

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.1226 of 2007

ORDER:

This writ petition is filed to declare the land acquisition notification dated 10.09.2006 issued under Section 4(1) of the Land Acquisition Act (for short 'the Act') seeking to acquire the land of the petitioners in RS Nos.333/ 1 and 333/ 2A admeasuring Ac.2.41 cents of Remalle Village, Bapulapadu Mandal, Krishna District, as illegal and arbitrary.

2. Brief facts of the case, according to the petitioners, are that the petitioners are the brothers and they are the joint owners of land admeasuring Ac.4.77½ cents in RS Nos.333/ 1 and 333/ 2A of Remalle Village, Bapulapadu Mandal, Krishna District. After receipt of Section 5-A notice, petitioners submitted objections for the proposed acquisition on the ground that they are small farmers. The respondents, without considering the objections properly, rejected the same and issued notice under Sections 9(1) and 10 of the Act. Copy of the order passed under Section 5-A enquiry was also not furnished to them. After receipt of the notice dated 18.12.2006 issued under Sections 9(3) and 10 of the Act, the petitioners filed their objections on 04.01.2007 before the 3rd respondent. The petitioners being the small farmers, having no other alternative, filed the present writ petition.

3. This writ petition came up for admission on 23.01.2007 and an interim stay was granted by this court on the same day.

4. The respondents filed counter-affidavit *inter-alia* stating that Section 5-A notice was issued to the petitioners on 19.09.2006. At the

time of enquiry, one Yanamadala Lakshmana Rao attended the enquiry on behalf of the petitioners and stated that they are willing to give away their land for acquisition at the rate of Rs.4,00,000/- per acre. Draft declaration under Section 6 of the Act was also approved by the Collector and it was published in the District Gazette on 26.10.2006. Thereafter, award enquiry notice was issued to the petitioners on 04.01.2007. At this stage, the writ petition was filed.

5. The petitioners filed reply affidavit stating that either the 2nd or other petitioners never consented to give away the land for acquisition and that opposite to their lands, the land belonging to one Madhavaiah, who is having more than Ac.30.00 cents of land is situated and on the other side of the S.C. Colony, there is more than Ac.20.00 cents of land is available.

6. Heard the learned counsel for the petitioners and the Assistant Government Pleader for Land Acquisition.

7. The main contention of the learned counsel for the petitioners is that during the enquiry under Section 5-A of the Act, the objections raised by the petitioners were not properly considered and the report of Section 5-A enquiry was not furnished to them. It is also contended that the petitioners are small farmers and that alternate lands are available for acquisition.

8. Admittedly, the objections raised by the petitioners are not properly considered during enquiry under Section 5-A of the Act. The respondents have not stated in their counter-affidavit that the report of Section 5-A enquiry was furnished to the petitioners. The petitioners also denied that they gave consent to give away the land under

acquisition during 5-A enquiry. In the circumstances, the respondents are directed to conduct fresh enquiry under Section 5-A of the Act and pass appropriate orders thereon, if the respondents still intend to proceed with the land acquisition, after giving opportunity to the petitioners. Consequently, draft declaration under Section 6 of the Act is set aside.

9. With the above direction, the writ petition is disposed of. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition, shall stand closed.

Date: 05.12.2017
BSS

KONGARA VIJAYA LAKSHMI, J



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