

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT APPEAL No.1067 of 2016

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the petitioners in W.P. No. 27977 of 2016, aggrieved by the order passed by the learned Single Judge dated 8.9.2016, dismissing the Writ Petition.

The relief sought for in the writ petition was for a mandamus to declare the action of the respondents, in high-handedly conducting a survey of the lands in Survey Nos. 303 to 325 of Yellur Village, Kollapur Mandal, Mahabubnagar District under the guise of proposed re-designing of Palamoor Ranga Reddy Lift Irrigation Scheme, without following the procedure contemplated under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the 2013 Act'), as arbitrary and illegal.

In the order under appeal, the learned Single Judge has noted the contention of the 7th respondent, in their counter affidavit, that, for the purposes of viability survey, they, along with revenue officials, had visited the lands of petitioner Nos. 2,14 and 28 only; a surge pool was proposed to be located in the Government land in Survey No.399 wherein boreholes were being drilled to assess the underground strata for locating an underground pump house complex; the allegations of high-handedly entering into the petitioners' lands were not true; there was no attempt to conduct a survey except visiting the

lands of the three petitioners for viability survey; and, since the alternative proposal was not finalized, the question of forceful acquisition did not arise.

In his counter affidavit, the 4th respondent stated that the project was taken up for the benefit of the public at large; the loss of an individual could not put the project without being re-designed in view of the delay that was likely to be caused for want of clearances; keeping in view the difficulty that was likely to be suffered by the respective land losers, the State would strictly follow the guidelines in the statute for compensating them adequately; the initial survey undertaken was only to study the viability; on the basis of the report submitted, it was for the State to proceed with the re-alignment of the scheme; and the present Lift Irrigation Scheme was taken up after a detailed study, after considering the various options available, and after obtaining necessary Government clearances.

Keeping in view the averments made in the counter affidavits, the learned Single Judge held that no cause of action had arisen in the matter which was required to be adjudicated by the Court; and there were no merits in the Writ Petition. The learned Judge, however, granted the petitioners liberty to approach the appropriate forum in case any cause of action arises in future.

In their counter-affidavit, the 7th respondent admitted that their officials, along with the revenue officials, had visited the lands of the petitioner Nos. 2, 14 and 28. There is no dispute that the petitioners herein are the owners of the lands in their

possession. It is also not in dispute that, as on date, no notification has been issued under Section 11 of the 2013 Act.

Both the Learned Government Pleader and Sri G.Mohan Rao, Learned Counsel for the 7th respondent, would place reliance on Section 12 of the 2013 Act to contend that it is open to any Officer of the Government to enter upon, and survey and take levels of, any land in the locality; and the only restriction placed by Section 12 is that no such survey can be conducted in the absence of the owner of the land, or in the absence of any person authorized in writing by the owner.

A constitutional right is conferred on the land owners, by Article 300-A of the Constitution, not to be deprived of their lands except in accordance with law. This right would also bring within its ambit the right to enjoy and use the land without interference. It is only if they are so permitted by the 2013 Act, would the action of the respondents in entering upon the appellants land be justified. Section 11(1) of the 2013 Act stipulates that, whenever it appears to the appropriate Government, that the land in any area is required or is likely to be required for any public purpose, a notification (called a preliminary notification) to that effect, along with details of the lands to be acquired in rural and urban areas, shall be published as prescribed in Section 11 of the Act. It is only after a preliminary notification is issued under Section 11(1) of the 2013 Act, can a preliminary survey of the land be made by the Government officials under Section 12 thereof. The power conferred under Section 12 (a), to enter upon and survey and take levels of any land in a locality, is circumscribed by the

requirement that no such survey shall be conducted in the absence of the owner of land or in the absence of any person authorised in writing by the owner. In the absence of a notification being issued under Section 11 of the 2013 Act, neither the 7th respondent nor the revenue officials could have entered into the petitioners' lands, save with their consent. Their power to cause a survey under Section 12(a), or to dig a bore well under Section 12(b), of the 2013 Act can only be exercised after a preliminary notification is issued under Section 11 of the 2013 Act. As, admittedly, no such notification has been issued till date, the respondents could not have even visited the petitioners' lands without their consent. The respondents shall, therefore, refrain from entering the petitioners' lands except with their prior consent, or in compliance with the provisions of the 2013 Act or any other law in force.

The writ appeal is disposed of accordingly. The miscellaneous applications shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

24th October, 2016

pnb

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA



WRIT APPEAL No.1067 of 2016

Date: 24.10. 2016

pnb

