

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 9837 of 2014

Date : 10-02-2015

Between :

Sri Vinayaka Youth Association

Rep by its President Kolan Srinivas

S/o K Chandraiah

H No 30-1350, Vinayakanagar, Hyderabad

... Petitioner

and

The Principal Secretary Revenue

Govt of A P

Secretariat, Hyderabad and others

... Respondents

The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 9837 of 2014

ORDER:

Petitioner is Vinayaka Youth Association, represented by its President. This writ petition is instituted praying to issue writ of mandamus declaring the inaction of Special Collector- Land Acquisition-(second respondent) in exercising the jurisdiction vested in him under Sections 33 and 64 of the Act 30 of 2013, to stay the operation of the orders of the Special Deputy Collector- Land Acquisition(third respondent) and Executive Engineer, Division No.3 (fourth respondent) in proceedings No.G/274/2013 dated 6.2.2014 and letter No. A/2141/2009 dated 4.9.2013 in respect of the cost of acquisition in Saidapur and other villages under Saidapur mandal, Karimnagar district. The association is registered on 4.3.1999 under A.P. (Telangana Area) Public Societies Registration Act, 1350 Fasli. The association is formed with the avowed objective to motivate Government policies in social sector, do social service, service to poor and old people. Having noticed that poor uneducated farmers were displaced from their lands without paying proper compensation, petitioner association seek to espouse their cause in order to ensure determination of payment of proper compensation to the displaced farmers in Saidapur Mandal, Karimnagar district.

2. Government intended to construct 'Tail End Minor or Right Side Main Canal under Mid Manair Reservoir' from K.M 2.307 to 3.621. This canal passes through lands in several villages of Saidapur mandal in Karimnagar district affecting lands of several small and marginal farmers in those villages. Land acquisition proceedings were set in motion by issuing notification under Section 4(1) of the Land Acquisition Act, 1894. The Special Collector approved the draft notification on 5.12.2009. State has invoked urgency clause under Section 17(4) of the Land Acquisition Act and draft declaration was approved by the Special Collector. Negotiations were conducted with the farmers whose lands were under acquisition and accordingly consent awards were passed to the extent where farmers have consented for taking compensation as determined in the negotiations and where farmers did not agree for such settlement, general awards were passed.

3. On a plain reading of the affidavit filed along with writ petition, the facts do not emerge as to the nature of grievance sought to be espoused by the petitioner association. Petitioner association earlier filed Public Interest Litigation No. 88 of 2014 and on a reading of the order therein, it appears that the Division Bench also expressed same difficulty but having found that the issue involved cannot be classified as the Public Interest Litigation it was dismissed giving liberty to avail appropriate remedy. Thereupon, petitioner filed this writ petition. Petitioner filed several affidavits and enclosed several documents in support of his claim.

4. Counter affidavit filed on behalf of the third respondent is deposed by Mr.Shankar Kumar-Special Deputy Collector, Land Acquisition, Unit-VI, LMD Colony, Karimnagar district. Counter affidavit lacks essential details. It is averred in the counter affidavit that after following due procedure and conducting negotiations as per provisions of Andhra Pradesh Land Acquisition (Negotiation Committee) Rules 1992 an amount of Rs.2,10,000/- was determined as compensation per acre as a package deal and consent awards were passed. Wherever, there was no consent general awards were passed.

5. Respondents raised objection on maintainability of the writ petition contending that on issues concerning acquisition of lands of the individuals and payment of compensation writ petition by an association is not maintainable, moreover persons whose lands were affected are not members of the petitioner association. President of the petitioner association appearing as party-in-person submitted that Smt Mekala Padma wife of late Mekala Beeraiah of Gudisala Village and Buchamma of Saidapur Village are members of the petitioner association. Land standing in the name of husband of Mekala Padma, Mekala Beeraiah was acquired but no compensation is paid. Similarly land of Buchamma was acquired. In matters arising out of compulsory acquisition of private lands for public purpose in exercise of power of eminent domain what is required to be considered is compliance of procedural safeguards, necessity to invoke urgency clause, extent of acquisition, determination of appropriate

compensation. However, these are matters for affected persons to contest individually or collectively. It cannot be said that cause against land acquisition cannot be espoused by an association on merits of acquisition procedure adopted, but the persons whose cause is sought to be espoused should be members of the association. In the instant case, two of the land owners,

Smt Mekala Padma and Buchamma, alone are affected persons and are members of the petitioner association.

6. Heard Mr. Kolan Srinivas- party-in-person, learned Government Pleader for Irrigation (Telangana State) and learned Government Pleader for Land Acquisition (Telangana State).

7. The grievance of the petitioner deducible from the pleadings in the affidavit filed in support of the writ petition and several other affidavits would show that farmers whose lands were acquired should be paid adequate compensation. It is asserted that as acquisition proceedings were pending before the bill was approved by the Parliament and compensation was paid after 1.1.2014 and some of them have not even paid, the land losers are entitled to determination of the compensation and payment of solatium in accordance with provisions of Act 30 of 2013. It is further asserted that land acquisition proceedings lapsed in view of the provision contained in Section 24 of Act 30 of 2013 since five years period has lapsed from the date of issuance of notification under Section 4 (1) of the Act within which time compensation was not paid and possession was not taken and, therefore, all the proceedings are liable to be set aside and respondents have to start the land acquisition proceedings afresh in accordance with the provisions of Act 30 of 2013.

8. It is further averred that if the State invokes urgency clause under Section 17 (4) of the Repealed Act, possession ought to be taken within 3 months. In the instant case, possession was not taken within the time prescribed. Therefore, as per Section 17 (5) (b) of Repealed Act procedure as contemplated by Section 5-A of the Repealed Act shall apply. It is further averred that on the market value determined, the land loser is entitled to an

additional amount at the rate of 12 % per annum for the period commencing from the date of publication of notification under Section 4 (1) till the date of taking possession of land.

9. It is further averred that as the award was not passed within one year from the date of draft declaration as required under Section 11-A of the Act, the land acquisition proceedings lapsed. As the Act 1894 is repealed, land losers are entitled to safeguards provided in new Act.

10. It is further averred that even if some land holders have consented to determination of compensation in a particular manner, in view of provision contained in Section 11 (3) of the Repealed Act, it cannot be imposed on others; depositing amount in revenue account does not amount to payment of compensation. Not all the land losers were paid compensation. Since twin conditions imposed in Section 24 (2) of new Act are not satisfied the acquisition proceedings lapse.

11. It is further averred that all the assertions including assertions made in reply affidavits filed by petitioner substantiate the claim that acquisition of land in Saidapur mandal was not according to law.

12. It is further averred that as the land acquisition proceedings vitiate on several grounds and though only two persons are members of the petitioner association, all similarly situated persons be granted same relief.

13. It is further averred that it is illegal to insist production of legal heir certificate from Mekala Padma when valid pattedar passbook and title deeds are available to prove the entitlement to receive compensation. Section 26 of the Repealed Act and Section 214 of Indian Succession Act also support the said contention.

14. Party-in-person, in support of his contentions, placed reliance on the following decisions:

i) RUSTOM CASVAJEE COOPER (Banks Nationalisation) Vs
UNION OF INDIA^[1], VIJAYAWADA-GUNTUR-TENALI URBAN

DEVELOPMENT AUTHORITY Vs. MOVVA RANGA RAO^[2],
M.SITARAMACHARY Vs. THE SENIOR DEPUTY INSPECTOR OF
SCHOOLS, GANNAVARAM RANGE^[3], DHARAM DUTT AND OTHERS
Vs UNION OF INDIA AND OTHERS^[4], O.K.GHOSH AND ANOTHER Vs
E.X.JOSEPH^[5], PUNE MUNICIPAL CORPORATION Vs HARAKCHAND
MISIRIMAL SOLANKI AND OTHERS^[6], STATE OF KARNATAKA Vs
C.LALITHA^[7], DURGA MATHA HOUSE BUILDING CONSTRUCTIONS
COOP HOUSING SOCIETY LIMITED AND OTHERS^[8], U.P. SALES TAX
SERVICE ASSN. V. TAXATION BAR ASSN.^[9], DELHI AIRTECH
SERVICES (P) LTD Vs STATE OF UTTAR PRADESH^[10],
K.T.PLANTATION (P) LTD Vs. STATE OF KARNATAKA^[11], SRI-LA SRI
SUBRAMANIA DESIKA GNANASAMBANDA PANDARASANNIDI Vs.
STATE OF MADRAS^[12].

15. Learned Assistant Government Pleader justified the procedure followed in acquiring the lands in Saidapur Mandal. He contended that majority of farmers consented for the value of lands determined and have received compensation. He placed reliance on the following decision ILLACHI DEVI (DEAD) BY LRS. AND OTHERS Vs. JAIN SOCIETY, PROTECTION OF ORPHANS INDIA AND OTHERS^[13] in support of his contentions.

16. Since counter affidavit is vague and does not disclose relevant facts, the Assistant Government Pleader was requested to ascertain and obtain detailed information on various aspects which affect the land acquisition process. The learned Assistant Government Pleader produced the relevant record. The Special Deputy Collector L.A. Unit-VI, SRSP & Dr.B.R.A.P.C.S.S.P, LMD colony, Karimnagar furnished written instructions vide Lr No.A/2140/2009 Dt: 9-02-2015 to learned Government Pleader, which is taken on record. Written instructions disclose startling facts regarding the

method adopted by the Land Acquisition Authorities in acquiring the lands in Saidapur mandal, Karimnagar district. Though Section 6 declaration was issued on 15.12.2009 (mode of publication-substance in the locality), compensation was paid for lands acquired in Akunur on 04.03.2010 and 10.01.2012, Ghanpur and Duddenapally villages on 4.3.2010, for Saidapur village on 10.01.2012 and 24.8.2012, Bommakal village on 25.03.2013 and 27.7.2013, Eklaspur on 26.06.2013 and 17.10.2013 and Godisala village on 24.09.2013 and 6.8.2014. It appears possession was taken on the dates mentioned above. However, learned Assistant Government Pleader admits that there is no clear record as to when possession was taken. However, even if above dates when compensation paid is considered as relevant date of taking possession, it is clear that except few properties, possession was not taken within three months from the date of Section 6 declaration.

17. Apparently, work is not completed in all respects and in some villages work was completed partially. Learned Assistant Government Pleader submits that work has been completed in all villages except in Gudisala village. On the contrary, party-in-person produced information obtained by him under Right to Information Act, which would disclose that only partly laying of the canal work was completed and that in some villages only to some extent work was executed.

18. Averments in the brief counter would make it clear that State invoked urgency clause, but on large extent of properties possession was not taken within three months from draft declaration, for some farmers compensation is yet to be paid and un paid amounts are kept in revenue account. The learned Assistant Government Pleader also stated that land losers who did not agree for consent award and not satisfied with the compensation determined have sought for enhancement of the compensation under Section 18 of the Act and accordingly the claims were referred to Civil Court in O.P.Nos.10 and 11 of 2014, which are pending consideration before the Court of Senior Civil Judge, Husnabad. He therefore submitted that entitlement for higher compensation is now under consideration by the Civil Court.

19. On the above admitted position it is appropriate to consider the relevant provisions of old and new Act and the principles laid down in precedents. The relevant provisions read as under:

Act, 1894

21. Section 17(4), (5) :

“17. Special powers in cases of urgency:

(1)...

(2)...

(3)...

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub section (1) or sub section (2) are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and if it does so direct, a declaration may be made under Section 6 in respect of the land at any time (after causing public notice} under section 4, subsection (1).

(5) (a) In any case where the State Government have directed under Sub Section (4) that the provisions of Section 5-A shall not apply, the Collector shall take possession of the land within three months thereof.

(b) if, however, the Collector fails to take possession of the land within the aforesaid period of three months, the provisions of Section 5-A shall apply as if there is no such direction that Section 5-A shall not apply, and in all such cases the period of thirty days referred in Section 5-A shall be reckoned from the date of expiration of three months specified in clause (a)}

Validation of certain acquisition:-- Notwithstanding any judgment, decree or order of any court, tribunal or other authority to the contrary,--

- (a) no acquisition of land made or purporting to have been made under the principal Act before the commencement of the Land Acquisition (Andhra Pradesh and Validation) Act, 1983 and no action taken or thing done (including any order made, agreement entered into, or notification published) in connection with such acquisition shall be deemed to be invalid or ever to have become invalid merely on the ground-
- (i) that the Collector has not caused public notice to be given as required under sub section (1) of Section 4 of the principal Act, simultaneously with the publication of the notification in the Andhra pradesh Gazette as the case may be;
- (ii) that a declaration has been made under Section 6 of the principal Act, after a considerable delay in respect of any land in the case of which the State Government have directed under sub section (4) of Section 17 of the principal Act shall not apply;
- (iii) that the possession of the land has not been taken immediately after a direction by the State Government that Section 5-A of the principal Act shall not apply;
- (b) any acquisition of land in pursuance of any notification published under Sub Section (1) of Section 4 of the principal Act before the Commencement of the Land Acquisition (Andhra Pradesh Amendment and Validation) Act 1983, may be made after such commencement, and no such acquisition made and no action taken or thing done (including any order made, agreement entered into, or notification published) whether before or after such commencement, in connection with such acquisition shall be deemed to be invalid merely on the grounds referred to in clause (a) or any of them.”

“Section 31: *Payment of compensation or deposit of same in court.*—

(1) On making an award under Section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the court to which a reference under Section 18 would be submitted.”

New Act :

Section 24 as under:

“ Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.—(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 (1 of 1894)—

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of landholdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

20. Some of the principles laid down in the precedent cases to the extent relevant to this case are as under:

21. The Supreme Court in K.T.PLANTATION (P) LTD, held as under:

“183. Payment of compensation amount is a constitutional requirement under Article 30(1-A) and under the second proviso to Article 31-A(1), unlike Article 300-A. After the Forty-fourth Amendment Act, 1978, the constitutional obligation to pay compensation to a person who is deprived of his property primarily depends upon the terms of the statute and the legislative policy. Article

300-A, however, does not prohibit the payment of just compensation when a person is deprived of his property, but the question is whether a person is entitled to get compensation, as a matter of right, in the absence of any stipulation in the statute, depriving him of his property.

.....

189. Requirement of public purpose, for deprivation of a person of his property under Article 300-A, is a precondition, but no compensation or nil compensation or its illusiveness has to be justified by the State on judicially justiciable standards. Measures designed to achieve greater social justice, may call for lesser compensation and such a limitation by itself will not make legislation invalid or unconstitutional or confiscatory. In other words, the right to claim compensation or the obligation to pay, though not expressly included in Article 300-A, it can be inferred in that article and it is for the State to justify its stand on justifiable grounds which may depend upon the legislative policy, object and purpose of the statute and host of other factors.

190. Article 300-A would be equally violated if the provisions of law authorising deprivation of property have not been complied with. While enacting Article 300-A Parliament has only borrowed Article 31(1) (the “Rule of Law” doctrine) and not Article 31(2) (which had embodied the doctrine of eminent domain). Article 300-A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive.

.....

193. Right to property no more remains an overarching guarantee in our Constitution, then is it the law, that such a legislation enacted under the authority of law as provided in Article 300-A is immune from challenge before a constitutional court for violation of Articles 14, 21 or the overarching principle of the rule of law, a basic feature of our Constitution, especially when such a right is not specifically incorporated in Article 300-A, unlike Article 30(1-A) and the second proviso to Article 31-A(1).

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202. Acquisition of property for a public purpose may meet with a lot of contingencies, like deprivation of livelihood, leading to violation of Article 21, but that *per se* is not a ground to strike down a statute or its provisions. But at the same time, is it the law that a constitutional court is powerless when it confronts with a situation where a person is deprived of his property, by law, for a private purpose with or without providing compensation? For example, a political party in power with a massive mandate enact a law to acquire the property of the political party in opposition not for public purpose, with or without compensation, is it the law, that such a statute is immune from challenge in a constitutional court? Can such a challenge be rejected on the ground that statute does not violate the fundamental rights [due to deletion of Article 19(1)(f)] and that the legislation does not lack legislative competence? In such a situation, is non-availability of a third ground as propounded in *State of A.P. v. McDowell & Co.*¹⁰¹, an answer?

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219. One of the fundamental principles of a democratic society inherent in all the provisions of the Constitution is that any interference with the peaceful enjoyment of possession should be lawful. Let the message, therefore, be loud and clear, that the rule of law exists in this country even when we interpret a

statute, which has the blessings of Article 300-A.

221. We, therefore, answer the reference as follows:

- (a)...
- (b)....
- (c).....
- (d)

(e) Public purpose is a precondition for deprivation of a person from his property under Article 300-A and the right to claim compensation is also inbuilt in that article and when a person is deprived of his property the State has to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

(f) Statute, depriving a person of his property is, therefore, amenable to judicial review on grounds hereinbefore discussed.

22. In PUNE MUNICIPAL CORPORATION, Supreme Court held;

“15. Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.

16. The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such Government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

17..... We are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the 1894 Act. In other words, the compensation may be said to have been “paid” within the meaning of Section 24(2) when the Collector (or for that matter Land Acquisition Officer) has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in Sections 32 and 33.

19.....Can it be said that deposit of the amount of compensation in the Government treasury is equivalent to the amount of compensation paid to the landowners/persons interested? We do not think so. In a comparatively recent decision, this Court in *Agnelo Santimano Fernandes*³, relying upon the earlier decision in *Prem Nath Kapur*⁴, has held that the deposit of the amount of the

compensation in the State's revenue account is of no avail and the liability of the State to pay interest subsists till the amount has not been deposited in court.

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21. The argument on behalf of the Corporation that the subject land acquisition proceedings have been concluded in all respects under the 1894 Act and that they are not affected at all in view of Section 114(2) of the 2013 Act, has no merit at all, and is noted to be rejected. Section 114(1) of the 2013 Act repeals the 1894 Act. Sub-section (2) of Section 114, however, makes Section 6 of the General Clauses Act, 1897 applicable with regard to the effect of repeal but this is subject to the provisions in the 2013 Act. Under Section 24(2) land acquisition proceedings initiated under the 1894 Act, by legal fiction, are deemed to have lapsed where award has been made five years or more prior to the commencement of the 2013 Act and possession of the land is not taken or compensation has not been paid. The legal fiction under Section 24(2) comes into operation as soon as conditions stated therein are satisfied. The applicability of Section 6 of the General Clauses Act being subject to Section 24(2), there is no merit in the contention of the Corporation.”

23. UNION OF INDIA Vs SHIV RAJ AND OTHERS^[14], Supreme

Court held as under:

15. Therefore, Section 5-A of the 1894 Act confers a valuable right in favour of a person whose lands are sought to be acquired. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the 1894 Act confers a valuable important right and having regard to the provisions, contained in Article 300-A of the Constitution of India has been held to be akin to a fundamental right. Thus, the limited right given to an owner/person interested under Section 5-A of the 1894 Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason and within the limitations prescribed under Section 17(4) of the 1894 Act.

24. Section 5A of the Repealed Act vests substantive right on the person whose land is proposed for compulsory acquisition to be given opportunity of hearing on the intent of the State to acquire his land. Extraordinary power is vested in Section 17(4) of the Repealed Act to dispense with such valuable right. It is an exception to the normal rule. The principle of law is well settled that Section 17(4) has to be resorted to sparingly and in rarest of rare cases. In the instant case, the urgency clause was invoked and the enquiry under Section 5A was dispensed with to dig a canal, whereas digging of a canal cannot be perceived as such emergent

requirement to take away right of hearing. Since the provision under Section 5A is a substantive provision and vests substantive right in the land owner, the provision in Section 17(4) of the Act require strict compliance. Thus, though Section 17(4) vest power to dispense with Section 5-A enquiry if urgency clause is invoked, Section 17(5)(a) mandates the Collector to take possession of the land within three months. According to Section 17(5) (b), if possession is not taken within three months, it is mandatory for the Collector to follow the mandate of Section 5A as if there was no such decision to dispense with Section 5A enquiry. In the instant case, even this mandatory requirement is not followed. Admittedly, except few properties, in majority of properties possession was not taken within three months. Therefore, invoking urgency clause perse and not complying with the mandate of Section 17(5) vitiates the entire proceedings. Further, in view of mandate of Section 17(5) subsequent payment of compensation and taking possession is not legally tenable.

25. It is further seen that though process of land acquisition was initiated in the year 2009 and awards were passed in December, 2011 or later (clear dates are not furnished by Land Acquisition Officer), while determining the compensation the land value was fixed by taking the value as on the date of initiation of land acquisition process, whereas value of the land has to be determined based on the valuation of the land on the date of passing of award. Until the award is made the decision to acquire land does not become final. The value of the land as on the date of passing of the award should be the basis to determine compensation. Land losers were not concerned with delay in the process to acquire the land, more so when State was feeling urgency in taking up the project but consume lot of time in complying with various legal formalities.

26. Once an award is passed after due determination of compensation with consent or without consent, the land loser must be paid compensation before possession is taken. As admitted by the respondents, compensation was not paid including to Mekala Padma, a member of the petitioner association, on various grounds and the amount was kept in

revenue account. This decision to keep the amount in revenue deposits is in violation of provision contained in Section 31 of repealed Act. If the person is not willing to receive compensation or has not come forward with proper particulars of entitlement to receive compensation, the amount of compensation determined should be deposited in the Court, where the reference under Section 18 for enhancement of compensation can be made. The Section does not recognize the depositing of the amount in the revenue account. The principle of law is well settled that depositing in revenue account does not amount to payment of compensation. Thus, compensation was not paid to some land owners and amount was illegally kept in the revenue account contrary to the mandate of Section 31. On this ground also, the land acquisition by the respondents vitiates.

27. There is merit in the contention of petitioner that a farmer's consent to receive compensation agreed in the negotiations cannot be enforced on other farmers. The value of the land is uniformly applied to all farmers irrespective of their consent. This was ex-facie illegal.

28. Though it has been asserted by the petitioner that the land acquisition proceedings are vitiated since five years lapsed from the date of Section 4(1) of notification in view of the provision contained in Section 24 (2) of the new Act, it is seen that though the land acquisition proceedings were initiated in the year 2009, the award was passed in December, 2011. To apply the provisions of Section 24 (2) of new Act, it is necessary that an award ought to have been passed five years prior to coming into force of new Act i.e., 1.1.2014, whereas it is little more than 2 years only and therefore, this provision has no application.

29. Act 30 of 2013 has come into force from 1.1.2014. Thus provisions of Act 30 of 2013 are applicable only from 1.1.2014. As the record would disclose the awards were passed much prior to 1.1.2014. According to Section 24 of the Act 30 of 2013 compensation as per the new Act has to be determined, if no award is passed before 1.1.2014. If award was passed before 1.1.2014 determination of compensation as per the new Act does not arise. In the instant case compensation was determined and awards were

passed prior to 1.1.2014.

30. However, if for majority of property owners compensation is not paid by 01.01.2014, compensation has to be determined to all as per Act 30 of 2013. The material on record do not disclose clear statistics on this aspect.

31. Though the infirmities noticed above are grave, there are only two members of the petitioner association who are affected by land acquisition i.e., Smt Mekala Padma of Gudisala village and smt Buchemma W/o late Kedari Mallaiah of Saidapur village and even for them relief sought was also not against various notifications to acquire land issued under the Repealed Act and awards made are not under challenge.

32. In Saidapur Mandal, seven villages are affected by acquisition. The awards are passed, some of them are consent awards and some are general awards. Said awards are not under challenge. Various notifications issued under the Repealed Act are not challenged. Some of the farmers sought reference under Section 18 of the Repealed Act and reference was made. The relief sought in the writ petition is that second respondent has not acted in accordance with the power vested in him under Section 33 and 64 of the Act 30 of 2013 in stopping the respondents 3 and 4 from acting as per letter dated 6.2.2014 and 4.9.2013 respectively. By letter dated 6.2.2014 the Special Deputy Collector, Land Acquisition informed the Collector that the claim for payment of 30 % solatium and 12 % additional market value would not arise as there is no such provision. Annexure to letter dated 4.9.2013 enclosed to writ petition at page 35 is a consolidated voucher for online payment made during the years 2012-13. It shows the details of payments directly credited to the individual accounts of the farmers as a consequence to acquiring of their land. Thus by the time the writ petition is instituted, the factum of payment as mentioned in Annexure I at page 35 of the writ petition was already made. As stated by learned Assistant Government Pleader, the farmers filed application for enhancement of compensation and matter is pending consideration before Civil Court. Possession of land was already taken and work for which acquisition was made was also undertaken at least

to some extent.

33. The infirmities noticed above are grave enough vitiating the entire land acquisition proceedings. In the instant case, the persons whose lands were acquired are small and marginal farmers and are all mostly illiterates. They were not properly enlightened about their rights and privileges as owners of the land and their entitlement to proper compensation and without disclosing the true and correct facts they were compelled to agree for the compensation determined. As the Land Acquisition Act is expropriate legislation and it is compulsory acquisition of the property of the individuals by taking away the right to own property, the mandate of Act has to be strictly complied with and any violation thereof vitiates the land acquisition proceedings. The small and mostly uneducated farmers were not properly guided in determination of compensation. The Land Acquisition Officers who have responsibility to act impartially and ensure strict compliance of the provisions of repealed Act failed in discharge of their primary duty.

34. Having regard to the fact that there are several grave infirmities and that the land losers are small farmers with low literacy or uneducated background, in exercise of equity jurisdiction, I deem it appropriate to dispose of the writ petition giving liberty to the members of the petitioner association and other farmers whose lands were acquired to construct 'Tail end minor or right side main canal under mid Manair reservoir' to make detailed representation to the Land Acquisition Officer and the District Collector, Karimnagar pointing out the grave violations of provisions of Repealed Act and to seek determination of the compensation in accordance with Act 30 of 2013. As and when such representations are made, Land Acquisition Officer and District Collector, Karimnagar shall consider the claims of the individuals vis-à-vis the infirmities noticed by this Court and take appropriate remedial action as warranted by law within a period of four months from the date of receipt of such representations. They should be afforded an opportunity of hearing before any decision is taken.

Accordingly, the writ petition is disposed of. No costs. Consequently, miscellaneous petitions, if any stand closed.

P NAVEEN RAO,J

DATE: 10.2.2015
TVK

Date : 10-02-2015

tvk

[5] AIR 1963 SC 812

- [\[6\]](#) AIR 2014 SC 982 = (2014)3 SCC 183
- [\[7\]](#) (2006)2 SCC 747
- [\[8\]](#) 2013 (5) ALT 442 (DB)
- [\[9\]](#) (1995) 5 SCC 716
- [\[10\]](#) (2011) 9 SCC 354
- [\[11\]](#) (2011) 9 SCC 1
- [\[12\]](#) (1965) 3 SCR 17
- [\[13\]](#) (2003) 8 SCC 413
- [\[14\]](#) AIR 2014 SC 2242= (2014) 6 SCC 564