HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WP.Nos.22781 of 2008, 18274 and 18619 of 2009

COMMON ORDER:

These three cases are being disposed of by this common order as they involved same point of law.

Writ Petition No.22781 of 2008 was filed challenging the notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'), dated 16.8.2008, issued for an extent of Acs.6.47 cents in Survey Nos.731/A 2B and 731/A 3B situated in Vemulakota Village, Markapuram Mandal, Prakasam District.

Writ Petition No.18274 of 2009 was filed challenging the notification under Section 4(1) of Act, dated 08.08.2008 and the declaration under Section-6 of the Act, dated 20.8.2009, issued in respect of the petitioner's land to an extent of Ac.1.00 in Survey No.11/2 situated in Narasimhapuram Village, Markapur Mandal, Prakasam District. Notification under Section 4(1) of the Act was issued in respect of a total extent of Acs.23.47 cents and declaration under Section-6 of the Act was made for an extent of Acs.9.63 cents.

Writ Petition No.18619 of 2009 was filed challenging the declaration made under Section-6 of the Act, dated 20.8.2009, after issuance of the notification under Section-4(1) of the Act,

dated 08.8.2008, which was challenged in Writ Petition No.18274 of 2009.

In the afore-mentioned three Writ Petitions, this Court by interim order, dated 18.10.2008, granted stay of dispossession of the petitioners from their respective lands in Writ Petition No.22781 of 2008, *status quo* was granted in Writ Petition No.18274 of 2009 on 02.9.2009 and a similar order of *status quo* was granted in Writ Petition No.18619 of 2009 on 08.9.2009.

So far as Writ Petition No.22781 of 2008 is concerned, it was stated in the affidavit, filed in support of the Writ Petition, that the Government wanted to rehabilitate the project displaced persons, under the Rehabilitation and Resettlement Policy, as their lands were submerged under Poola Subbaiah and Velugonda project. The land in Survey Nos.731/A 2B and 731/A 3B in an extent of Acs.6.47 cents was identified for providing house sites. At that stage, the petitioners and others filed Writ Petition No.6825 of 2008 challenging the acquisition on the ground of availability of Government land and the said Writ Petition was disposed of by order, 31.3.2008, directing the authorities concerned to consider and dispose of the representation, dated 28.02.2008, of the petitioners therein with regard to availability of the Government lands for providing

house sites to the project displaced persons. Later, on inspection, it was noticed that the Government lands stated by the petitioners therein are tank bed lands not fit for provision of house sites and some lands are situated at a distance of 25 kms.

The draft notification was published on 16.8.2008 and a notice for conducting the enquiry under Section 5-A of the Act was issued on 10.9.2008. The petitioners submitted their representations on 29.8.2008 and 19.9.2008. Thereafter, a Gram Sabha was conducted on 06.10.2008. At that stage, the petitioners filed the present Writ Petition, *viz.*, Writ Petition No.22781 of 2008. But, as on today, no award was passed.

It appears that in view of the interim orders passed by this Court, no declaration under Section-6 of the Act was published so far and the proceedings stood as they were. In the meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act 30 of 2013') came into force with effect from 01.01.2014.

As per Section-24(1)(a) of Act 30 of 2013, if the land acquisition proceedings were initiated under the Land Acquisition Act, 1894 (for short 'the Act') and no award under Section-11 of the said Act has been made, all the provisions of the new Act relating to the determination of compensation shall apply.

Under the provisions of Section-6 of the Act, no declaration shall be made after the expiry of one year from the date of publication of notification under Section-4(1) of the Act. In view of this, the notification under Section-4(1) of the Act issued earlier stood lapsed and it is open to the respondents to issue a fresh notification, if they so choose, under the provisions of Act 30 of 2013.

With regard to Writ Petition Nos.18274 and 18619 of 2009, the declaration under Section-6 of the Act was made in the year 2009 and no award was passed by virtue of the *status quo* order granted by this Court.

Under Section-11(a) of the Act, the award has to be passed within a period of two years from the date of publication of the declaration and in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration stayed by the order of Court shall be excluded. Even if that period is excluded and an award is liable to be passed, now it cannot be done under the provisions of the Act, as the action has to be taken as per Section-24(1)(a) of Act 30 of 213.

The interplay of Section-11-A of the Act and Section-24(1)(a) of Act 30 of 2013 was considered by the Supreme

Court in ***Laxmi Devi Vs. State of Bihar and others***[1] and in view of the conflicting situation, it was held that the acquisition proceedings initiated under the Act are liable to be set aside and the respondents-State were given liberty to issue a fresh notification, if they so choose, under Section-24(1)(a) of Act 30 of 2013.

In the instant cases, the lands of the petitioners were sought to be acquired for the purpose of rehabilitating the project affected families. There was such need in the year 2009. The possession of land of the petitioners was not taken.

In the circumstances, all the Writ Petitions are allowed. It is needless to observe that allowing of the Writ Petitions will not preclude the Government from acquiring the afore-mentioned lands of the petitioners in future either for the original purpose or for any other purpose. No costs.

As a sequel to disposal of the Writ Petitions, the Miscellaneous Petitions, if any pending, are disposed of as infructuous.

_____

JUSTICE A.RAMALINGESWARA RAO

07th December 2016
DR

[1] (2015)10 SCC 241