

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 7594 of 2008

Order:

The petitioners claim that they are the joint owners and possessors of the agricultural lands admeasuring Ac.14.06 cents in Survey No.74, Ac.2-04 cents in Survey No.89 and Ac.2-03 cents in Survey No.90, situated in Kurmidda village, Kalwakurthy Mandal, Mahaboobnagar District. Out of the said land an extent of Ac.6-25 gts., in Survey Nos.74, 89 and 90 was sought to be acquired for the purpose of formation of Kalwakurthy Main Canal from Gudipally Gattu Balancing Reservoir at Kurmidda under Mahathma Gandhi Lift Irrigation Scheme. The enquiry under Section 5A of the Land Acquisition Act, 1894 (for short 'the Act') was dispensed with and Section 6 declaration was published on 16.05.2007. It is also the case of the petitioners that they have filed O.S. No.237 of 2007 on the file of the Senior Civil Judge, Mahaboobnagar, for declaring the plaintiffs and defendant No.2 therein are the owners of the suit schedule lands and the possession shall be delivered to the plaintiffs by dispossessing the first defendant by cancelling the registered gift deed dated 28.11.1980. The first defendant therein is the fourth respondent herein. This Writ Petition was filed challenging the notification issued under Section 4(1) and the declaration under Section 6 of the Act.

This Court, by order dated 17.04.2008, directed the respondents not to dispossess the petitioners from the lands of an extent of Ac.3-25 gts., in Survey No.74, Ac.1-23 gts., in Survey No.89 and Ac.1-17 gts., in Survey No.90 of Kurmidda village of Kalwakurthy Mandal in Mahaboobnagar District pending further orders.

Seeking vacation of the said order W.V.M.P. No.2856 of 2009 was filed. In the affidavit filed in support of the vacate petition it is stated that the Executive Engineer, MGLISP Unit-I, Nagarkurnool, Division-1, Mahaboobnagar District submitted a requisition on 26.04.2006 for acquiring the land of an extent of Ac.79-08 gts., in various survey numbers situated in Kurmidda village for the purpose of formation of Kalwakurthy Main Canal from Gudipalligattu Balancing Reservoir to Kurmidda village under "Jalayagnam Programme" of the Government. On receipt of requisition, the Record of Rights was verified and found that out of the total extent of Ac.79.08 gts., an extent of Ac.14.33 gts., is the Government land and the remaining land of an extent of Ac.64.15 gts., is the patta land. Accordingly, a draft notification was issued on 12.06.2006 seeking acquisition of the land of an extent of Ac.64.15 gts. It was published in the District Gazette and two daily Newspapers in June and July 2006. The enquiry under Section 5A of the Act was dispensed with. After submission of the survey report, the Special Deputy Collector found variations in the requisition and in the survey report, which required issuance of an errata notification. A part of the land of an extent of Ac.2-08 gts., was withdrawn and some small extent of additional land was required to be included. After publication of the declaration for an extent of Ac.70-21 gts., on 17.05.2007 appropriate notices were issued under Sections 9(3) and 10 of the Act on 04.09.2007 to all the interested persons to attend the enquiry. As the petitioners were not residing in Kurmidda village and their addresses were not known to the respondents, the said notices were published in the notice board of the Grampanchayat on 04.09.2007. Thereafter, consent awards were passed on 13.12.2007, 05.03.2008, 04.06.2008 and 11.11.2008 in respect of the land of an extent of Ac.56.11 gts., and compensation was accordingly paid to all the

land owners. In respect of the remaining land of an extent of Ac.14-10 gts., award could not be passed as there were rival claims between the petitioners and the fourth respondent in respect of the land of an extent of Ac.6-25 gts., and there was no evidence with regard to rest of the land of an extent of Ac.7-25 gts.

Learned counsel for the petitioners submits that firstly Section 4(1) notification and Section 6 declaration were published on the same date and secondly dispensing with of enquiry for the public purpose indicated in 4(1) notification is bad in law.

So far as the first point is concerned, it is not factually correct to state that 4(1) notification as well as Section 6 declaration was published on 16.05.2007 itself. Section 4(1) notification was initially published on 12.06.2006 and errata was published on 16.05.2007 in view of the changes sought to be made to the total extent of land required for the purpose of the Project as stated above. In *State of Tamil Nadu v. Mahalakshmi Ammal*¹, relied on by the learned counsel for the respondents, the Hon'ble Supreme Court held that once errata was published, it dates back to the date of initial Section 4(1) notification and it cannot be considered to be a fresh notification issued under Section 4(1). Hence, the first ground of the learned counsel for the petitioners does not survive.

With regard to second ground of dispensing with the enquiry, it is to be noted that the petitioners approached this Court after publication of Section 6 declaration and this Court considering the submissions made by the learned counsel for the petitioners passed an order only to the extent of dispossession on 17.04.2008. Immediately, thereafter, four consent awards were passed on 13.12.2007, 05.03.2008, 04.06.2008 and

¹ AIR 1996 SC 866

11.11.2008. It also come on record that there are title disputes between the petitioners and the fourth respondent pending in O.S.No.237 of 2007 on the file of the Senior Civil Judge, Mahaboobnagar, and in the absence of the claimants no award was passed in respect of the land covered by the present Writ Petition to an extent of Ac.6-25 gts. However, this cannot be a ground for putting the clock back by directing the Land Acquisition Officer to conduct an enquiry under Section 5A of the Act as held by the Hon'ble Supreme Court in Nasik Municipal Corporation v. Harbanslal Laikwant Rajpal², wherein it was held that by publication of the declaration under Section 6 of the Act, the public purpose becomes conclusive and what remains is only an award enquiry. Though the learned counsel for the petitioners placed reliance on the decisions reported in Union of India v. Mukesh Hans³, Union of India v. Krishan Lal Arneja⁴ and Prabhawati v. State of Bihar⁵ in support of his contention, in view of the above position those decisions are not considered.

Having regard to the facts and circumstances of the case, the Writ Petition fails and the same is, accordingly, dismissed. There shall be no order as to costs.

As a sequel thereto, the Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 26.10.2016
Nsr

² (1997) 4 SCC 199

³ (2004) 8 SCC 14

⁴ (2004) 8 SCC 453

⁵ (2014) 13 SCC 721