

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos. 16621 and 16972 of 2009

Common Order:

These two Writ Petitions are being disposed of by this common order as they relate to the acquisition of same land.

W.P.No.16621 of 2009 was filed challenging the action of the second respondent in publishing a declaration under Section 6 of the Land Acquisition Act, 1894 (for short 'the Act') on 01.09.2008 and passing an Award No.30 of 2008 on 14.10.2008 in relation to the land of an extent of Ac.6.30 cents in RS No.38/1 to 4 and Ac.1.70 cents in RS No.39/2B, totally admeasuring Ac.8.00, situated in Kurada village, Gudlavalleru Mandal, Krishna District.

W.P.No.16972 of 2009 was filed by the same petitioners challenging the action of the respondents in dealing with the said property.

This Court, by order dated 13.08.2009 in W.P.No.16621 of 2009, directed *status quo* be maintained, whereas in W.P.No.16972 of 2009 also an order of *status quo* was passed on 18.08.2009.

The petitioners claim that they are the owners and possessors of the above land in respect of which a notification under Section 4(1) of the Act was issued on 14.08.2006. Challenging the said notification, the petitioners filed W.P.No.25278 of 2006 and the same was disposed of directing the District Collector, Krishna at Machilipatnam to furnish a copy of the order passed under Section 5A of the Act. When a copy of the order

was furnished, the petitioners filed W.P.No.5990 of 2008 challenging the said order and the said order was set aside by this Court and the matter was remitted to the District Collector for conducting fresh enquiry under Section 5A of the Act. Ultimately, the District Collector passed an order on 23.08.2008 rejecting the objections filed by the petitioners. Challenging the order of rejection dated 23.08.2008, the petitioners filed yet another W.P.No.22716 of 2008 and this Court directed the respondents not to dispossess the petitioners from their land, but it was observed that the other proceedings may go on. In view of the liberty given to the respondents, a declaration was published on 01.09.2008 and an award enquiry was conducted. The award was passed on 14.10.2008. In the award it was stated that though the first petitioner attended the award enquiry and claimed compensation he failed to produce documentary evidence showing his title over the land. In the absence of any proof of title an amount of Rs.20,02,268/- was directed to be kept under Civil Court deposits under Section 31(2) of the Act in the Court of Senior Civil Judge, Gudivada.

The respondents state that the land was acquired for the purpose of Indiramma programme and Kurada village was declared as model and Aadarsha village for the said programme. It was noticed that 278 poor families are not having own houses or house sites and there is no Government land or poramboke land available in the village. In those circumstances, a draft notification was published on 14.08.2006 in the district gazette followed by a declaration on 09.10.2006 in the district gazette. When this Court remanded the matter to the District Collector for conducting fresh 5A enquiry, an enquiry was conducted and an order was passed rejecting the objections. Thereafter, a fresh declaration under

Section 6 of the Act was published in the district gazette on 01.09.2008. In the absence of any evidence as to the title to the land the compensation was deposited in the Civil Court on 15.11.2008. Thereafter, notices were sent to the petitioners. The possession of the land was taken on 19.11.2008 and the case is now numbered as O.P.No.105 of 2008 and it is pending before the reference Court for adjudication. It is also stated that after obtaining interim stay of dispossession on 22.04.2009 in W.P.No.22716 of 2008 the petitioners were carrying on agricultural activities. It is also brought to the notice of this Court that one M. Radhabai filed W.P.No.16740 of 2009 claiming that an extent of 355 sq. yards was purchased by her from the land in RS No.38/1 under a registered sale deed dated 19.10.1984, but the claim of the petitioners is that the entire land in RS No.38/1 belongs to them. It is also stated that a lay out was prepared on 12.12.2008 and pattas were handed over to the Housing Department on the same day under an acknowledgment to take up construction of houses, however, 269 pattas were distributed.

When the above writ petitions are pending, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013) came into force with effect from 01.01.2014. As per Section 24(2) of the said Act, though an award was made five years or more prior to the commencement of the Act, but physical possession of the land was not taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and it is open to the Government to initiate proceedings for land acquisition afresh in accordance with the provisions of the new Act.

Admittedly, in the instant case, the award was passed on 14.10.2008, 5 years prior to the coming into force of the Act No.30 of 2013. With regard to taking over of possession, it is submitted by the learned Government Pleader that it was taken on 19.11.2008 and in those circumstances the original record was called for. The record showed the taking over of possession under a panchanama on that day, but the signatures of the land owners was not taken. Even otherwise also in the counter affidavit it is admitted that after obtaining the interim orders in these cases the petitioners continued to be in possession and were cultivating the land. The petitioners also filed documents of Adangals, land revenue receipts to show that they continued to be in possession of the land as on today. In the circumstances, it has to be assumed that the possession of the land was not taken, even though a panchanama was conducted showing that possession was taken. The other averments relating to the preparation of 269 pattas and handing over them to the Housing Corporation are of no avail.

The Hon'ble Supreme Court in *Velaxan Kumar v. Union of India*¹, considered the effect of Section 24(2) of the Act, more so in the light of the allegation of taking possession and held that physical possession shall be taken in accordance with law. With regard to payment of compensation also the compensation was not paid and the same was deposited in the Civil Court. In *Sree Balajinagar Residential Association v. State of Tamilnadu*² also the effect of non-taking of possession in the light of Section 24(2) of the Act was considered.

¹ 2015(4) SCC 325

² 2015(3) SCC 353

In view of the said decisions and in view of the continued possession of the land with the petitioners, the land acquisition proceedings stood lapsed and the Writ Petitions are, accordingly, allowed. However, this will not preclude the Government from taking fresh proceedings for acquisition, if the Government so chooses. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

Date: 21.12.2016
Nsr

A. RAMALINGESWARA RAO, J

