

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.20117 and 21431 of 2009

COMMON ORDER:

The petitioners challenge Endorsement Rc.No. 3004/2008-G2, dated 20.07.2009 of the 1st respondent rejecting the objections raised by petitioners, as illegal, arbitrary and contrary to Section 5-A (2) of the Land Acquisition Act, 1894 (for short 'the Act').

The counsel for petitioners, referring to stand taken in the counter affidavits of 2nd respondent, raises additional ground under proviso (ii) of Section 6 of the Act.

The writ petitions have been substantially heard on the jurisdiction of respondents to issue draft declaration beyond one year from the date of 4(1) Notification, dated 21.07.2008.

The dates, relevant for disposing of the writ petitions, are stated thus:-

21.07.2008	Section 4(1) Notification was issued proposing to acquire total extent of Ac.1-23 cents in Sy.No.390/1 situated at Nandivelugu Village, Tenali Mandal, Guntur District, belonging to petitioners.
22.08.2008	The 2 nd respondent issued notice of enquiry under Section 5-A of the Act.

24.09.2008	The petitioners filed objections against the proposed acquisition of subject land for providing house sites to weaker sections. One of the objections is that the petitioners are small farmers and are eking out their livelihood by cultivating the subject land.
18.07.2009	Through communication Rc.No.1182/2008/A, the record of enquiry is said to have been forwarded by the 2 nd respondent to the 1 st respondent.
20.07.2009	Proceedings were issued approving draft declaration.
22.07.2009	The gist of draft declaration is stated to have been published in the locality.
23.07.2009	Draft declaration was published in Vaartha Daily.

Counsel for petitioners relies on the proviso of Section 6 of the Act, which reads as follows :-

Section 6: Declaration that land is required for a public purpose :-

(1) Subject to the provisions of Part VII of this Act, [when the]
[appropriate Government is satisfied after considering the

report, if any, made under Section 5-A, sub-section (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some Officer duly authorised to certify its order [and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2)],

Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1), -

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification; or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification.

The contention of petitioners is that without getting into the infirmities pointed out in the enquiry or the competence of the Tahsildar or the Revenue Divisional Officer to conduct enquiry in this behalf, the legal objection raised against Section 6 declaration is that the respondents are required to publish draft declaration on or before 20.07.2009.

In the case on hand, the endorsement was issued on 20.07.2009. Admittedly, the draft declaration was not published

before the expiry of period stipulated under Proviso (ii) of Section 6 of the Act. The respondents admit to have published draft declaration on 23.07.2009 which is beyond the period prescribed by law.

From the admission of respondents, it is clear that the publication of draft declaration beyond one year from the date of publication of 4(1) Notification and draft declaration is illegal and unsustainable.

For the above reasons, the Land Acquisition proceedings initiated proposing to acquire the land in an extent of Ac.1-23 cents in Sy.No.390/1 situated at Nandivelugu Village, Tenali Mandal, Guntur District, through Notification dated 21.07.2008 is illegal and accordingly 4(1) Notification and draft declaration are declared as illegal and contrary to the Act. Hence, the impugned proceedings are set aside.

The writ petitions are ordered as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Date: 23.08.2017
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