

THE HON' BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.21005 of 2008

ORDER:

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

2. The present Writ Petition came to be filed seeking issuance of writ of Mandamus declaring the notification issued by the first respondent under Section 4(1) of the Land Acquisition Act (for short, 'the Act'), dated 02.11.2006 and consequential notice issued under Section 6 of the Act dated 22.11.2006, and notice under Sections 9(3) and 10 of the Land Acquisition Act vide proceedings 2094/ 2006 (B) dated 13.04.2007, as illegal and arbitrary.

3. The facts in issue are as under:

The petitioner is owner of the land admeasuring Acs.2.72 cents situated in R.S.Nos.78/ 1, 78/ 2 and 78/ 3 of Vedangi Pallem Village, Poduru Mandal, West Godavari District. It is stated that when the Gram Panchayath tried to lay a road in the land of the petitioner to reach the proposed burial ground, W.P.No.9498 of 2006 came to be filed. While issuing notices, this Court held that in case the road, which is proposed to be laid pursuant to the resolution of the fourth respondent dated 21.04.2006 involves utilization of any private land, the respondents shall not lay road on such lands without acquiring the same or without the consent of the petitioner. While things stood thus, on 13.04.2007, the petitioner received notice said to have been issued under Sections 9(3) and 10 of the Act, to submit statement in writing, to claim compensation. His enquiries revealed that the land acquisition proceedings were initiated to acquire the land admeasuring Ac.0.12 cents situated in Survey No.78/ 1B of Vedangipallem Village, Poduru Mandal of which petitioner has no knowledge.

The material on record discloses that the first respondent issued the impugned order dated 02.11.2006 under Section 4(1) of the Act which was published in local newspaper on 22.11.2006. Thereafter, notification under Section 6 of the Act came to be published on 08.12.2006 in Andhra Prabha daily news paper. It is stated that when notice dated 13.04.2007 was served on the petitioner, the present writ petition came to be filed.

4. By an order dated 25.09.2008, this Court while issuing *rule nisi* granted interim stay as prayed for.

5. Learned counsel for the petitioner mainly submits that as the urgency clause under Section 14 of the Act has been invoked for the purpose of acquiring the land of the petitioner, the authorities ought to have followed the procedure contemplated under the Act.

6. A counter came to be filed disputing the averments made in the writ petition. It is not in dispute that the respondents have invoked urgency clause for the purpose of acquiring the land of the petitioner. In support of his plea, learned counsel for the petitioner placed reliance on Full Bench judgment of this Court in *Ramdas Ramanamma and others Vs. Government of Andhra Pradesh*¹ contending that the provisions under Section 17 were not followed while invoking urgency clause. From a reading of the observations made by Full Bench in the Judgment referred to above, it is clear that Section 17(3A and 3B) were intended to revive inquiry under Section 5 A in cases where urgency clause is invoked but possession is not taken within a period of 90 days. Sections 5(a) and 5(b) of Section 17 mandates the Collector to take possession within three months from the date when the State Government directs non application of Section 5A of the Act and in case if the Collector fails to take possession within the aforesaid period of three months, provisions of Section 5A of the Act shall

¹ 2014 (6) ALT 676 (FB)

apply and the period of 30 days referred to in Section 5A has to be reckoned from the date of expiry of three months specified in clause (a) of Section 17(5).

7. In the instant case, notification under Section 4(1) of the Act came to be issued on 02.11.2006 and Section 6 declaration was made on 22.11.2006. This Court granted interim stay on 25.09.2008. No steps have been taken by the authorities, for nearly twenty months, for taking possession of the land and also for depositing of compensation amount, as contemplated under the law. Apart from that, learned counsel for the petitioner submits that Section 17 of the Act was invoked for the purpose of acquiring land for burial ground.

8. Having regard to the above circumstances, since procedure contemplated under Section 17 of the Act has not been complied with, this Court has no option except to allow the present writ petition and accordingly the impugned proceedings are set aside giving liberty to the respondents to initiate fresh proceedings in accordance with law, under the provisions of the new Act i.e., the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act.

9. With the above direction, the writ petition is disposed of. There shall be no order as to costs.

10. Miscellaneous petitions, pending if any, shall stand closed in the light of this final order.

JUSTICE C. PRAVEEN KUMAR

27.02.2017
vhb