

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

HON'BLE SRI JUSTICE P. NAVEEN RAO

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Writ Petition No. 20740 of 2016

Date: 30.06.2016

Between:

Serupally Upender Reddy,
Thogutta Mandal,
Medak District and others.

... Petitioners

And

State of Telangana,
Represented by its Chief Secretary,
Hyderabad and others.

... Respondents

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO**

Writ Petition No.20740 of 2016

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PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard Mr. Vedula Venkataramana, learned Senior Counsel for the petitioners and learned Advocate General for the State of Telangana.

Petitioners in the instant writ petition seek the following prayers:

“(a) declaring the “Telangana State Policy for acquisition of land through agreement under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013” issued as annexure to G.O. Ms. No. 75, dated 5.6.2015 and G.O. Ms. No. 123, dated 30.7.2015 along with its amendment in G.O. Ms. No. 190, dated 7.10.2015 and G.O. Ms. No. 214, dated 28.11.2015 issued by the 3rd respondent as ultra vires the “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013)” and quash the same and;

(b) declare the action of the respondents in not issuing any notifications under Section 11(i) & 20 of the Act and not following the procedure established under the “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013)” as arbitrary, illegal and consequently direct the respondents not to resort to any negotiation process or forcible

acquisition and further direct the respondents to follow and implement the provisions of the “Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013)” and pass such other order or orders in the interest of justice.”

Petitioners apprehend acquisition of their lands by respondents, without following the due procedure under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (Act 30/2013) (for short ‘the Act’) for storage of Komaravelli Mallanna Sagar Project (Reservoir), Kaleswaram Project, in view of their decision to enhance storage from 2 T.M.C. to 50 T.M.C. resulting in heavy submergence. The petitioners have challenged the policy promulgated by Government under G.O. Ms. No. 75, dated 5.6.2015, namely ‘Telangana State Policy for Acquisition of Land through Agreement under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (No. 30 of 2013)’ and subsequent Government Orders, G.O. Ms. No. 123, dated. 30.7.2015, G.O. Ms. No. 190, dated 7.10.2015 and G.O. Ms. No.214, dated 28.11.2015, contending that the policy promulgated and the Government Orders are ultra vires the Act.

In reply to the prayers made in the writ petition, learned Advocate General on last occasion had submitted that challenge need not be examined since the Government is not going to force/compel any of the villagers, including, writ petitioners to enter into an agreement to sell their lands for the aforesaid project. In other words, he submits, unless

villagers/land owners come forward willingly and voluntarily to sell their lands, they would not compel/force them to do so and in all such cases, they would follow the due procedure for acquiring their lands contemplated under the Act. Learned Advocate General has placed these submissions on record by way of affidavit of Special Chief Secretary, Government of Telangana, dated 29.6.2016. The relevant portion of the affidavit reads thus:

“1. I am working as the Special Chief Secretary, Government of Telangana, Revenue Department, the 3rd respondent herein, and as such well acquainted with the facts stated hereunder:

2. It is submitted the 3rd respondent herein issued G.O. Ms. No.123, dt. 30.7.2015, wherein the procedure is provided for expeditious procurement of land from the land owners, those who are willingly and voluntarily sell their lands or properties, for public purpose.

3. It is submitted, on receipt of information that those who are willingly or voluntarily coming up to sell their lands or properties, the District Collector after ascertaining the willingness and verification of other details will proceed to purchase of the lands for public purpose.

4. It is submitted, in the process of procuring the lands in terms of G.O. Ms. No.123, there is no force or coercion against the land owners in any form by the Procuring Agencies.

5. It is submitted, in the case of the land owners are not inclined to sell their lands in terms of the procedure provided under G.O. Ms. No.123, if the said lands are inevitable for the public purpose, the Land Procuring Agencies of the State will follow due process of law for purpose of acquisition of lands for public purpose.”

From bare perusal of the affidavit, we find that prayer clause (b) stands satisfied, and insofar as the first prayer (a) is

concerned, it need not be examined since the Government has made it clear that they shall follow the procedure contemplated under the Act for acquiring the lands from owners, who are not willing to sell their lands for the said project. In other words, it is stated that they would purchase lands from the owners only if they willingly and voluntarily sell their lands.

Mr. Vedula Venkataramana, learned Senior Counsel wanted to make submissions based on the provisions of Articles 162 and 300-A of the Constitution to contend that executive power of the State Government is co-extensive as that of the legislative power only if no law covering the field is in existence. He also invited our attention to Sections 11, 16 and 19 of the Act, which, according to him, prescribe mandatory procedure. In short, he submitted that if there is statutory Rule or Act on the matter, executive must abide by the Act or Rule, and it cannot, in exercise of the executive power under Article 162 of the Constitution, ignore or act contrary to that Rule or Act. In support of this submission, he placed reliance on the judgments of the Supreme Court in **B. N. Nagarajan and others vs. State of Mysore and Others**^[1] and **Rai Sahib Ram Jawaya Kapur and Others vs. The State of Punjab and Others**^[2].

We are not inclined to examine these contentions in the instant petition, in view of the statements made on affidavit by the State Government. We keep the contentions based on Articles 162 and 300-A of the Constitution and the relevant provisions of the Act, open to be considered in appropriate proceedings.

We dispose of this writ petition recording and accepting the

statements made on affidavit by the State Government. We further observe that under any circumstances, the respondents shall not compel the petitioners to enter into any agreement for acquisition of their lands for the said Project and they shall follow the procedure for acquiring their lands as contemplated under the provisions of the Act.

With these observations, the writ petition is disposed of.

Miscellaneous petitions, if any, shall also stand closed.

DILIP B.BHOSALE, ACJ

P. NAVEEN RAO, J

Date: 30.06.2016

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[\[1\]](#) AIR 1966 SC 1942

[\[2\]](#) AIR 1955 SC 549