

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 110 of 2009

ORDER:

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Heard learned counsel for the petitioner and Additional Government Pleader for Land Acquisition.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short "the Act") issued by the District Collector, Chittoor, vide Roc.No.G3/9600/08 dated nil.08.2008 in respect of land admeasuring Ac.2.24 cents in Sy.No.47/8 of Adavi Kothur Village, Nagari Mandal, published in Eenadu newspaper dated 05.08.2008 and its consequential proceedings, as illegal, arbitrary and unconstitutional.

The petitioner herein claims to have purchased land, which is subject matter of dispute in this writ petition, for a consideration of Rs.1,46,000/- on 25.08.2007 through a registered sale deed bearing document No.1515 of 2007 and developed the same by spending huge amount as the same is near to Galeru-Nagari Water Channel. While things stood thus, the first respondent (District Collector, Chittoor), at the instance of political rivals of the petitioner is said to have issued a notification under Section 4 (1) of the Act proposing to acquire the said land for providing house sites to the weaker sections under Indiramma housing scheme. After publishing the said notification in the local newspaper on 05.08.2008, the proceedings under Section 5-A of the Act were initiated by issuing Form-3 notices calling upon the

petitioner to submit her objections within 15 days from the date of issuance of Form-3 notice. She was also directed to appear before the Revenue Divisional Officer on 10.09.2008 either in person or through an advocate. The petitioner is said to have sent her objection within the time stipulated and her husband appeared before the Revenue Divisional Officer on 10.09.2008. Since the acquisition was being done with a malafide intention in spite of there being number of government lands in the vicinity and as the authorities are trying to dispossess the petitioner from the said land, the present writ petition came to be filed.

On 30.01.2009, this Court while issuing Rule-nisi directed the respondents not to dispossess the petitioner from the subject land until further orders. However, this Court also observed that the same will not preclude the authorities from proceeding further under the Land Acquisition Act, 1894.

The Tahsildar, Nagari Mandal (respondent No.3) filed counter disputing the averments raised in the affidavit filed in support of the writ petition. It has been specifically stated in para No.4 of the counter that no suitable government land is available for providing house sites and that the land was acquired only for public purpose. In para No.7 of the counter it is stated that even though the land was purchased in the year 2007 it was kept vacant without any cultivation. The land belonging to the petitioner was selected as it is found more suitable for house sites and not based on any political considerations as alleged by the petitioner. It is further stated that the award was already passed on 19.08.2009 vide Award No.2/2009-2010 dated 19.08.2009 and the possession of the property could not be taken in view of the interim orders passed by this Court on 30.01.2009.

It is said that if the petitioner is not satisfied with the compensation awarded by the L.A.O., she can avail remedies under Section 18 of the L.A.Act.

A reply to the said counter came to be filed in the month of December, 2015 stating that though the proceedings under the Act were initiated for the purpose of providing house sites under Indiramma Housing Scheme, but the purpose for which the acquisition proceedings were initiated are dropped and the respondents have again initiated land acquisition proceedings to acquire land for formation of Galeru-Nagari Irrigation Canal. In the said acquisition proceedings land to an extent of Ac.0.90 cents out of Ac.2.24 cents belonging to the petitioner was notified to be acquired. However, the said notification was withdrawn insofar as the petitioner is concerned since the total extent of Ac.2.24 cents was already acquired and the said land vested with the Government. It is further stated in the reply that though the award was passed on 19.08.2009 but till date neither possession was taken nor the compensation was deposited in the concerned Court.

It is stated that when the purpose for which the land was sought to be acquired was withdrawn and since the land which is now sought to be acquired is Ac.0.90 cents, the respondents are not justified in retaining the total extent of land belonging to the petitioner.

An affidavit of the third respondent came to be filed to the reply stating that an amount of Rs.2,83,620/- was awarded towards compensation and released in the shape of Demand Draft No.645570 dated 02.09.2009 to the petitioner, but as the petitioner refused to take the demand draft, the same was

returned to the Revenue Divisional Officer, Chittoor. The affidavit filed by the Tahsildar does not dispute the fact that Ac.0.90 cents of land in the same survey number with sub-division is demarcated for G.N.S.S.Canal and land acquisition proceedings initiated by the Special Deputy Collector, G.N.S.S. Unit-II, Puttur were dropped on the ground that the land was already acquired for house site purpose. It would be useful to extract the relevant portion of the affidavit, which is as under:

“It is a fact that Ac.0.90 cents of land in the same survey number (Sub-Division No.47/5) demarked for G.N.S.S. Canal and land acquisition proceedings initiated by Special Deputy Collector, GNSS Unit-II Puttur and subsequently dropped on the ground that the land was already acquired for house sites purpose.”

From a perusal of the averments in the affidavit, it is clear that initially 4 (1) notification was issued in the year 2008 seeking acquisition of land admeasuring Ac.2.24 cents for the purpose of providing house sites to the weaker sections under Indiramma Housing Scheme. Enquiry under Section 5-A of the Act was conducted by issuing Form-3 notices, to which the petitioner submitted objections and thereafter declaration under Section 6 of the Act was made and published in the gazettee on 31.12.2008 and in the local news papers on 12.01.2009. Thereafter, the Revenue Divisional Officer, Chittoor issued notice in Form-7 under Section 9 (3) and 10 of the Act to the petitioner, but the petitioner is said to have refused to take the notice and approached this Court by filing the present writ petition. As the writ petitioner failed to co-operate, draft award was prepared by the Land Acquisition Officer and the same was approved by the Collector vide proceedings LASW/9600/2008 dated 22.02.2009. Finally the

Land Acquisition Officer and Revenue Divisional Officer, Chittoor passed an award for Rs.2,83,620/- vide award No.2/2009-2010 dated 19.08.2009 and later the compensation amount was deposited in the government treasury. Thereafter, another notification under Section 4 (1) of the Act came to be issued seeking acquisition of land for formation of Galeru-Nagari Irrigation Canal. The said notification was published in District Gazette on 08.08.2011 and draft declaration was published in Chittoor District Gazette on 18.08.2011 and in the locality on 08.11.2011. In the said notification, the land of the petitioner to an extent of Ac.0.90 cents was sought to be acquired, but however the said notification was withdrawn insofar as the petitioner is concerned as the entire extent of land belonging to the petitioner was already acquired and award was also passed. Later another award came to be passed in respect of acquisition of same land for Galeru-Nagari Irrigation Canal.

One of the objections that was raised by the Government Pleader for Land Acquisition is that since the compensation amount was already deposited, the petitioner is not entitled to any enhancement as per the New Act.

The issue as to whether the deposit of amount in the Government Treasury would amount to compliance of the provisions of the Act came up for consideration before the Apex Court in ***Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others***^[1], wherein the Apex Court after referring to the judgments in ***Ivo Agnelo Santimano Fernandes v. State of Goa***^[2] and in ***Premnath Kapur v. National Fertilizers Corporation of India***^[3] held that the

deposit of compensation amount in the Government treasury is of no avail and cannot be held to be equivalent to compensation paid to the landowners/persons interested.

In view of the judgments of the Apex Court referred to above, it is clear that deposit of the amount in the government treasury instead of depositing the same in the Court does not amount to payment of compensation to the land owner. Therefore, it has to be held that till date no compensation amount has been paid to the petitioner.

Learned counsel for the petitioner submits that since the award under Section 11 of the Act is made more than five years prior to the commencement of New Act and neither compensation amount has been paid to the petitioner nor deposited in the Court, the proceedings of acquisition gets lapsed in view of Section 24 (2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "Act, 2013). In order to appreciate, it is useful to refer to Section 24 (2) of the Act, 2013, which reads as under:

"24. Land Acquisition process under Act No.1 of 1984 shall be deemed to have lapsed in certain cases:

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894.

(a) where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said Section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if

the said Act has not been repealed.

(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 majority of landholdings 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.”

A perusal of the material on record would show that the award pertaining to the subject land was made on 19.08.2009 and New Act came into force with effect from 01.01.2014. Therefore, it cannot be said that five years has elapsed from the date of award. Benefit gets accrued to the petitioner only if the award is passed on or before 01.01.2009. Hence, the argument that the entire proceedings gets lapsed in view of Section 24 (2) of the Act, 2013 cannot be accepted. But however, Sri M.N.Narasimha Reddy, learned counsel appearing for the petitioner submits that since the compensation in respect of the holdings is not deposited in the account of the beneficiaries as required under proviso to Section 24 (2) of the Act, 2013, the petitioner is entitled to compensation in accordance with the provisions of Act, 2013.

The Government Pleader for Land Acquisition tried to submit that possession could not be taken in view of the interim orders of the High Court and as such the petitioner is not entitled for any benefit under the Act, 2013. I am afraid the said argument cannot be accepted. The effect of not taking possession in view of the interim orders of the High Court came up for consideration before the Apex Court in ***Sri Balaji Nagar Residential Association v. State of Tamil Nadu and others***^[4] wherein, it has been held as under:

“From a plain reading of [Section 24](#) of the 2013 Act it is clear that [Section 24\(2\)](#) of the 2013 Act does not exclude any period during which the land acquisition proceeding might have remained stayed on account of stay or injunction granted by any court. In the same Act, proviso to [Section 19\(7\)](#) in the context of limitation for publication of declaration under [Section 19\(1\)](#) and the Explanation to [Section 69\(2\)](#) for working out the market value of the land in the context of delay between preliminary notification under [Section 11](#) and the date of the award, specifically provide that the period or periods during which the acquisition proceedings were held up on account of any stay or injunction by the order of any court be excluded in computing the relevant period. In that view of the matter it can be safely concluded that the Legislature has consciously omitted to extend the period of five years indicated in [Section 24\(2\)](#) 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.”

The last straw of the argument of the Government Pleader for Land Acquisition is that the provisions of the Act, 2013 cannot be made applicable to the case on hand since the award is passed prior to the date of commencement of the Act, 2013. The

said argument has to be repelled at threshold. The said issue also fell for consideration in **Sree Balaji Nagar Residential Association Case (4 supra)** , wherein an identical argument was advanced. The Court held that the language employed in various provisions of [Section 24](#) of Act, 2013 makes it clear that the Parliament has made a clear distinction between the contingency when award was not passed prior to 1.1.2014 and though award was passed but compensation was not paid to majority of property owners. As per [Section 24](#) (1) (a) of the Act, 2013 if proceedings have commenced under Repealed Act (prior to commencement of Act 30 of 2013) but award was passed after 1.1.2014, it mandates determination of the compensation according to provisions of Act, 2013 while passing award in continuation of the proceedings already commenced. Whereas, proviso to [Section 24](#) of Act, 2013 deals with a situation where though award has already been made which would also mean compensation was determined and process for payment of compensation was set in motion but for majority of property owners, compensation was not paid. The Apex Court held that in such an event all the property owners irrespective of whether some of them have received compensation or not, are entitled for payment of compensation in accordance with provisions of Act 30 of 2013. This clear distinction is discernible by reading of provisions of [Section 24](#) (1) (a) and proviso appended to [section 24](#). Therefore, to attract the proviso, it is thus necessary that if the award was already passed, compensation was determined but compensation was not paid to the land owners or deposited the same in the Court, the provisions of the Act, 2013 have to be given effect.

For the aforesaid reasons, the writ petition is allowed

directing the respondent to pay compensation to the petitioner in terms of Act, 2013 as expeditiously as possible, preferably, within a period of six months from the date of receipt of a copy of the order. There shall be no order as to costs.

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

**JUSTICE C. PRAVEEN
KUMAR**

25.02.2016
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[\[1\]](#) (2014) 3 SCC 183

[\[2\]](#) (2011) 4 SCC (civ) 268

[\[3\]](#) (1996) 2 SCC 71

[\[4\]](#) (2015) 3 SCC 353