

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.23069 of 2007

ORDER:

Heard Sri Sinivas Emani for petitioners and the Assistant Government Pleader (Land Acquisition) for respondents.

The petitioners pray for Mandamus declaring proceedings No.Roc.SW/341/2006(G1) dated 09.10.2007 as illegal, arbitrary, unconstitutional and contrary to the Mandate of Section 5-A of the Land Acquisition Act, 1894 (for short 'the Act').

The averments in brief are as follows:-

On 22-07-2006, the 1st respondent issued Notification under Section 4(1) of the Act proposing to acquire agricultural lands described in the schedule appended to the said Notification for the stated purpose of providing house sites to weaker sections. At the first instance, the respondents dispensed with Section 5-A enquiry by invoking power under Section 17(4) of the Act. The decision dispensing with enquiry was the subject matter of challenge in W.P.No.16622 of 2006. On 09-08-2006, W.P.No.16622 of 2006 was disposed of and the operative portion reads thus:-

“The petitioners' lands are sought to be acquired by the issuance of a draft notification dated 22.7.2006 under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act'). Urgency clause was invoked under Section 17 (4) of the Act and the enquiry under Section 5-A of the Act was dispensed with mechanically and without due application of mind, is the complaint. Draft declaration under Section 6 of the Act dated 02.8.2006 has been issued.

The impugned notification states that the acquisition is for the purpose of allotment of house-sites under Indiramma Programme. This requirement is not of such an emergent nature as would justify invocation of the urgency clause and dispensing with the enquiry under Section 5-A of the Act. The enquiry under Section 5-A of the Act is a salutary statutory provision intended for affording a reasonable opportunity to the owners of lands to object to the acquisition on any relevant grounds as they wish to submit.

In the aforesaid circumstances, the decision in the impugned notification to invoke the urgency clause and dispensing with the enquiry under Section 5-A of the Act is declared irrational and unsustainable. The respondents are directed to issue notice to the petitioners for submission of objections if any to the proposal to acquire the lands. On the petitioners' submitting their objections within the time stipulated in the notice, the same shall be considered and an appropriate decision taken duly communicating the decision to the petitioners simultaneously with the recommendations made after the enquiry under Section 5-A of the Act by the acquiring authority. The petitioners shall not be dispossessed pending communication of the decision to the petitioners consequent on the enquiry under Section 5-A of the Act. The draft declaration issued under Section 6 of the Act dated 02.8.2006 is quashed.

The writ petition is disposed of as above at the stage of admission, after hearing the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition. There shall however be no order as to costs.

On 05-09-2006, notice of enquiry under Section 5-A of the Act was issued to the petitioners. On 12-09-2006, the petitioners filed

objections against the proposed acquisition of the petition lands for house site to weaker sections. On 16-01-2007, the Joint Collector, West Godavari District, disposed of the objections. Challenging the Communication dated 16-01-2007, W.P.No.2176 of 2007 was filed and there was stay of all further proceedings vide order dated 08-02-2007.

On 23-08-2007, W.P.No.2176 of 2007 was disposed of by this order.

The learned Government Pleader for Land Acquisition fairly concedes that since the order dated 16-01-2007 of the Joint Collector, West Godavari district is an order by an incompetent authority under Section 5-A(2) of the Land Acquisition Act, 1894, (for short "the Act") the said order is null and void and un-enforceable. The learned Government Pleader also states that in view of the invalidity of the impugned order, the competent authority will now proceed to take a decision and pass an order under Section 5-A(2) of the Act and the same will be communicated to the petitioners by registered post with acknowledgment due and that the petitioners will not be dispossessed till then.

Recording the submission made by the learned Government Pleader for Land Acquisition the writ petition is disposed of. No order as to costs.

Having regard to the order passed by this Court on 23-08-2007, the 1st respondent thereafter disposed of the objections through the proceedings, dated 09-10-2007 impugned in the writ petition.

On 01-11-2007, this court after taking note of *prima facie* infirmity in the consideration of objection by 1st respondent in the proceedings impugned, passed the following interim order :-

“Learned Government Pleader takes notice for the respondents.

Hence, no notice need be served on them.

Prima facie, the District Collector has failed to refer and adjudicate on the objection raised by the petitioners that there are Government lands available for acquisition.

There shall be status-quo as on today with respect to the possession of the lands in dispute, pending further orders. The respondents can go ahead with and complete other formalities.”

The interim order is subsisting as on date.

The petitioners challenge the proceedings dated 09-10-2007 and also notification dated 22-07-2006 as illegal, arbitrary and contrary to Section 6 of the Act.

Counsel for petitioners relies upon the decisions in *Usha Stud & Agricultural Farms (P) Limited v. State of Haryana*¹ and *Women's Education Trust v. State of Haryana*². The Hon'ble Supreme Court in the decisions cited above on the scope, ambit and procedure to be followed by the Land Acquisition Officer has held as follows:

Usha Stud & Agricultural Farms's case (1):

“[Section 5-A](#), which embodies the most important dimension of the rules of natural justice, lays down that any person interested in any land notified

¹ (2013) 4 SCC 210

² (2013) 8 SCC 99

under [Section 4\(1\)](#) may, within 30 days of publication of the notification, submit objection in writing against the proposed acquisition of land or of any land in the locality to the Collector. The Collector is required to give the objector an opportunity of being heard either in person or by any person authorised by him or by pleader. After hearing the objector(s) and making such further inquiry, as he may think necessary, the Collector has to make a report in respect of land notified under [Section 4\(1\)](#) with his recommendations on the objections and forward the same to the Government along with the record of the proceedings held by him. The Collector can make different reports in respect of different parcels of land proposed to be acquired.

Upon receipt of the Collector's report, the appropriate Government is required to take action under [Section 6\(1\)](#) which lays down that if after considering the report, if any, made under [Section 5-A\(2\)](#), the appropriate Government is satisfied that any particular land is needed for a public purpose, then a declaration to that effect is required to be made under the signatures of a Secretary to the Government or of some officer duly authorised to certify its orders. This section also envisages making of different declarations from time to time in respect of different parcels of land covered by the same notification issued under [Section 4\(1\)](#). In terms of clause (ii) of the proviso to [Section 6\(1\)](#), no declaration in respect of any particular land covered by a notification issued under [Section 4\(1\)](#), which is published after 24.9.1989 can be made after expiry of one year from the date of publication of the notification. To put it differently, a declaration is required to be made under [Section 6\(1\)](#) within one year from the date of publication of the notification under [Section 4\(1\)](#)."

Women's Education Trust's case (2):

"The rule of audi alteram partem engrained in the scheme of Section 5-A of the Land Acquisition Act, 1894 ensures that before depriving any person of his land by compulsory acquisition, an effective opportunity must be given to him to contest the decision taken by the State Government/competent authority to acquire the particular parcel of land.

Any person interested in the land, which has been notified under Section 4(1) of the Land Acquisition Act, 1894 can file objections under Section 5-A(1) of the Act and show the purpose specified in the notification is really not a public purpose or that in the guise of acquiring the land for a public purpose the appropriate Government wants to confer benefit upon private persons or that the decision of the appropriate Government is arbitrary or is vitiated due to mala fides.

In response to the notice issued by the Land Acquisition Collector under Section 5-A (2) of the Land Acquisition Act, 1894 the objector can make all possible endeavours to convince the Land Acquisition Collector that the acquisition is not for a public purpose specified in the notification issued under Section 4(1) of the Land Acquisition Act, 1894; that his land is not suitable for the particular purpose; that other more suitable parcels of land are available, which can be utilised for execution of the particular project or scheme.

The Land Acquisition Collector is duty bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations

made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons. (Emphasis added)

The Land Acquisition Collector is required to submit his report and the recommendations to the State Government along with the record of proceedings to enable the latter to take final call on the desirability, propriety and justification for the acquisition of particular parcel(s) of land.”

As regards the objection under Section 6 declaration, the case of petitioners is that explanation (1) to Section 6 of the Act cannot and could not be relied upon by the respondents for there was no stay preventing the 1st respondent from issuing draft declaration within one year from the notification under Section 4(1) of the Act. In other words, with the order passed by this Court in W.P.No.2176 of 2007, the earlier decision of the Joint Collector cannot and could not be treated as one made by competent authority. By the time, the writ petition was disposed of, the one year period stipulated under Section 6 of the Act expired by 21-07-2007. Therefore, either the consideration of objections or the publication of draft declaration on 03-12-2007 is illegal and impermissible.

Section 6 of the Act reads as follows:-

6. Declaration that land is required for a public purpose :- (1) Where the appropriate Government or the District Collector is satisfied that any particular land is needed for the purpose of construction, extension or improvement of any dwelling house for the poor, a declaration shall be made to that effect under the signature of a Secretary to such

Government or any other officer duly authorised to certify their orders or the District Collector as the case may be, and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification under Section 4, sub-section (1) :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-Section (1) :-

(i) publication after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1957 (1 of 1957), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification;

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification).

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Explanation 1 :- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2 :- Where the compensation to be awarded for such property is to be paid out of

the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues;]

(2) Every declaration shall be published in the Official Gazette [or the District Gazette] [and in two daily newspapers circulating in the locality in which the land is situate of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of publication of the declaration] and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed [(for a public purpose specified in sub-section (1) or for a company as the case may be; and, after making such declaration, the [appropriate Government] [or the District Collector] may acquire the land in a manner hereinafter appearing.”

Learned Government Pleader having regard to the binding precedents on the scope of enquiry under Section 5-A of the Act and the defective consideration of objections by 1st respondent vide proceedings dated 09-10-2007 is unsustainable.

The proceedings dated 09-10-2007 are liable to be set aside and accordingly set aside on the ground that the consideration is illegal and erroneous.

As regards Section 4(1) Notification is concerned, this court after considering the purport of explanation (1) to Section 6 of the

Act is of the view that the draft declaration issued on 03-12-2007 is illegal. Accordingly 4(1) Notification and impugned proceedings are set aside.

The writ petition is accordingly ordered as indicated above.
No order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

Dt: 28-09-2016
Prv

S. V. BHATT, J



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