

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.4171 OF 2003

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, 1949 is filed by the petitioners, challenging the notification, issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act'), dated 21.10.2002 by the 2nd respondent and declaration, issued under Section 6 of the Act, dated 24.12.2002, by the 3rd respondent as illegal, arbitrary and without any jurisdiction and declare the same as void.

The case of the petitioners, in brief, is that they are the owners of land in an extent of Ac.0.54 cents in various survey numbers of the Sameerapalem village, Valetivaripalem mandal and Prakasam District; for the purpose of laying road to reach Audi Andhra Colony, invoking Section 17(1)(ii) of the Act, decided to take possession of the land within 15 days from the date of notice issued under Section 9(1) of the Act, on the ground that the 3rd respondent did not publish 4(1) notification and declaration under Section 6 of the Act in the local news papers and gazette, the 3rd respondent is not competent to dispense with the enquiry under Section 5-A of the Act since there was no urgency to secure the land invoking Section 17(4) of the Act, as the purpose of laying road is not an urgency. Therefore, the notification issued under Section 4(1) of the Act and declaration filed under Section 6 of the Act are null and void and prayed to quash the same by issuing a writ of *mandamus*.

The 3rd respondent filed counter denying material allegations while admitting that the 2nd respondent issued notification dated 21.10.2002 under Section 4(1) of the Act for acquiring the land of an extent of Ac.0.54 cents and also issuance of declaration under Section

6 of the Act, only for the purpose of laying road to reach Audi Andhra Colony people, who are residing beyond Tummaleru and facing lot of trouble especially in rainy season, to reach their village as well as to Audi Andhra Colony. Hence, the 3rd respondent proposed to acquire land dispensing with enquiry under Section 5-A of the Act, invoking Section 17(4) of the Act.

The respondents further denied the allegation that notification under Section 4(1) and declaration under Section 6 of the Act were not published in any news paper and gazette, contending that 4(1) notification was published in Prakasam district gazette on 19.11.2002, in the local news papers 'Today Freedom' and 'Visalandhra' and by beat of *tom tom* in the locality on 13.11.2002, 09.11.2002 and 26.12.2002, respectively. Therefore, there is no truth in the allegation that publication of 4(1) notification and declarations under Section 6 were not made; finally, it is contended that each of the petitioner own and possessed only a small extent ranging from Ac.0.01 to Ac.0.05 cents and the acquisition, in view of urgency, is only for laying road to Audi Andhra Colony people and prayed to dismiss the writ petition.

Sri G. Krishna Murthy, learned counsel for the petitioners, contended that the question of invoking urgency clause under Section 17(4) of the Act does not arise, in this case, as the purpose for acquisition is only to provide road to Audi Andhra Colony people; apart from that, there is inherent lacuna in the acquisition proceedings and without enquiry under Section 5-A of the Act, the land cannot be acquired and that the procedure followed by the 3rd respondent is totally in deviation of the procedure contemplated under the Act and, in support of his contention, placed reliance on a decision of the Apex Court in ***Hindustan Petroleum Corporation Limited Vs. Darius Shapur Chenai and others***^[1].

Though the 3rd respondent filed counter, neither the learned Government Pleader for Revenue had represented the matter nor appeared before this Court, despite listing the matter 'for hearing', to advance his argument in support of the grounds raised in counter.

Considering the contentions of learned counsel for the petitioner and the grounds raised by the 3rd respondent in his counter, the sole point that arises for consideration is:

Whether the purpose of providing road to Audi Andhra Colony people is public purpose and urgency, within the meaning of Section 17(4) of the Act? If not, whether an enquiry under Section 5-A of the Act can be dispensed with and the consequential notification dated 21.10.2002 issued under Section 4(1) and declaration dated 24.12.2002 issued under Section 6 are not in accordance with law and liable to be set-aside?

POINT: The main contention of learned counsel for the petitioners is that laying of road to Audi Andhra Colony people is not an urgency and the 3rd respondent cannot invoke the urgency clause under Section 17(4) while dispensing with enquiry under Section 5-A of the Act.

Section 17 of the Act conferred special power on the Government in cases of urgency, whenever the appropriate Government or the District Collector so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, sub-section (1) take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free, from all encumbrances.

Sub-section 4 of Section 17 further says that 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, sub-section (1).

In the present case, the purpose of laying road leading to Audi Andhra Colony is an urgent requirement but Section 17(1) clarified that whenever the land is needed for public purpose, the authorities may take possession of the land after expiry of 15 days time from the date of notification under Section 9(1) of the Act. Laying of road is only for public purpose *i.e.*, for the inhabitants of Audi Andhra Colony to reach through village or colony from the main road but in ***Hindustan Petroleum Corporation***, the Apex Court held as follows:

“7. The conclusiveness contained in Section 6 of the Act indisputably is attached to a need as also the purpose and in this regard ordinarily, the jurisdiction of the court is limited but it is equally true that when an opportunity of being heard has expressly been conferred by a statute, the same must scrupulously be complied with. For the said purpose, Sections 4, 5-A and 6 of the Act must be read conjointly. The court in a case, where there has been total non-compliance or substantial non-compliance of the provisions of Section 5-A of the Act cannot fold its hands and refuse to grant a relief to the writ petitioner. Sub-section (3) of Section 6 of the Act renders a declaration to be a conclusive evidence. But when the decision making process itself is in question, the power of judicial review can be exercised by the court in the event the order impugned suffers from well-known principles, viz., illegality, irrationality and procedural impropriety. Moreover, when a statutory authority exercises such enormous power it must be done in a fair and reasonable manner.”

The Apex Court in ***State of Punjab and another Vs. Gurdian Singh and others***^[2], held as follows:

“.....hearing him before depriving him is both reasonable

and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons.....”

Thus, it is clear from the decision of the Apex Court in ***Gurdian Singh²***, hearing the parties before depriving them is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons, can be dispensed with.

When a quasi judicial authority like the 3rd respondent is expected to act in a fair manner, the 3rd respondent must act scrupulously adhering to the provisions of the Act. Section 5-A of the Act is incorporated for the benefit of the land holder for being heard raising objections. According to Section 5-A of the Act, the 3rd respondent shall hear the objections of any person interested in any land which has been notified under Section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within 30 days of causing public notice under the said sub-section, as the case may be.

Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under Section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of proceedings held by him for the decision of the Government. The decision of the appropriate Government on the objections shall be final.

The main contention of learned counsel for the petitioners is that laying of road is not public purpose and thereby the enquiry under Section 5-A cannot be dispensed with. This contention cannot be accepted for the reason that the word “public purpose” is defined under Section 3(f) of the Act, which is as follows:

“3(f) the expression “public purpose” includes-

- (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;
- (ii) the provision of land for town or rural planning;
- (iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;
- (iv) the provision of land for a corporation owned or controlled by the State;
- (v) the provision of land for residential purposes to the poor or landless or to persons residing in area affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;
- (vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by Government for carrying out any such scheme, or, with the prior approval of the appropriate Government, by a local authority or a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, or a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State;
- (vii) the provision of land for any other scheme of development sponsored by Government, or, with the prior approval of the appropriate Government, by a local authority,
- (viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies;”

Thus, the purpose of laying road would fall within the ambit of definition of public purpose. In Section 17(2) of the Act, the enquiry

under Section 5-A can be dispensed with in different situations and laying of road is covered by Section 17(2)(ii)(e) of the Act. Therefore, when the Government intend to lay road, it amounts to urgency; thereby, dispensing with enquiry under Section 5-A of the Act is permissible.

When a similar question came up before the Apex Court in ***State of Haryana and others Vs. Vinod Oil and General Mills and another***^[3], it was held that public purpose includes a purpose involving general interest of community as opposed to individual interest involved directly or indirectly. The said term cannot be restricted only to development of infrastructure, railways or irrigation, water supply, drainage, road *etc.*, In relation to acquisition of land for public purpose, public interest would override an individual interest.

From a bare look at the decision of the Apex Court, it is clear that laying of road is public purpose within the definition of Section 3(f) of the Act. Thus, the contention that laying of road is not public purpose and that the enquiry under Section 5-A cannot be dispensed with is without any substance.

This Court, by order dated 26.03.2003, passed an interim order of status quo. When the W.P.M.P. No.5470 of 2003 was listed, learned Assistant Government Pleader for Revenue, appearing for the respondents, fairly conceded before this Court that possession of the land was not taken over. Recording the said submission, this Court disposed of W.P.M.P. No.5470 of 2003 on 21.04.2003. Thus, it is clear that possession of the land was not taken over till today. During pendency of the writ petition, a new Act *i.e.*, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013') came into force with effect from 01.01.2014; thereby, the land acquisition is governed by the provisions of the Act of 2013. Section 24(2) of the Act

of 2013 is relevant for the purpose of deciding the present issue and the same is extracted hereunder for better appreciation:

“24(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 land holdings 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.”

In view of Section 24(2) of the Act of 2013, if no award is passed by the date of enactment *i.e.*, the Act 2013 or even if award is passed and possession is not taken over, the Award passed under the Act of 1894 is deemed to have been lapsed.

In the instant case, on account of status-quo being granted by this Court regarding taking possession, the Government did not pass any award for acquisition. A similar provision was contained in the Act of 1894 and the explanation to Section 11-A of the Act explains that in computing the period of two years referred to therein, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court, shall be excluded. Therefore, stay of further proceedings being taken under Section 11 and explanation to Section 11-A covers such an order then the entire period of stay has to be excluded in computing the period of two years prescribed by Section 11-A.

In the present case, interim direction sought by the petitioners in the last paragraphs of the writ petition was “not to dispossess” them. Accordingly, status-quo was ordered with regard to their possession and, on the representation of learned Assistant Government Pleader for Revenue, this Court disposed of the W.P.M.P. No.5470 of 2003 recording the submission that the possession was not taken over. Thus, status-quo was only with regard to dispossession but not against passing of an award but curiously the Government did not pass any award though there was no stay against passing of any award. On this ground alone, the benefit under explanation to Section 11-A cannot be extended to save the acquisition proceedings. In the absence of any stay, nothing prevented the Government to pass an award but still the Government did not pass any award; however, recently, when similar question came up for consideration before the Apex Court in ***Rajiv Chowdhrie HUF Vs. Union of India and others***^[4], it was held as follows in paragraph 15:

15. Further, with regard to the legal contention that physical possession of the land could not have been taken by the Respondents in view of the interim order of "status quo" passed by this Court. This Court in the case of ***Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu and others*** [2014 (10) SCALE 388], held that Section [24\(2\)](#) of the Act of 2013 does not exclude any period during which the land acquisition proceedings might have remained stayed on account of stay or injunction granted by any court. It was conclusively held that the Legislature has consciously omitted to extend the period of five years indicated in Section [24\(2\)](#) of the Act of 2013 for grant of relief in favour of land owners even if the proceedings had been delayed on account of an order of stay or injunction granted by a court of law or for any reason. Thus, the said period has to be excluded as provided under the amended proviso to Section [6](#) of the L.A. Act by way of an amendment by the legislature to the above Section [6](#) through an Amendment Act 68 of 1984, to add Explanation 1 to the Act, for the purpose of excluding the period, when the proceedings suffered stay by an order of the Court, in the context of limitation provided for publishing the declaration notification Under Section [6\(1\)](#) of the Act. The Explanation to

Section [11A](#), which was added by Amendment Act 68 of 1984 was to a similar effect. This Court in the above case has examined this legal contention and held that the legislature in its wisdom made the period of five years Under Section [24\(2\)](#) of the Resettlement Act, 2013, absolute and unaffected by any delay in the proceedings on account of any order of stay by a court of Law. The plain wordings used by the Legislature under the provisions of Section [24\(2\)](#) are made very clear and do not create any ambiguity or conflict. In such a situation, the court is not required to depart from the literal rule of interpretation, as held by this Court in the case of ***C.I.T., Mysore Vs. The Indo Mercantile Bank Limited*** [AIR 1959 SC 713] as under:

“10. Lord Macmillan in *Madras and Southern Mahratta Railway Company Vs. Bezwada Municipality* laid down the sphere of a proviso as follows:

The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms.

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that is its necessary effect.”

Similar view was expressed by the Apex Court in ***Sita Ram Vs.***

State of Haryana and another^[5], ***Karnail Kaur and others Vs.***

State of Punjab and others^[6] and ***Magnum Promoters Private***

Limited Vs. Union of India and others ^[7].

In all the decisions of the Apex Court, the cumulative effect of the law declared is that after the advent of the Act 2013, if no award is passed within five years prior to the Act came into force and possession was not taken over, the proceedings initiated under Section 4(1) are deemed to have lapsed. Therefore, on account of lapsing of award either under Section 11-A of the Act of 1894 or under Section 24(2) of the Act of 2013, this Court has no option except to allow the writ petition, since the award is deemed to have been lapsed, though the contentions urged in petition are different but due to change of law the Court cannot mould the relief and pass appropriate orders.

However, the contention of the respondents is that after filing declaration under Section 6 and publication of the same, notification under Section 4(1) and declaration cannot be declared as illegal, but this contention cannot be accepted in view of lapsing of the award.

Taking into consideration of the facts and circumstances of the case and in view of introduction of the Act of 2013, I find that it is a fit case to quash the notification issued under Section 4(1) of the Act dated 21.10.2002 and declaration issued under Section 6 dated 24.12.2002 as they are illegal and arbitrary due to deemed lapse of proceedings taken over under Section 4(1) of the Land Acquisition Act, 1894.

Accordingly, the Writ Petition is allowed

In consequence, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed. No order as to costs.

**M. SATYANARAYANA MURTHY,
J**

Date: 26-02-2016.
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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

263

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WRIT PETITION No.4171 OF 2003

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Date. 26-02-2016

DSH

[\[1\]](#) AIR 2005 SC 3520

[\[2\]](#) 1980 (1) SCR 1071

[\[3\]](#) 2014 (15) SCC 410

[\[4\]](#) 2015 (3) SCC 541

[\[5\]](#) 2015 (3) SCC 597

[\[6\]](#) 2015 (3) SCC 206

[\[7\]](#) 2015 (3) SCC 327