

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.10230 of 2008

ORDER:

The petitioner states that she is a resident of Keerthipadu Village and her family comes below the poverty line. She came to know that the lands admeasuring Ac.0.56 cents in Survey No.178/1 and Ac.1.04 cents in Survey No.178/2 were sought to be acquired for the purpose of allotting house sites to weaker sections. The petitioner states that without conducting enquiry under Section 5-A of the Land Acquisition Act, 1894 (for short, 'the Act'), the land is sought to be acquired.

2. This Writ Petition is filed challenging the action of the respondents in not conducting enquiry under Section 5-A of the Act, pursuant to notification in Form 5A of the Act, dated 23.02.2007.

3. This Court, by order dated 02.05.2008, granted *status quo*, as the petitioner stated that she still continues to be in possession in spite of the draft declaration, dated 23.02.2007.

4. Seeking vacation of the said order, W.V.M.P.No.2960 of 2010 is filed. In the affidavit filed in support of this petition, it is stated that 38 beneficiaries were identified in Keerthipadu and Gajulapalem Villages, H/o. Keethipadu Village under INDIRAMMA II Phase and category – III. They all belong to Scheduled Caste community. The lands proposed are adjacent to S.C. Colony. The petitioner is a big farmer, having land to an extent of Ac.11.87 cents. The draft notification was published in the District Gazettee

on 05.03.2008 and draft declaration on 10.03.2008. The preliminary valuation proposals dated 16.04.2008 sent by the Revenue Divisional Officer, Ongole, were approved by the Joint Collector on 14.05.2008 and when the Revenue Divisional Officer was about to take up the award proceedings, the present Writ Petition is filed. It is further stated that the petitioner is residing at Maddipadu Village, but not in Keerthipadu Village. She has leased out the subject land under acquisition to others and when the draft declaration was published, there was no crop in the land.

5. Learned counsel for the petitioner submits that no notice was given to the petitioner either at the time of issuance of notification under Section 4(1) of the Act or publication of declaration under Section 6 of the Act.

6. Learned counsel, by placing reliance on the judgment of the Hon'ble Supreme Court in **Sharma Agro Industries v. State of Haryana and others**¹, further submits that the Government is bound to consider the recommendations/report of the Land Acquisition Officer submitted under Section 5-A (2) of the Act and where the Government arrives at a conclusion contrary to the said recommendations/report, it must record reasons in respect thereof.

7. The decision cited by the learned counsel is not applicable to the present case. However, it is made clear that in view of the enactment of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioner is entitled to the benefit under Section 24

¹ (2015) 3 SCC 341

(1)(a) of the Act. In the instant case, no objections were filed by the petitioner and declaration under Section 6 of the Act was published on 10.03.2008.

8. The Hon'ble Supreme Court in **Nasic Municipal Corporation Harbanslal Laikwant Rajpal and others**² held that by publication of declaration of the land, the public purpose becomes conclusive and the only remedy available to the aggrieved party is to seek reference under Section 18 (1) of the Act.

9. In the instant case, as stated above, declaration under Section 6 of the Act was already published and enquiry under Section 5-A of the Act was dispensed with. In a case of this nature, it cannot be said that no public purpose is involved. In these circumstances, this Court finds no ground to grant the relief as sought for by the petitioner in this Writ Petition and the same is liable to be dismissed.

10. The Writ Petition is accordingly dismissed. There shall be no order as to costs.

The miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 26.10.2016

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² (1997) 4 SCC 199