

HON' BLE SRI JUSTICE SURESH KUMAR KAIT

W.P. No. 29905 of 2016

DATE: 08.09.2016

Between:

Modiyam Veeraswamy
and another

.. Petitioners

And

The State of Andhra Pradesh
and seven others

.. Respondents



ORDER:-

This writ petition is filed seeking to set aside the Preliminary Notification dated 15.01.2016 under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) and subsequent Declaration Notification dated 20.08.2016 under Section 19(1) of Act, 30 of 2013 issued by the 2nd respondent.

The brief facts of the case are that the petitioners belong to Schedule Tribe community and their livelihood is on agriculture. While so, the 2nd respondent issued a Preliminary Notification dated 15.01.2016 vide Rc.No.G3/ E-113360/ 2015 (Form No.VI(A), under Section 11(1) and Rule 19(1) of A.P. Amended Rules, 2014 of Act 30 of 2013 for acquisition of D-Form Patta lands belonging to the petitioners only to an extent of Ac.3.00 cents instead of acquiring their entire extent of Ac.4.50 cents of lands for the purpose of construction of "POGONDA RESERVOIR" and intimated to the petitioners to file objections, if any, under Section 11(1) of Act 30 of 2013 within 60 days before the 2nd respondent. In the Notification, while the petitioners' lands are shown to be acquired for public purpose, the names of respondent Nos.4 to 7 are reflected as pattedars, for an extent of Ac.2.20 cents of land in Sy.No.1P in favour of the 4th respondent, an extent of

Ac.3.70 cents in Sy.No.1P in favour of the 5th respondent, an extent of Ac.0.80 cents in Sy.No.1P in favour of the 6th respondent and an extent of Ac.0.60 cents in Sy.No.1P in favour of the 7th respondent situated in Chintalagudem, Buttayagudem Mandal, West Godavari District. The alleged patta lands which stand in the name of respondent Nos.4 to 7 and are shown in the Preliminary Notification dated 15.01.2016, were obtained by misrepresentation of fact. Respondent Nos.4 to 7 are not in possession and enjoyment of the notified properties. More so, they belong to different villages. It is further asserted that the petitioners filed objections on 25.01.2016 under Section 15(1) of Act 30 of 2013 at Mee-kosam Grievance Cell, Euru, West Godavari District requesting respondent Nos.2 and 3 to pay them *ex-gratia* and compensation by including their names in Form – VII of the Declaration. Respondent Nos.4 to 7 are no way concerned with the lands which are notified mistakenly in their favour. Ultimately, the 2nd respondent issued Form-VII and Declaration Notification dated 20.08.2016 without considering their objections which is unconstitutional and violative of Articles 14, 21 & 300-A and the spirit of Fifth Schedule of the Constitution of India.

The learned counsel for the petitioners has submitted that the petitioners filed objections on 25.01.2016 before the

2nd respondent, however, so far, they have not received any communication from his end. Moreover, Declaration Notification under Section 19(1) has already been issued, but the names of the petitioners are not included in the Declaration under Form VIII and under Section 19(1) of Act 30 of 2013 and Rule 25(1) of A.P. Amended Rules, 2014 in spite of their valid objections. The aim and object of the respondents is to acquire the lands and complete the project as mentioned above. If this Court does not interfere with the illegal action of the respondents, compensation may be granted to other undeserving parties, who are not entitled to compensation, thereby the petitioners, who have been living in the said village for years together, will be deprived of the benefit of Act 30 of 2013.

The learned counsel has also submitted that if the lands are acquired in tribal / agency area, the Government may pay *ex gratia* as per Act 30 of 2013, however enquiry should not to be conducted to pass the award. This procedure is available only for private lands and not for assigned lands.

The learned Government Pleader for Land Acquisition appearing for respondent Nos.1 to 3 does not dispute the submission made by the learned counsel for the petitioners only to the extent of *ex gratia* to be paid to the land owners/pattedars. Therefore, he has submitted that the

petitioners shall not be dispossessed from their lands without paying them *ex gratia* if they are entitled to, in accordance with law.

Keeping in view the averments made in the writ affidavit and the submission made by the learned Government Pleader, this Court is inclined to dispose of the writ petition by directing the official respondents to consider the representation / objections dated 25.01.2016 filed by the petitioners and pass appropriate orders thereon, in accordance with law before awarding *ex gratia* either to the petitioners or to unofficial respondent Nos.4 to 8 or to any other person and communicate decision that may be taken in writing to the petitioners and the amount of compensation shall not be disbursed for a period of fifteen (15) days from the date of communication made to the petitioners.

With the above direction, the writ petition is disposed of. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

SURESH KUMAR KAIT, J

08.09.2016

bcj