

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.1064 of 2009

ORDER:

Heard Mr. C.M.R.Velu for petitioners and the learned Assistant Government Pleader (Land Acquisition) for respondents.

2. The petitioners challenge Section 4(1) notification in Roc No.G4/ 8851/ 2008/ (SW) dated 22.12.2008, proposing to acquire an extent of Ac.6.68 cents in Sy.Nos.275/ 1, 275/ 2 and 275/ 3 at Dudduvuru Village, Devarapalli Mandal, West Godavari District and that the petitioners incidentally challenge the procedure followed by 2nd respondent pursuant to enquiry notice dated 22.12.2008, as illegal, arbitrary, violative of principles of natural justice.

3. To complete narration, this court finds it convenient to refer to the interim prayer sought by petitioners in the instant writ petition, which reads thus:

“..to grant interim stay of dispossession of the petitioners from their lands in Sy.Nos.275/ 1, 275/ 2 and 275/ 3 at Dudduvuru Village, Devarapalli Mandal, West Godavari District, pending disposal of the writ petition.”

4. The respondents issued notice impugned in the writ petition proposing to acquire the subject matter of the writ petition for providing houses to weaker section under a welfare scheme implemented by the State Government. On 23.12.2008, draft notification was issued. On 26.12.2008, Section 5-A Notice of enquiry was issued and the petitioners filed objections and also attended the enquiry on 19.01.2009. On 28.01.2009, this court granted stay of dispossession of petitioners from the subject matter of the writ petition. With effect from 01.01.2014, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013) has come into force.

5. Mr. C.M.R. Velu contends that the writ petition was filed apprehending dispossession of petitioners from the subject land and also not providing opportunity in the enquiry conducted by 2nd respondent for the experience of petitioners is such that without completing procedure contemplated by the Land Acquisition Act, 1894 (for short 'the Act'), small and marginal farmers are dispossessed from lands under acquisition. Hence, the writ petition was filed. The possession was protected and however the authorities were not precluded from proceeding with other stages of enquiry, viz., draft declaration and passing of award. Since other steps are not taken up, he raises two legal objections against continuation of impugned land acquisition proceedings, viz., firstly that the respondents are under obligation to publish draft declaration under Section 6 of the Act, within one year from the date of 4(1) notification, the same has not been done and even assuming that enquiry was completed, no order on the objections filed by petitioners is passed and therefore, further steps under the Act cannot be taken. He contends that under Section 11-A even if any order on objections is passed behind the back of petitioners, the order goes against continuation of land acquisition proceedings by operation of Section 11-A of the Act. Therefore, prays for allowing the writ petition.

6. Learned Assistant Government Pleader, opposes the writ prayer by contending that the writ petition is filed on mere apprehension and that the petitioners cannot take advantage of the interim order obtained in the writ petition. According to him the authorities are under *bona fide* impression that the interim order shall have to be respected by not proceeding in any manner with the subject acquisition. He fairly submits that having regard to categorical stand taken in the counter-affidavit that the land acquisition proceedings are held back at the stage of enquiry.

7. I have perused the material on record, taken note of submission of counsel for parties and having regard to the embargo under Section 6 of the Act

and also limited interim direction granted by this court, the respondents, if have understood the order in a different way, are not authorised by court for continuation of land acquisition proceedings impugned in the writ petition.

8. The writ petition is ordered and impugned 4(1) Notification dated 22.12.2008 issued by 1st respondent, is declared as illegal and set aside. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

Date: 22.08.2017
BSS

S.V.BHATT, J



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