

HON'BLE SRI JUSTICE SURESH KUMAR KAIT

WRIT PETITION No.31263 of 2016

ORDER:

Vide the present petition, the petitioners seek a mandamus declaring the notification issued by respondent No.3, under Sections 11 and 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act 30 of 2013'), published vide eenadu and sakshi daily newspapers dated 12.04.2016 and 22.07.2016 respectively, as illegal and arbitrary.

It is stated, in the writ affidavit, that the petitioners purchased house plots in Sy.Nos.422-3, 422-4, 422-5 admeasuring Ac.0.74 cents, Ac.0.91 cents and Ac.0.72 cents respectively, totalling to Ac.2.37 cents. Respondent No.3 issued notification under Section 11(1) of Act 30 of 2013. It is further stated that, pursuant to G.O.Ms.No.16, dated 29.01.2015, the provisions of Chapter II and Chapter III of Act 30 of 2013 are not applicable to the facts of the case; and any person interested in the land can submit objections within a period of 15 days from the date of notification. In the notification, while the name of petitioner No.1 was shown as owner of the property, the names of others, who have purchased the plots, were not mentioned. Therefore, the petitioner made representation dated 23.06.2016 to the Special Deputy Collector (Land

Acquisition), HNSS unit, Anantapur. Despite which, no enquiry was conducted. Respondent No.3, thereafter, issued declaration under Section 19(1) of Act 30 of 2013. Again, the petitioner made representation dated 03.08.2016 stating that notification and declaration issued under Sections 11(1) and 19(1) of Act are not legal, and the same are without jurisdiction.

Learned counsel for the petitioners submits that, while Section 2 of Act 30 of 2013 deals with regard to the application of Act 30 of 2013, Section 2(1) thereof deals with regard to the applicability of the provisions of the Act with regard to various public purposes for which land of the private individual acquired by the Government. Chapter II deals with regard to determination of social impact and public purpose. Chapter III deals with regard to the special provision to safeguard food security. Section 11 provides power to issue notification. Sub-section (3) thereof provides that the notification issued, under sub-section (1), shall also contain a statement on the nature of public purpose involved, reasons necessitating the displacement of affected persons, summary of the social impact assessment report and particulars of the administrator appointed for the purposes of rehabilitation and resettlement under Section 43 of Act 30 of 2013.

Learned Counsel for the petitioners submits that Act 30 of 2013 came into force on 01.01.2014, and the provisions relating to Chapters II and III are very stringent and require considerable time before issuing notification under Section 11(1). He submits that, with a view to wriggle out of the stringent provisions contained in Chapters II and III, the President of India promulgated Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014 (hereinafter referred to as 'Ordinance 9 of 2014') on 31.12.2014 exempting Chapters II and III in respect of acquisitions relating to five categories viz. defence, rural infrastructure, affordable housing for poor people, industrial corridors and infrastructure projects including project under Public Private Partnership where the ownership of the land continues to vest with government. Pursuant thereto, Amendment Bill, 2015 was introduced replacing Ordinance 9 of 2014. Since Amendment Bill, 2015 could not be passed, Ordinance 9 of 2014 lapsed. Therefore, the President of India promulgated the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (for short 'Ordinance 4 of 2015') bringing certain amendments to the Act. Since Ordinance 4 of 2015 could not be passed by both Houses, it ceased to operate and

lapsed. Thereafter, the President of India promulgated the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2015 (for short 'Ordinance 5 of 2015'). Since Ordinance 5 of 2015 also could not be passed by both Houses, it ceased to operate and lapsed on 31.08.2015. Thus, preliminary notification, under Section 11(1) of Act 30 of 2013, was issued without following the procedure contemplated. Ordinance 5 of 2015 has since ceased to operate, similar ordinance could not be passed. It is, therefore, not open to issue preliminary notification under Section 11(1) of Act 30 of 2013. While acquiring land, respondents are required to follow the procedure under Chapters II and III of Act 30 of 2013 and only, thereafter, preliminary notification could be issued. In as much as ordinance ceased to operate, respondents cannot rely on the rules made in pursuance of Ordinance 9 of 2014, and issue notification.

In the present case, the subject lands were acquired by various notifications. While ordinance 9 of 2014 was issued on 03.12.2014; Ordinance 4 of 2015 was issued on 03.04.2015, whereas ordinance 5 of 2015 was issued on 31.05.2015 and it lapsed on 31.08.2015.

As stated by the learned counsel for the petitioners, the fact remains that land acquisition notification, under

Section 11(1) of Act 30 of 2013, was issued on 12.04.2015. Accordingly, the petitioner made representation dated 23.06.2016, wherein it was stated as under:

“I enclose herewith a statement showing the details of the members who have plots in this land showing the extent of land/plot each is having in the land and also showing their registration numbers. I also enclose the address of the owners of the plots for your kind information. I hope these details will facilitate as a ‘ready reckoner’ for the details of the owners in the land. The details can be summarized as under:

<i>Particulars</i>	<i>Survey No.</i>	<i>Area In cents</i>
<i>Original land owner:</i>	422.3	0.74
<i>M.Palaniswamy,</i>	422.4	0.91
<i>Sai Darshan Manor,</i>	422.5	0.72
<i>Kammavaripalli Road,</i>		
<i>Puttaparthi</i>		
<i>Total area of the land:</i>		2.37
<i>Less Area of the Building [on plots 1, 2, 3, 4]</i>		0.21
<i>Balance area</i>		216.0
<i>Total area of plots shared by other Owners:</i>		117.0
<i>Total area of the Original Land Owner (M.Palaniswamy):</i>		0.99
<i>Total:</i>		216.0

After the construction of the canal, the whole land, except the building area, would become not usable for house constructions. We, therefore, request you to kindly consider the land acquisition compensation as per law for the total area of 216 cents.

We look forward for your kind consideration and favourable orders and communication in this respect.”

After considering the said representation, respondents issued notification dated 11.07.2016 under Section 19 of Act 30 of 2013. Thereafter, the petitioner made representation dated 03.08.2016 to respondent No.3, whereby it was stated as under:

***Sub: Acquisition of our land in Survey No.422-3/4/5
in Peddakammavaripalli, Kammavaripalli Road,
Puttaparthi Mandal for canal purpose.***

Sairam to you Sir, This is in continuation of my letter dated 23.06.2016 on the above subject [copy enclosed for ready reference which is self-explanatory]. I am enclosing the revised and detailed statement showing the compensation amounts payable to the land owners for your kind information, consideration and needful action.

As per Section 26(1) (a), read with the Explanation 1 of the ‘Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013’, the criteria for the market value is as specified in the Indian Stamps Act, 1899 for the registration of sale deed in the area where the land is situated thereon.

Accordingly, the Market Value of our land as on date and also as per the communication No.379/2016 dated 30.07.2016 of the Sub-Registrar, Bukkapatnam, Anantapur District (A.P.) received by me [Copy enclosed] is Rs.2,42,00,000/- (Rupees Two Crore and Forty Two Lakhs Only). The calculations in the statement are based on this communication. I hope these details will facilitate as a ‘ready reckoner’ for working out the compensation.

The revised details can be summarized as under:

<i>Particulars</i>	<i>Survey No.</i>	<i>Area In cents</i>
<i>Original land owner: M.Palaniswamy, Sai Darshan Manor, Kammavaripalli Road,</i>	<i>422.3</i>	<i>0.74</i>
	<i>422.4</i>	<i>0.91</i>
	<i>422.5</i>	<i>0.72</i>

<i>Puttaparthi</i>		
<i>Total area of the land:</i>		<i>2.37</i>
<i>Less Area of the Building [on plots 1, 2, 3, 4]</i>		<i>0.21</i>
<i>Balance area</i>		<i>216.0</i>
<i>Total area of plots shared by other Owners:</i>		<i>117.0</i>
<i>Total area of the Original Land Owner (M.Palaniswamy):</i>		<i>0.99</i>
<i>Total:</i>		<i>216.0</i>

After the construction of the canal, the whole land except the building area would become not usable for house/residential constructions. We, therefore, request your good self to kindly consider the compensation as per the 'Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013' for the total area of 216 cents.

We look forward for your kind consideration and favourable orders and communication in this respect."

Respondent No.3, vide communication dated 15.09.2016, informed the learned Government Pleader for Land Acquisition that 9 objections received, out of which, 7 were accepted and 2 rejected based on revenue records U/s 15(3) of the TRFCTLA RR Act, 2013 vide reference No.A/44/2016 dated 11.07.2016.

In the said communication, it is further stated that, the Executive Engineer, HNSS Division No.10 Dharmavaram, sent a revised requisition for an extent of Ac.45.33 cents against Ac.47.11 cents, in which, an extent

of Ac.34.02 cents was classified as patta land; Ac.7.34 cents as DKT; and Ac.3.97 cents as government land. Declaration proposals were approved by the Joint Collector & Special Land Acquisition Officer, HNSS – II, Ananthapur, vide R.c.No.A/44/2016 dated 11.07.2016, and published in Sakshi & Hindu dailies on 22.07.2016.

It is also stated that the Government of Andhra Pradesh, vide G.O.Ms.No.34 dated 15.04.2015, delegated power to the Special Collectors, Land Acquisition and designated them as appropriate Government in order to speed up land acquisition process for Irrigation Projects.

Vide G.O.Ms.No.252 dated 24.04.2015, the Government appointed the Joint Collector, Ananthapur District, for the purpose of land acquisition pertaining to HNSS project in Ananthapur District.

It is stated that, according to Section 6(ii) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and the Ministry of the Environment and Forest, Government of India, New Delhi Order No.J/12011/37/2011-SA-1 dated 20.12.2006, the provision of chapter – II, the Social and Impact Assessment Study, is excepted for land acquisition for Irrigation Project of HNSS.

It is further stated that, vide G.O.Ms.No.262, Revenue (LA) Department dated 13.07.2015, amendment orders

were issued in the APRFCTRR Rules, 2014, by inserting new rule 28A, for payment of higher compensation than permitted under Land Acquisition Act, 2013. As per the rule, the District Collector, Special Deputy Collector and Superintending Engineer, HNSS conducted negotiations with ryots of Kammavaripalli Village and they agreed to 21.03% G.D. and I.D lands for Rs.23,00,000/- per acre. Increase of market value fixed as per section 26(1) clause B, explanation 1 and 2 of the LA RR Act, 2013. In this connection, G.O.RT.No.629, Water Resources (LA) Department dated 02.09.2016 for Rs.23,00,000/- per acre was issued. The award enquiry process is going on for payment of compensation for the land losers at Rs.23,00,000/- per acre.

The main grievance of the petitioners is that, since ordinances 9/2014, 4/2015 and 5/2015 lapsed on 31.08.2015, Sections 4 to 9 of Act 30 of 2013 have to be taken into consideration while issuing notification which were not taken into account.

Section 3(c) of Act 30 of 2013 defines 'affected family'.

"affected family" includes-

- (i) *a family whose land or other immovable property has been acquired;*
- (ii) *a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the*

acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land;

Section 4 deals with determination of social impact and public purpose:

“Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification.”

Petitioners also state that, for assessment of social impact, even public hearing is also required, which is not carried out in the present case.

The crux, of the objections of the petitioners dated 23.06.2016 and 03.08.2016, is that after construction of canal, the whole land except the building area would become unusable for house/construction; and, accordingly, requested the Sub-Collector for grant of compensation in respect of total extent of land, admeasuring 216 cents, as per Act 30 of 2013. In the representation dated 03.08.2016, it is specifically stated that the market value, as per communication No.379/2016 dated 30.07.2016 of the Sub-Registrar, Bukkapatnam, Anantapur District, was Rs.2,42,00,000/-. The calculations were based on the communication dated 30.07.2016. The petitioner sought that the total extent of land admeasuring 216 cents be acquired. After arriving at compensation of Rs.23,00,000/-

per acre, the petitioners cannot now raise legal issues that the respondents have not carried out social impact assessment.

Section 15 of Act 30 of 2013 deals with Hearing of objections. It provides that any person interested in any land which has been notified under sub-section Hearing of (1) of Section 11, as being required or likely to be required for a public purpose, may within objections, sixty days from the date of the publication of the preliminary notification, object to the area and suitability of land proposed to be acquired; justification offered for public purpose; and the findings of the Social Impact Assessment report.

Under sub-section (2) thereof, every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, in any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the

approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.

It is not in dispute that the petitioner has not objected regarding social impact in both the representations/objections mentioned above. The whole crux of the matter is that after construction of the canal, the total land, except the building area, would become unusable for house/residential construction and requested to grant compensation for total area of 216 cents. There was no occasion before the Special Deputy Collector/competent authority, as prescribed under Section 15 of Act 30 of 2013, to consider and give personal hearing to the petitioner.

In view of the reasons aforementioned, I find no merit in this Writ Petition.

The Writ Petition fails and is, accordingly, dismissed.

Miscellaneous Petition pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

SURESH KUMAR KAIT, J

Dt:16.09.2016
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