

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.26777 OF 2011

ORDER :

Heard counsel for the petitioner and the Government Pleader for Land Acquisition for respondents.

2. In all, 46 petitioners have filed this Writ Petition claiming that they possessed land of an extent of Acres 47.37 guntas in survey Nos.301, 304, 315, 317, 318, 327, 328, 331, 389, 391, 392, 432, 449, 451, 459, 461, 462, 463, 473, 474, 478, 479 and 489 of Muskapalli Village H/o Bollikunta Village, Sangem Mandal, Warangal District; the said land was proposed to be acquired for the purpose of excavation of D8 South Canal of JCRGLIP Project; a notification under Section 4(1) of the Land Acquisition Act was issued on 09.11.2006 invoking Section 17(4) of the Act and dispensing with the enquiry under Section 5A of the Act; and a declaration under Section 6 of the Act was issued on 10.11.2006 and the same was published in A.P.Gazette on 22.11.2006.

3. Petitioners contend that while invoking Sub-Section (4) of Section 17 and dispensing with enquiry under Section 5A of the Act, respondents did not deposit 80% of the market value of the land acquired, as per law and passed the award on 04.12.2008 in Award No.96/2008-2009. They contend that copy of the said award was furnished to them only after they applied under Right to Information Act, 2005.

4. Apart from raising contentions on the validity of the award, counsel for the petitioners also contended that if the respondents invoke Section 17(4) of the Act and dispense with enquiry under Section 5A, they are bound to take possession of the land within three (03) months; that possession of the land was taken only on 03.05.2012, 5 ½ years after the notification under Section 4(1) of the

Act was issued; and in view of the Full Bench judgment of this Court in ***Ramdas Ramanna and others v. Government of Andhra Pradesh, rep. by its Secretary, Energy Department (PR.II) and others***^[1], proceedings for acquisition of the petitioners' lands are required to be quashed.

5. Counter affidavit is filed by the 2nd respondent on behalf of the 1st respondent. The 2nd respondent did not dispute that Section 17(4) of the Act had been invoked dispensing with enquiry under Section 5A of the Act and that possession was not taken within the 90 day period prescribed under Section 17(5)(a) of the Act. In para 9 of the counter affidavit it is stated that possession of the land was not taken in advance and therefore there is no question of payment of 80% of the compensation to the petitioners.

6. The Government Pleader for Land Acquisition reiterated the above submissions.

7. In ***Ramdas Ramanna's*** case(1 supra), the Full Bench considered the question -

“Whether Section 4 and Section 17(5)(a) and (b) of Land Acquisition Act, 1894, as amended by the provisions under the A.P. State Amendment Act, 1983, will continue to be in force or not, in the light of the amendments made to the Principal Act, by the Land Acquisition (Amendment) Act, 1984”.

It referred to Section 17(5)(a) and (b) of the Act, which states as under:

“17(5)(a): In any case where the State Government have directed under sub-section (4) that the provisions of Section 5-A shall not apply, the Collector shall take possession of the land within three months thereof.

(b): If, however, the Collector fails to take possession of the land within the aforesaid period of three months, the provisions of Section 5-A shall apply as if there is no such

direction that Section 5-A shall not apply, and in all such cases the period of thirty days referred in Section 5-A shall be reckoned from the date of expiration of three months specified in clause(a).”

It observed that the above provisions indicate that if the possession of the land is not taken within the period of three (03) months, enquiry as contemplated under Section 5A of the Act shall be conducted and these provisions were introduced because it was noted that in a large number of cases, where there is no real urgency, authorities were invoking the urgency clause, but were not taking possession for a considerable time, within which, enquiry could have been initiated and concluded.

8. The Full Bench also held that there is no repugnancy with sub-section (3A) added to Section 17 by the Land Acquisition Amendment Act 68 of 1984 and the A.P. State Amendment which added sub-sections 5(a) and (b) to Section 17. It observed as under:

“From the aforesaid judgments, it is clear that in normal course, authorities are empowered to acquire the lands of private citizens only by conducting inquiry under Section 5-A of the Land Acquisition Act, and only in cases of extraordinary real urgency which cannot brook any delay, inquiry under Section 5-A can be dispensed with. It is implicit from the A.P. Amendment Act 9 of 1983 that in case where urgency clause is invoked by dispensing with inquiry, if possession is not taken within the period of 90 days, the provision with regard to conduct of inquiry as contemplated under Section 5-A of the Act will automatically apply. It is clear from the said provision that it is intended to safeguard the interest of citizens not to deprive them of their property without conducting inquiry in cases where there is no real urgency. It is clear from the said provision itself that having invoked the urgency clause, when possession is not taken within the period of 90 days, it cannot be said that such cases are urgent in nature and that cannot brook any delay. Section 17(5)(a) and (b) will operate only in specific areas where the authorities notify the land under the provisions of the Land Acquisition Act by invoking urgency clause under Section 17 of the Act, but fail to take possession within the period of 90 days. As a protective measure to safeguard the interests of citizens and to give a

fair opportunity by conducting inquiry, such provisions under Section 17(5)(a) and (b) are introduced by State Amendment Act 9 of 1983.”

9. No judgment taking a contra view is placed before me by the learned Government Pleader for Land Acquisition.

10. In view of the contentions of the petitioners that possession of the subject land was not taken within three months from the date of issuance of notification under Section 4(1) of the Act on 09.11.2006 and non-denial of this allegation in the counter affidavit filed by the respondents, it has to be held that possession of the subject lands was not taken within the period of three months from the date of issuance of Section 4(1) notification.

11. Counsel for the petitioners has also placed before me proceedings Rc.No.A2/66/2007, dt.03.05.2012, prepared by the Sub Divisional Officer and attested by the Special Deputy Tahsildar(Land Acquisition), JCR-GLIP, Head Quarters at Hanamkonda, showing that the possession of the subject lands was taken on that date under a panchanama. This document is also not disputed by the learned Government Pleader for Land Acquisition.

12. Therefore, in view of the judgment of the Full Bench referred to above, this Writ Petition is allowed; the Notification under Section 4(1) of the Act published on 09.11.2006 as well as the declaration issued under Section 6 of the said Act published on 10.11.2006 apart from the Award No.96/2008-2009 dt.04.12.2008 passed by the 2nd respondent are all quashed; and the respondents are directed to restore possession of the subject lands to the petitioners, forthwith. There shall be no order as to costs.

13. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

21st June, 2016.
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[\[1\]](#) 2014(6) ALT 676 (F.B.)