

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.14546 of 2008

ORDER:

Heard learned counsel for the petitioners and learned Government Pleader for land acquisition.

2. The present Writ Petition came to be filed seeking issuance of writ of Mandamus declaring the action of the third respondent in issuing the proceedings ROC.No.G1/ 143/ 2007(SW), dated 04.06.2008, as illegal and arbitrary and violation of Section 5-A(2) of the Land Acquisition Act and Circular Memo No.10054/ LA. 1/ 2005 dated 22.04.2006.

3. A perusal of the averments in the affidavit filed in support of the writ petition would show that a notification under Section 4(1) of the Land Acquisition Act (for short, 'the Act of 1894') came to be issued and the same was published in newspaper. Subsequently, the petitioners were asked to submit objections by 17.05.2005 with regard to acquisition of lands for conducting enquiry. It is stated that the objections raised by the petitioners were not considered by the respondents. But when the Tahsildar directed the petitioners to vacate the fields, W.P.No.22508 of 2007 came to be filed, which was disposed of. It is averred that the respondents failed to give an opportunity of personal hearing to the petitioners while disposing of the objections raised by the petitioners and hence the present writ petition came to be filed. It is also stated that the petitioners were not aware about the publication of draft declaration under Section 6 of the Act.

4. By an order, dated 08.07.2008, this Court while admitting the writ petition granted interim stay of all further proceedings in respect of the above lands.

5. A counter came to be filed by the respondents contending that the Government proposed to acquire the land of the petitioners for the purpose of giving house sites to weaker sections under Indiramma Housing Scheme. After conducting survey, the District Collector approved the Draft Notification issued under Section 4(1) of the Act on 27.04.2007 and the same was published in the District Gazette. The said notification dated 27.04.2007 was challenged by the petitioners and the writ petition was disposed of directing the respondents to comply with the statutory requirement before dispossessing the petitioners from the land in dispute. It also refers to the notices published and the 5A enquiry which was held and approved on 04.06.2008. Having regard to the reasons stated above, the respondents seek to dismiss the present writ petition.

6. Learned counsel for the petitioners submits that though other government lands are available for the purpose of acquisition, so as to provide house sites to weaker sections under Indiramma Housing Scheme, the authorities are intentionally taking the land of the petitioners, which is the main source of their livelihood.

7. Before proceeding further, it would be appropriate to refer to Section 11-A of the Act of 1894.

“Section 11-A of the Act of 1894: A period within which an award shall be made: The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1894, the award shall be made within a period of two years from such commencement.

Explanation: In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court, shall be excluded.

8. A perusal of the material placed before the Court would show that the objections raised by the petitioners have been enquired into and after perusing the objections and the record, the District Collector, Krishna, rejected the objections on 04.06.2008 and directed the authorities to continue further with the acquisition proceedings. While things stood thus, on 08.07.2008 this Court passed an order granting interim stay of further proceedings. In view of the interim order, the authorities failed to proceed further under the Act of 1894. Meanwhile, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act 30 of 2013") came into force with effect from 01.01.2014. Section 24 (1) (a) of the Act 30 of 2013 prescribes that if the land acquisition proceedings were initiated under the Act and no award under Section 11-A of the Act of 1894 has been made, all the provisions of the Act 30 of 2013 shall apply for determination of compensation.

9. In order to determine the compensation and the period within which an award shall be made, the Act 30 of 2013 provides a procedure under Sections 25 and 26 of the Act 30 of 2013, which reads as under:

"Section 25. Period within which an award shall be made: The Collector shall make an award within a period of twelve months from the date of publication of the declaration under Section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same.

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

Section 26. Determination of market value of land by Collector:

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land namely:

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.”

10. Under Section 26 of the Act 30 of 2013, the Collector has to determine the market value of the land for the purpose of payment of compensation under Section 24 of the Act 30 of 2013. Methodology to be adopted for arriving at the market value is prescribed under Section 26 of the Act 30 of 2013. Proviso to Section 26 of the Act 30 of 2013 states that the market value shall be as on the date on which the notification under Section 11 of the Act 30 of 2013 has been issued. An argument is advanced saying that Section 11 of the Act 30 of 2013 has to be equated to Section 4 (1) of the Act of 1894. I am afraid, the same cannot be accepted for the reason that if really the intention of the legislature was to equate Section 11 of the Act 30 of 2013 with Section 4 of the Act of 1894, definitely there would have been some indication to that effect in the Act 30 of 2013. On the other hand, though the Act 30 of 2013 takes

care of many situations and shortfalls under the Act of 1894 but it is silent on this aspect. Apart from that it is to be noted that Section 4 of the Act of 1894 does not anywhere indicate fixation of market value. While determining the compensation to be paid in respect of the lands acquired under the Act of 1894, the market value prevailing as on the date of the award is normally taken into consideration. But situation under the Act 30 of 2013 appears to be different. Therefore, the argument that the Section 11 of the Act 30 of 2013 has to be equated to Section 4 of the Act of 1894 cannot be accepted. On this score, the proceedings under Old Act should lapse, giving liberty to initiate fresh proceedings under the Act 30 of 2013.

11. In W.P.Nos.22781 of 2008, 18274 and 18619 of 2009, this Hon'ble Court while dealing with a case where declaration under Section 6 of the Act of 1894 was made in the year 2009 and no award was passed by virtue of *status quo* order granted by this Court, held as under:

“Under Section 11 (A) of the Act, the award has to be passed within a period of two years from the date of publication of the declaration and in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration stayed by the order of Court shall be excluded. Even if that period is excluded and an award is liable to be passed, now it cannot be done under the provisions of the Act, as the action has to be taken as per Section 24 (1) (a) of Act 30 of 2013.

The Interplay of Section 11 (A) of the Act and Section 24 (1) (a) of the New Act was considered by the Apex Court in *Laxmi Devi v. State of Bihar and others*¹, wherein the Apex Court held that the acquisition proceedings initiated under the Act are liable to be *set aside* and the respondents

¹ (2015) 10 SCC 241

were given liberty to issue a fresh notification, if they so choose, under New Act.”

12. Cases where lands are acquired for the purpose of housing under Indiramma Housing Scheme, came up for consideration before this Court in W.P.Nos.454 and 14091 of 2009. It was a case where notification under Section 4 (1) of the Act of 1894 was issued for acquiring the land admeasuring Ac.5.85 cents situated in Mudinepalli Village, Krishna District for the purpose of providing house sites to the weaker sections of the society under Indiramma programme. A learned Single Judge of this Court, while dealing with the said issue, held as under:

“This Court granted interim stay of all further proceedings, as a result of which the respondents could not complete the acquisition proceedings. In the meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 30 of 2013 came into force with effect from 01.01.2014 and seven years have lapsed from the date of publication of Section 4 (1) notification. It is not known whether the earlier scheme of providing house sites to the weaker sections of the society is being pursued by the Government due to changed circumstances.”

13. The Government Pleader for Land Acquisition submits that said orders are not challenged and have become final. Further, the Government Pleader could not place any material on record to show that, the said land is still required for providing house sites to weaker sections. Infact, a doubt is raised as to the very existence of the said scheme.

14. For the aforesaid reasons, the writ petition is allowed and the impugned proceedings initiated under the Act of 1894, are set aside, giving liberty to the respondents to initiate fresh proceedings for acquisition of the above mentioned land of the petitioners, if the land is still required, in

accordance with the provisions of the Act 30 of 2013. There shall be no order as to costs.

15. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

19.01.2017
vhb/ gkv

