

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.27387 OF 2011

ORDER:

The petitioners pray for Mandamus declaring notifications under Section 4(1) vide G.O.Ms.No.233 Revenue (Endts.IV) Department dated 23.02.2005 issued by the 1st respondent

herein and the Draft Declaration vide Memo No.30006/ Endowments. IV(2)/2004-14 dated 12.04.2007 published in newspaper on 04.05.2007 under the Land Acquisition Act, 1894

(for short 'the Act') proposing to acquire 68 sq.yards and 12 sq.yards in R.S.No.45/1 of Dwaraka Tirumala Village and Mandal, West Godavari District, as illegal, contrary to the mandatory provisions of the Act and unconstitutional.

The case of petitioners is that one Mandavalli Surya

Prasada Rao was the owner of small extent of land in R.S.No.45/1. The petitioners through registered sale deeds dated 01.04.2001 and 31.03.2003 purchased an extent of 68 sq. yards and 12 sq.yards respectively in R.S.No.45/1 of Dwaraka Tirumala Village from Mandavalli Surya Prasada Rao. The petitioners claim title and exclusive possession of the property purchased through the sale deeds dated 01.04.2001 and 31.03.2003. The draft Notification under Section 4(1) of the Act through G.O.Ms.No.233 Rev.(Endts IV) Department 23.02.2005 was issued intending to acquire among other properties/extents including the subject matter of writ petition for development of surroundings of Sri Venkateswara Swamyvari Devasthanam, Dwaraka Thirumala Village and Mandal.

On 12.04.2007, Draft Declaration under Section 6 of the Act was issued.

The petitioners allege that though they are the absolute owners and possessors of the petition land, the respondents did

not show the petitioners as owners of small extents of property covered through the said sale deeds, in Notification dated 23.02.2005. Likewise, Section 6 Declaration was issued invoking the urgency clause under Section 17(4) of the Act. Section 6 Declaration does not bear the names of petitioners.

The grievance of the petitioners, in nutshell, is initiation of

land acquisition proceedings and issuance of declaration in the name of predecessor-in-interest of petitioners is illegal and that the petitioners are entitled for participation or opportunity in the ongoing land acquisition proceedings. On the short ground that the names of the petitioners are not shown in Section 4(1) Notification and Section 6 Declaration, the petitioners contend that it is a serious illegality going to the root of the acquisition proceedings and pray for setting aside the land acquisition proceedings dated 23.02.2005 and 12.04.2007.

The petitioners contend that the land acquisition proceedings are lapsed due to publication of Draft Declaration beyond the time stipulated by Section 6 of the Act.

The Executive Officer of Sri Venkateswara Swamyvari Devasthanam, Dwaraka Tirumala/4th respondent filed counter affidavit. The averments in the counter affidavit, briefly stated, are as follows:

The influx of pilgrims to the 4th respondent Temple has increased manifold. In the year 1985-86, the annual income of the Temple was about Rs.81,41,000/- and now the income has increased to Rs.30 crores. Likewise, keeping in mind the changed circumstances, steps to acquire an extent of 68 sq. yards of 1st petitioner and 12 sq. yards of 2nd petitioner as part land acquisition proceedings were initiated. The public purpose is providing amenities to the pilgrims and enhancing the infrastructure in and around the temple. The temple has remitted a sum of Rs.1,88,75,000/- as early as 24.11.2004 towards cost of acquisition of properties in and around the temple to Government.

The Government issued G.O.Ms.No.170 Rev.(Endts.IV) Department. 02.02.2005. The subject matter is covered by G.O.Ms.No.233 dated 23.02.2005. The names of owners and extents covered by R.S.No.45/1 are shown as O.Manga Thayaru and M.Surya Prasad. Assailing the legality of land acquisition proceedings, the predecessors-in-interest of petitioners filed W.P.Nos.5784 and 5785 of 2005 in this Court. On 29.08.2005, the writ petitions were disposed of by directing the 2nd respondent/LAO to hold enquiry under Section 5-A of the Act and also afford opportunity to the petitioners therein. On 20.10.2005, notice of enquiry under Section 5-A of the Act

was issued to the

predecessors as their names appear in the record. The notified enjoyers submitted objections dated 02.11.2005 on 05.11.2005.

The 2nd respondent forwarded the report of enquiry through his letter dated 01.10.2006 to the Government. The Government issued Memo No.30006/Endowments.IV (2)/2004-14 dated 12.04.2007 issuing notification under Section 6 of the Act. The draft Declaration was published in newspapers on 04.05.2007. As against the total extent acquired through the notifications referred above, except the extent of Ac.0-10½ cents covered by the writ, the Devasthanam has taken possession of the balance extent and on account of pending litigation, an extent of Ac.0-10½ cents could not be proceeded with or possession taken by Government.

W.P.No.10145 of 2007 was filed by the notified enjoyers and the same was dismissed by order dated 08.06.2010. The same is subject matter of W.A.No.637 of 2010. It is, therefore, contended that the predecessors-in-interest of petitioners herein challenged the draft Declaration dated 12.04.2007 as published on 04.05.2007. Further, the findings in W.P.No.10145 of 2007 do not keep any challenge open to the petitioners to file the present writ petition. The 4th respondent places strong reliance upon the decision of this Court in W.P.No.10145 of 2007 and batch dated 08.06.2010.

Sri K.Gopal, learned counsel for the petitioners, contends that the purchase by the petitioners is much earlier to Section 4(1) Notification dated 23.02.2005. The respondents are under obligation to show the names of petitioners in the notification, give them opportunity and proceed further in accordance with law.

The failure to include the names of petitioners has vitiated the land acquisition proceedings and the proceedings are liable to be set aside. The learned counsel contends that the draft Declaration dated 12.04.2007 is contrary to the mandatory requirement of Section 6 of the Act and for these objections in fact and law pray for setting aside the impugned notifications.

The learned Standing Counsel Sri Venugopal Rao contends that the objections taken in the present writ petition are substantially same and similar to the objections taken by the predecessors-in-interest of petitioners in W.P.No.10145 of 2007 and the

findings recorded by this Court through order dated 08.06.2010 cover the issue and the petitioners cannot urge the same grounds against the impugned notifications and the writ is liable to be dismissed.

The learned Standing Counsel submits that the predecessors- in-interest if have no subsisting interest in the property acquired by the 2nd respondent, there was no necessity for them to file writ petition. Once writ petition is filed by the predecessors-in-interest and they are unsuccessful in their challenge, the same grounds are not available to the petitioners to file a fresh writ petition.

The learned Standing Counsel places strong reliance upon the following paragraphs in W.P.No.10145 of 2007 and batch:

“It is a different matter that declaration in respect of the lands was published at a later point of time. The fact however remains that the declarations that were published on 10.03.2005 and 16.03.2005, by the respondents, remained intact, and were not set aside, to the extent of the properties, even by now. Hence, there is a compliance, at least on technical parlance, with the explanation to Section 6 of the Act, vis-à-vis the properties of the petitioners.

There is another factor that militates against the petitioners, and it is this: Assuming that the declaration in respect of the properties of the petitioners stood impliedly set aside, with the holding of enquiry under Section 5-A of the Act and subsequent publication of another declaration, the fact remains that as regards the rest of the properties, it was published within the stipulated time, so much so, award was also passed within months. A case in which the declaration under Section 6 is set aside in its entirety, on the one hand, and the one, where it is set aside in respect of part of the land proposed to be acquired, on the other hand, warrant different approaches, in the context of enforcing the mandate under explanation to Section 6. The reason is that, with the publication of notification under Section 4(1) of the Act, the rights of the owner of the land, to a substantial extent get frozen, be it, as regards the future escalation of market value, or his right to alienate the property, etc. Instances are not lacking, where the owners of the land had to suffer on account of the undue delay in publication of the declaration and other proceedings, such as passing of award. The market value, that remained decades together prior to the passing of award, used to be paid. To remedy that situation, timeframes were stipulated at two levels: one for publication of the declaration under Section 6 of the Act, and the other, for passing of award. Sections 6 and 11 of the Act were correspondingly amended. The object underlying these amendments is to require the authorities to be alert, or to face the eventuality of, the lapse of the entire

proceedings.

If no declaration was published at all, within the stipulated period of one year, the inevitable conclusion is that the notification under Section 4(1) itself would lapse. Same result would follow, where a declaration under Section 6 of the Act was set aside in its entirety. Where, however it is set aside in part of the land and kept intact as regards the balance, it is difficult to imagine the same consequences. The reason is that the promptitude on the part of the appropriate Government, or its delegate in publishing the declaration within the stipulated time and compliance with second proviso to Section 6, already exists, in respect of part of the land, covered by the same draft notification.

Though it may be desirable to insist on the publication of the declaration, to the extent it was set aside earlier, also, within the stipulated time, duly giving credit to the period, during which, the proceedings were pending in the Court, one cannot remain oblivious to the hurdles, that come to be created in one form or the other. The instant case itself provides an example. There was almost an uncertain situation about the requirement to publish declaration afresh, vis-à-vis the lands of the petitioners, because the earlier declaration were not set aside, in W.P.No.8784 of 2005 and batch. The respondents felt, and in a way, for valid reasons, that, it is not necessary to publish declarations since no part of the earlier ones, was set aside. It is only when the petitioners raised an objection to the issuance of the notice under Sections 9(3) and 10 of the same was sustained by this Court, that steps had to be taken for publication of declaration afresh, to the extent of the properties of the petitioners. This naturally needed movement of files and proposals from one table to another, culminating in publication, but with delay. Therefore, the fresh publication of a declaration under Section 6 of the Act where it relates to part of the lands covered by the same draft notification, under Section 4(1) of the Act, needs a different approach, vis-à-vis the compliance with second proviso to Section 6 of the Act.

Identical situations arise as regards passing of awards. Section 11 of the Act mandates that an award must be passed within two years from the date of publication of notification under Section 4(1) of the Act, in default, the proceedings lapse. In *State of Tamil Nadu v. Mahalakshmi Ammal*, (AIR 1996 SC 866) the Supreme Court dealt with a case, where an award was passed within the stipulated time in respect of part of the acquired land, and as regards the balance, the award was passed beyond that. It was held that, within the passing of award in respect of part of land within the stipulated time, the requirement under Section 11-A of the Act stands complied with, and the award as regards the other part, passed afterwards, does not get

vitiated. The same analogy can be applied to the facts of this case also. From the same judgment, another aspect that can be culled out is that, in case an errata is published to draft notification under Section 4(1) of the Act, adding some more items of land to a notification, which was already published, the timeframe stipulated under Section 6 or 11-A of the Act would stand relaxed. The Supreme Court held that errata would date back to the original notification.”

I have perused the material available on record and considered the objections raised by the petitioners. Learned counsel for the petitioners fairly states that the earlier round was pursued by the land owners only to enable the petitioners/purchasers to enjoy the property purchased by them without cloud on the title conveyed by the vendors and he further states that the findings of the learned Single Judge have not become final as the writ appeal is pending.

In the considered view of this Court, the objections raised by the petitioners herein are substantially same and similar to the factual and legal objections raised in W.P.No.10145 of 2007.

The findings already recorded cannot be ignored by this Court while considering the legal effect or implication of such finding.

By adopting the reasons stated in W.P.No.10145 of 2007, the present writ petition is 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

07th April, 2015

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