

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.18613 of 2009

ORDER:

Heard Ms. G. Kavitha for Mr. V. Mallik for petitioners and learned Government Pleader (Land Acquisition) for respondents.

2. Petitioners challenge draft notification under Section 4(1) for the Land Acquisition Act (for short 'the Act') dated 08.08.2008 and draft declaration under Section 6 of the Act dated 20.08.2009 as illegal, contrary to Section 5-A and alternatively Section 17(4) of the Act.

3. 4(1) notification dated 08.08.2008 was issued for providing house sites to villagers of Gottipadiya village. On 20.08.2009, the draft declaration was issued. Petitioners challenge the notification and draft declaration on the assumption that respondents erroneously and illegally invoked power under Section 17(4) of the Act, dispensed with Section 5-A enquiry and issued draft declaration. The challenge to Section 4(1) notification is that the public purpose of house sites for villagers of Gottipadiya village is unavailable, illegal, incorrect etc.

4. The respondents filed petition to vacate the status quo order dated 08.09.2009. To appreciate the compliance with the requirement under Section 5-A of the Act, the reply of respondents reads thus:

"10. In answer to the averments made in para 9 of the petitioners affidavit, it is submitted that petitioners did not choose to file objections U/s 5-A of the Land Acquisition Act. The petitioners filed this Writ Petition without filing any objections to the Draft Notification published U/s 4(1) of the Land Acquisition Act. Without filing any objections to the draft

Notification issued U/s 4(1) and Draft Declaration U/s 6 of the Land Acquisition Act. It is submitted that the lands in question are being acquired for the purpose of providing house sites to the displaced families of Gottipadiya Village of Markapur Mandal under R & R package. The acquisition of the petitioners land became inevitable as there are no other suitable Government lands available in the Village.

11. In answer to the averments made in Para 10 & 11 of the petitioners affidavit, it is submitted that the contention of the petitioners is devoid of merits. The urgency clause was not invoked as contended by the petitioners. Enquiry U/s 5-A of the Land Acquisition Act was conducted but the petitioners failed to submit objection for acquisition of the land.”

From the above, it is clear the reply of respondents is that the power under Section 17(4) of the Act is not invoked much less enquiry under Section 5-A is dispensed with, on the other hand, notices have been issued, petitioners did not file objections and therefore, draft declaration is legal and tenable.

5. This Court has difficulty in accepting the incoherent and incomplete reply given by the respondents on the statutory compliance of Section 5-A of the Act. 4(1) notification was issued on 08.08.2008 and draft declaration is dated 20.08.2009. The definite case of respondents is that notices were issued and served on the petitioners and the petitioners have not filed objections and therefore, the draft declaration is tenable. By merely constructing the dates and lack of details of date of notices, date of enquiry and the communication of draft declaration on the petitioners, this Court is of the view that enquiry under Section 5-A of the Act is vitiated. The enquiry under Section 5-A of the Act is a valuable right and also stage of acquisition, and as held by a catena of decisions, cannot be construed as a mere

formality. Therefore, the draft declaration is found to be unsustainable and accordingly, the draft declaration dated 20.08.2009 is set aside. The respondents are given liberty, if circumstances still warrant, to issue notice under Section 5-A of the Act, afford opportunity to petitioners, hold enquiry and proceed in accordance with law thereafter.

The writ petition is ordered as indicated above to the extent of lands claimed by petitioners under Section 4(1) notification dated 08.08.2008. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

September 26, 2016
DSK



S. V. BHATT, J