

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**WRIT PETITION No.2132 of 2012**

**ORDER:**

This Writ Petition is filed by the petitioners alleging that the lands belonging to the petitioners in Duggugunta Village, Podalakuru Mandal, Nellore District were notified under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') for acquisition by the 1<sup>st</sup> respondent on 14.09.2011 in Rc.G5/4514/2011, that the said notification did not dispense with enquiry under Section 5A of the Act and without conducting such enquiry, a draft declaration under Section 6 of the Act was published on 16.02.2012.

2. Petitioners contend that without conducting enquiry under Section 5A of the Act, the respondents 1 to 3 are proceeding to pass award; that the respondents 1 to 3 have not considered their representation dt.17.10.2011 not to acquire their lands, that conduct of enquiry under Section 5A is mandatory and therefore, the draft declaration under Section 6 of the Act issued by the 1<sup>st</sup> respondent on 16.01.2012 has to be quashed.

3. Although the respondents 1 to 3 have not filed any counter affidavit, it is not denied by the Government Pleader that enquiry under Section 5A of the Act was not conducted before issuing a declaration under Section 6 of the Act.

4. Sri P.Venugopal, Senior Advocate appearing for Sri Bhaskar, counsel for 4<sup>th</sup> respondent, contends that the 4<sup>th</sup> respondent was entrusted with the project of constructing a new Railway Line between Obulavaripalle and Krishnapatnam Port having a length of about 115 Km at an estimated cost of Rs.1500 crores; the new line

work is entrusted to the 4<sup>th</sup> respondent by the Krishnapatnam Rail Company Limited and the project is funded by the 4<sup>th</sup> respondent, Government of A.P. and other agencies; the project is funded by borrowing money as loans from consortium of banks; and the 4<sup>th</sup> respondent has given assured rate of progress of work and targets to complete the project. He stated that any delay in completing the project would cripple the financial status of Krishnapatnam Rail Company Limited by way of huge interest burden which may run into few hundred crores of rupees and this is not in public interest. He stated that out of total length of 115 Km track, 20 Km length of track is commissioned, while work progress is going on to complete the balance of 95 Km of track, but because of the interim order dt.31.01.2012 in WP.MP.No.2658 of 2012 in this Writ Petition work to an extent of 0.20 Km is stalled. He stated that the 4<sup>th</sup> respondent would abide by the decision of this Court and in the event the Writ Petition is allowed, the 4<sup>th</sup> respondent is willing to acquire the lands of the petitioner by invoking the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

5. There is no dispute that the process of acquisition of land under the Land Acquisition Act, 1894 is expropriatory in nature and therefore, strict adherence to the provisions of the Act is necessary. Only in exceptional circumstances an enquiry under Section 5A of the Act can be dispensed with. Section 17 of the Act deals with this aspect of the matter and under sub-section (4) of Section 17 of the Act, it is open to the State to dispense with the enquiry under Section 5A of the Act in exceptional cases. This legal position is discussed in ***Ramdas Ramanna and others v. Government of Andhra Pradesh, rep. by its Secretary, Energy***

**Department (PR.II) and others**<sup>[1]</sup> as under:

“From the aforesaid judgments, it is clear that in normal course, authorities are empowered to acquire the lands of private citizens only by conducting inquiry under Section 5A of the Land Acquisition Act, and only in case of extraordinary real urgency which cannot brook any delay, inquiry under Section 5-A can be dispensed with. It is implicit from the A.P. Amendment Act 9 of 1983 that in cases where urgency clause is invoked by dispensing with inquiry, if possession is not taken within the period of 90 days, the provision with regard to conduct of inquiry as contemplated under Section 5-A of the Act will automatically apply. It is clear from the said provision that it is intended to safeguard the interest of citizens not to deprive them of their property without conducting inquiry in cases where there is no real urgency. It is clear from the said provision itself that having invoked the urgency clause, when possession is not taken within the period of 90 days, it cannot be said that such cases are urgent in nature and that cannot brook any delay. Section 17(5)(a) and (b) will operate only in specific areas where the authorities notify the land under the provisions of the Land Acquisition Act by invoking urgency clause under Section 17 of the Act, but fail to take possession within the period of 90 days. As a protective measure to safeguard the interest of citizens and to give a fair opportunity by conducting inquiry, such provisions under Section 17(5)(a) and (b) are introduced by State Amendment Act 9 of 1983.”

6. Since it is not disputed that enquiry under Section 5A of the Act is not conducted before issuing of declaration under Section 6 of the Act as regards the lands of the petitioners, the declaration under Section 6 of the Act issued on 16.01.2012 is liable to be quashed and it is accordingly quashed.

7. Even if a fresh declaration under Section 6 of the Act is to be issued, such a declaration is required to be issued within one year from the date of publication of notification under Section 4(1) of the Act. Since it is not possible to do so at this point of time, not only because more than one year has elapsed since the date of publication of notification under Section 4(1) of the Act, but also

because of the repeal of the Land Acquisition Act, 1894 by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, this Court has no option but to direct the respondents 1 to 4 to initiate appropriate proceedings in accordance with law for acquisition of the petitioners' lands as per the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is open to the petitioners to submit representations to the respondents, if they feel that other land is also to be acquired, if it is rendered useless by the utilization of the notified land. This exercise shall be completed within four (04) months from the date of receipt of a copy of this order. The Writ Petition is allowed accordingly. There shall be no order as to costs.

8. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

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**M.S.RAMACHANDRA RAO, J**

29<sup>th</sup> June, 2016

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[\[1\]](#) 2014(6) ALT 676 (F.B.)