maps etc., with 2nd respondent as per notification under Section 3-A, as making available these maps is crucial for deciding the purpose and extent of land acquired by the respondents. The 2nd respondent filed additional counter affidavit and produced the records. Through the additional counter affidavit, it is stated that as per alignments submitted by the NHAI, sketch plans were prepared in respect of each and every survey number, including Sy.No.269 of Bhimavaram Village. According to the sketch plan notified under Section 3-A, an extent of 17,461 sq. metres in Sy.No.269 is acquired. In the Gazette dated 17.04.2011, an extent in Sy.No.269/2 was shown as 8,296.3 sq. metres and the same extent was shown in notification dated 09.03.2011

under Section 3-D and finally notification under Section 3-G was published in local newspaper the Hindu on 26.02.2012.

The 2nd respondent asserts that the detailed land plans are very much available with the competent authority at the time of issuance of Section 3-A notification and the allegations in the affidavit are incorrect. The petitioner or his representative ever visited the office for inspection of the available plans. It is replied that these objections are made without any basis.

The learned counsel appearing for the respondents reiterated the objections stated in the counter affidavit and placed reliance on the decision of this Court reported in **DANO VACCINES & BIOLOGICAL (P) LTD., HYDERABAD AND ANOTHER v. GOVERNMENT OF INDIA AND ANOTHER** and an unreported decision in W.A.No.504 of 2007 confirming the order in W.P.No.378 of 2007.

From the material available on record and the pleadings of the petitioner, the complaint against the respondents firstly is that the respondents are taking away petitioner's land in an extent of 2560.8 sq. metres in Sy.No.269/2 without recourse to law and secondly the notifications dated 07.04.2011 and 12.05.2011 under Sections 3-A and 3-D are liable to be set aside as contrary to the ratio laid down in **COMPETENT AUTHORITY's** case (1 supra). The identification of property, it is contended, is dependant upon the plans available by the 1st respondent to 2nd respondent while issuing Section 3-A notification. If no plan or detail is available, then the notification suffers from ambiguity and liable to be set aside.

This Court directed the 2nd respondent to produce the original record concerning the subject acquisition. The original file is made available and the learned counsel appearing for the petitioner was permitted to peruse the same to find out whether the plans are available with the acquisition proposals and if so the acquisition through delineation by plans affects the property claimed by the petitioner in Sy.No.269/2. The learned counsel for the petitioner after verifying the record submits that, no doubt, plans are available but still the required details are unavailable to show whether particular property is acquired for the proposed construction of toll plaza at the subject location.

The petitioner places strong reliance upon the decision reported in **COMPETENT AUTHORITY'S** case (1 supra) in support of his main contention that issuance of

notification under Section

3-A without maps and other details etc., vitiates the acquisition proceedings. On fact, the objection of petitioner is that the detailed plans are not available with the 2nd respondent at all. Neither of these points should detain this Court for too long inasmuch as in **DANO VACCINES** (2 supra) case, a Division Bench of this Court has considered the law applicable and the requirements of Section 3-A notification in the light of law declared by the Apex Court in **COMPETENT AUTHORITY's** case (1 supra). The view of **DANO VACCINES** (2 supra) is reiterated in W.A.No.504 of 2007 and W.P.No.378 of 2007. By applying the reported principle laid down in the reported and unreported decisions, it cannot be said that the notifications under Sections 3-A and 3-D suffer from any legal infirmity on the ground of lack of details. Accordingly, the first submission is rejected. Further, on the alternative submission that the acquisition is without plans and without taking into consideration the Government land available on the other side of the road on the same stretch of road, the 2nd respondent filed counter affidavit explaining the comprehensive acquisition of

20 acres for construction of toll plaza with eight lines road widening and the extent of area required for public purpose, road widening, toll plaza etc. Therefore, it is not a case whether the available Government land is completely overlooked by the respondent in acquiring the land on either side of the road. Further, the availability of Government land in a case like the present may not by itself be sufficient to call in question the acquisition, for the utility, location etc., of Government land are very important in considering the available Government land. Having regard to the alignment of NH-9 and the necessity of acquiring land on either side, proposals have been sent along with detailed plans. The original record discloses that the detailed plans are also available right from the stage of Section 3-A notification. The other objection as well is without merit.

For the above two reasons, the writ petition is without merit. The writ petition fails and 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

2nd April, 2015

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