

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.4881 OF 2015

ORDER:

Heard Ms.G.Jyothi Kiran, the Government Pleader and Mr. K.Vivek Reddy.

With the consent of learned counsel, the writ petition is taken up for final disposal.

The petitioners pray for Mandamus declaring the action of 2nd respondent in passing award No.A/94/2007 dated 05.02.2015 for the premises bearing M.C.H.No.1-115/252/1 in Survey No.193/4 at Begumpet Village, Balanagar Mandal, Ranga Reddy District, as illegal, contrary to the Right to Fair Compensation And Transparency In Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short Act, 30 of 2013) and unconstitutional.

The 2nd respondent issued notifications under Section 4(1) and 6 of the Land Acquisition Act, 1894 on 24.05.2007 and 25.05.2007 to acquire an extent of Ac.0.05 ¼ Gts. equivalent to 630 square yards. The petitioners assailed the act of respondents in invoking the power under Section 17(4) of Act 1 of 1894 in writ petition No.14915 of 2007. On 25.05.2007, the writ petition was allowed setting aside the declaration under Section 6 of Act 1 of 1894. The respondent conducted 5-A enquiry again issued 6 declaration. On 20.10.2014 the petitioners received notice under Section 9(3) of Act 1 of 1894 for award enquiry. The date of enquiry was scheduled on 05.11.2014. On 13.11.2014 the 2nd respondent issued notice in Form 7 dated 13.11.2014. On 20.11.2014 a reply was submitted asserting that Act 1 of 1894 was repealed and Act 30 of 2013 has come into force with effect from 01.01.2014 and the issuance of notices for determination of compensation should be under Section 21 of Act 30 of 2013. The award dated 05.02.2015 is passed under Section 26 of Act 30 of 2013. The writ petition is filed assailing the award primarily on the ground that reference to procedure under Act 1 of 1894 is illegal and unavailable. The 2nd respondent has not followed the procedure stipulated under Act 30 of 2013. The award deprives the valuable rights of petitioners without enquiry much less opportunity. It is prayed that the award should be set aside.

The learned Government Pleader submits that the reason for following the

procedure under Act 1 of 1894 is that the rules have not been made under Act 30 of 2013. The petitioners are unable to point out prejudice against the determination in the impugned award, for the 2nd respondent has determined the compensation under Act 30 of 2013 as payable to petitioners. Alternatively it is submitted that even assuming that the procedure has been followed under repealed Act the decision of this Court in writ petition Nos.29913 of 2014 and batch dated 02.12.2014 is in all fours applicable to the case on hand and at best the petitioners are entitled to same relief. The paragraph relied upon by the learned Government Pleader in the order dated 02.12.2014 is as follows:

“The Land Acquisition Officer shall fix the date of hearing, cause notice on the petitioners and afford an opportunity of hearing to the petitioner, consider all the claims of the petitioners with reference to the determination of appropriate compensation, consider their objections and pass supplementary award and the amount of compensation so determined would be paid before possession of the properties are taken. The persons in occupation shall be given four weeks time from the date of payment of compensation for vacating the premises and handing over the premises. To avoid further litigation, it is necessary to put on notice the persons, who claimed to have interest in the subject properties and shall also be given an opportunity of hearing to them and their grievance shall also be considered before passing the supplementary award. The petitioners shall furnish list of such persons to the Land Acquisition Officer within a week from today. The petitioners shall cooperate for early disposal of the issue and shall have to appear on the date and time fixed by the Land Acquisition Officer for the purpose of enquiry to determine compensation and to receive the amount of compensation determined. By the date and time fixed for enquiry, petitioners shall be ready with the claims in accordance with the provisions of Act 30 of 2013, if they so choose, they may submit in advance the amount of compensation payable to them as per their assessment. Petitioners are entitled to be represented by their counsel. The entire exercise shall be completed within the fixed time frame and the Land Acquisition Officer shall draw the schedule and communicate to petitioners along with notice of hearing including date for payment of amounts and mode of payments. If the petitioners do not appear on the dates fixed or do not cooperate in early disposal of the claims, it is open to the Land Acquisition Officer to pass *ex parte* supplementary award duly recording the reasons and to take consequential steps. Parties shall adhere to time schedule fixed to conclude the acquisition proceedings.”

Mr.Vivek Reddy while reiterating the submissions of learned Government Pleader makes additional submissions that the remedy under Section 64 of Act 30 of 2013 is efficacious and in the absence of exceptional circumstances

present in the matter and the petitioners failure to show prejudice of determination in any manner the re-determination by 2nd respondent for all purposes should be avoided and he prays for dismissal.

The circumstances leading to the writ petition are not in dispute. The short question for consideration is:

Whether the issuance of notices under Act 1 of 1894 and passing an award under Act 30 of 2013 has vitiated the award dated 05.02.2015? If so, what relief?

At the outset, having perused the order of my learned brother Justice Naveen Rao in writ petition No.29913 of 2014 and batch, I am of the view the operative portion of the order applies to the present writ petition. After perusing the material available on record, this Court has no reason to disbelieve the contention of the petitioners that for want of opportunity in award enquiry before the 2nd respondent the petitioners suffered deprivation of a valuable right. Having considered the nature of objections and to ensure fairness in action in implementing an ex-proprietary legislation , I consider it appropriate to order the writ petition by giving one week from today to petitioners to file detailed objections to the notices dated 20.10.2014 read with dated 13th November,2014, as if, notices under Act 30 of 2013 have been issued and the 2nd respondent is directed to consider the objections, give opportunity to petitioners and pass appropriate award(supplemental) within a period of four weeks from today.

As the matter is remanded to the 2nd respondent for consideration and passing award (supplemental), it is needless to observe that the physical features as on date are directed to be maintained in the meantime.

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

S.V.BHATT, J

Date:04.03.2015

Stp