

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION Nos. 32774, 33063 and 36758 of 2012

COMMON ORDER:

These three Writ Petitions are being disposed of by this common order as they relate to the same notification, under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'), published on 09.12.2011, and Section 6 declaration made on 18.09.2011 for acquisition of land of an extent of Ac.16.85 cents, situated in Unguturu Village and Mandal, for the purpose of providing house sites to the weaker sections under Indiramma Housing Programme, Phase – III.

Draft notification was published in the gazette dated 09.12.2011, and notices for conducting an enquiry under Section 5A of the Act were issued on 15.12.2011 asking them to attend enquiry on 18.01.2012. Though the petitioners did not attend the enquiry, they sent their objections by post on 19.03.2012. After considering the objections, an order was passed on 27.07.2012 rejecting their objections. It was followed by a declaration, under Section 6 of the Act, which was published in the gazette on 18.09.2012. At that stage, the present Writ Petitions were filed.

The land of the petitioners in W.P.No.36758 of 2012 is situated in Sy.No.1128/2 and the total extent involved is

Ac.2.23 cents. The land of the petitioners in W.P.No.32774 of 2012 is situated in Sy.Nos.801/2 to 801/5 in an extent of Ac.8.00. The land of the petitioners in W.P.No.33063 of 2012 is situated in Sy.Nos.1146/4 to 1146/7 and 1112/1 in an extent of Ac.5.88 cents. The petitioners raised several grounds. A perusal of the order dated 27.07.2012, passed by the first respondent, shows that the financial status of the petitioners was taken into consideration. It was observed that the proposed land was nearer to the present dwelling houses in Ungutur Village and suitable government dry land was not available though the land in R.S.No.801 in an extent of Ac.30.00 in the revenue records is classified as 'government dry'. After observing as aforesaid, the individual position of the petitioners, by noticing their residence and the family income, the objections were negated.

In the counter affidavit filed by the second respondent it was stated that acquisition of the land of the petitioners became inevitable in order to have a compact block of land.

In those circumstances, learned Government Pleader for Revenue was directed to produce a sketch of the village map, and the location of the lands proposed for acquisition. It is noticed that the land situated in Sy.No.801 has no connection with the land situated in Sy.No.1128. Similarly, the land situated in Sy.No.1146 was also at a distance.

Thus the defence taken by the second respondent that the lands were acquired in order to have a compact block is found to be incorrect.

In view of the statement made in the impugned order dated 27.07.2012, with regard to the occupation of the land in R.S.No.801, information was called. It is noticed that the land of an extent of Ac.30.50 cents, was classified as 'government dry', but the names of private persons were shown as pattadars. Since an extent of Ac.0.50 cents was available in Sy.No.801, if the respondent wanted to have a compact block, they should have acquired the entire land in the said survey number. The details with regard to the availability of government land are not available/are not furnished to this Court. This Court has to go by the statement that no government land was available. As stated above, this Court noticed that the total extent of Ac.16.85 cents proposed for acquisition for the provision of house sites is situated in three different places at a long distance. It appears that selective attempt was made in choosing the land for the purpose of acquisition. Even otherwise also, no award was passed since the date of publication or declaration. On 18.09.2012 obviously, since a stay was granted by this Court. In the meanwhile, the provisions of the Right to Fair Compensation and Transparency in land

Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) came into force with effect from 01.01.2014.

In the circumstances, this Court sees that, though the purpose was *bona fide*, exercise of power was not *bona fide* and it vitiated the entire exercise of acquisition of land. Consequently, the notification, issued under Section 4(1), which was published on 09.12.2011, and the declaration made on 07.09.2012, are set aside. If the respondents wanted to acquire the land for providing house sites to the weaker sections, they can choose a suitable land having less value since the present lands are double crop wet lands and acquire single block of land, as expressed in the order passed under Section 5A enquiry. It is needless to state that the provisions of Act 30 of 2013 shall be made applicable for future acquisition.

The Writ Petitions are, accordingly, allowed.

Miscellaneous Petitions, if any, pending in the Writ Petitions shall stand closed. No order as to costs.

A. RAMALINGESWARA RAO,J

Date:21.12.2016
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