

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.19424 of 2011

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ORDER :

Heard Mr.Md. Ghouse Pasha, learned counsel for the petitioner and learned Government Pleader for Land Acquisition.

2. The petitioner prays for Mandamus directing the respondents herein not to implement notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), dated 14.09.2008, proposing to acquire petitioner's land in an extent of Ac.1.69 cents in Sy.No.1069-9 situated at Kolakaluru Village, Kollipara Mandal, Guntur District, as illegal and without jurisdiction.

3. This Court, through order, dated 13.07.2011, given liberty to the respondents to proceed with the enquiry under Section 5-A of the Act subject to further orders in this behalf.

4. The respondents filed petition to vacate the interim order.

I consider it convenient to refer to the following provision before advertng to the admitted circumstances of the case.

Section 6 of the Act reads as follows:

"6. Declaration that land is required for a public purpose:

(1) Where the appropriate Government or the District Collector is satisfied that any particular land is needed for

the purpose of construction, extension or improvement of any dwelling house for the poor, a declaration shall be made to that effect under the signature of a Secretary to such Government or any other officer duly authorised to certify their orders or the District Collector as the case may be, and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification under Section 4, sub-section (1):

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1):-

- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1957 (1 of 1957), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification;*
- (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification”*

5. On 14.09.2008, Notification under Section 4(1) of the Act was issued proposing to acquire the subject matter of the writ petition for providing house sites to weaker sections. The 3rd respondent has issued notices

for conducting enquiry under Section 5-A of the Act. At the first instance, the petitioner filed W.P.No.20085 of 2009 and the same was disposed of by leaving it open to the petitioner to approach this Court if cause of action arises at subsequent stage of land acquisition proceedings. As stated in the writ affidavit, the notice under Section 5-A of the Act dated 28.06.2011 is issued through R.C.No.1748/2008/A. The legal objection of the petitioner is under Section 6 of the Act the 2nd respondent is required to publish draft declaration within one year from the date of publication of Notification under Section 4(1) of the Act. Admittedly, the enquiry under Section 5-A of the Act could not be completed and even as late as 28.06.2011, there is no draft declaration issued under Section 6 of the Act. By operation of proviso to Section 6 of the Act, Notification under Section 4(1) of the Act cannot be continued. The learned counsel for the petitioner has relied upon the order dated 08.03.2011 in W.P.No.13560 of 2014 in support of the effect proviso to Section 6 of the Act.

6. The illegality pointed out is patent and having regard to the admitted circumstances, the writ petition is allowed, as prayed for. No order as to costs.

7. Miscellaneous Petitions pending, if any, shall stand closed.

S.V. BHATT, J

12th March 2015.

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