

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.2870 of 2008 and 22798 of 2014

COMMON ORDER:

With the consent of learned counsel, W.P.No.22798 of 2014 is also taken up for hearing and disposal along with W.P.No.2870 of 2008.

The subject matter of writ petitions is an extent of 5 acres each in Sy.No.132 of Paradesipallem Village, Chinnagadily Mandal, Visakhapatnam District.

One G.Seedevi is the petitioner in W.P.No.2870 of 2008 and G.Janardhana Rao is the petitioner in W.P.No.22798 of 2014.

The prayer in W.P.No.2870 of 2008 reads as follows :-

“.... to issue a Writ or order or orders more particularly one in the nature of Writ of Mandamus for declaration that the notification issued by the State through the Collector vide draft Notification under 4(1) in LA Act in form 2A in respect of the petitioner's land by invoking urgency clause under Section 17 (4) of L.A. Act violating the Principles of natural justice, Articles 14, 19 and 300-A of the Constitution and the draft notification under Section 4(1) of L.A. Act issued through R.C. 112/ 2008/ G, dated 28-01-2008 as arbitrary, illegal”

The prayer in W.P.No.22798 of 2014 reads as follows :-

“.... to issue a Writ or order or orders more particularly one in the nature of Writ of Certiorari calling for the records from the concern authorities and quash the proceedings D/ 63/ 2006, dt.18.02.2014 issued invoking the proceedings under rule 9(4) section 24 of A.P. Bhoodan and Gramadan Act, 1965 as arbitrary, illegal, high handed, malafide, unconstitutional

contrary to law and consequently direct the respondents not to interfere peaceful possession and enjoyment of the land to an extent of 5 acres in Sy.No.132 situated at Paradesipallem Village, Chinagadily Mandal, Visakhapatnam District....”

The counsel appearing for parties submit that the averments in W.P.No.2870 of 2008 can be referred to for disposing of both writ petitions.

The petitioner alleges that in File No.4033/2003 (S.No.017094) dated 18.08.2003 an extent of 5 acres in Sy.No.132 of Paradesipallem was allotted by the 5th respondent under Section 14 of A.P.Bhoodan and Gramdan Act, 1965 (for short ‘the Act’) read with Rule 9 of A.P.Bhoodan and Gramdan Rules, 1965 (for short ‘the Rules’). According to petitioner, she is in possession and enjoyment of the land allotted through proceedings, dated 18.08.2003; the name of the petitioner was recorded in the revenue records and, therefore, the petitioner is a person having subsisting interest in the subject matter of writ petition. The petitioner to stay clear from any shroud on the allotment of land by 5th respondent and also to state all relevant facts relating to the subject matter of the writ petition has further stated that the 5th respondent issued show-cause notice Ref. No.D/188/07, dated 25.10.2007, proposing to cancel the allotment made through proceedings, dated 18.08.2003. On 05.11.2007, the petitioner alleges to have submitted reply to the show-cause

notice dated 25.10.2007 and thereafter, through communication Ref.No.D/188/07, dated 24.11.2007, the 5th respondent forwarded explanation of petitioner etc., for remarks of the Revenue Department. While matter stood thus, the 2nd respondent issued Section 4(1) Notification vide Gazette No.7/08 dated 28.01.2008 proposing to acquire an extent of Ac.50-56 cents in Sy.No.132 of Paradesipallem Village, Chinagadily Mandal, Visakhapatnam District for the purpose of developing integrated Satellite Township by the Visakhapatnam Urban Development Authority-3rd respondent. It is matter of record that by dispensing with the enquiry under Section 5-A of the Land Acquisition Act, the 2nd respondent approved draft declaration under Section 6 through proceedings R.Dis.No.112/2008/G1, dated 02.02.2008. In this back ground, the challenge of petitioner against the impugned land acquisition is two fold. Firstly, the 4(1) Notification proposing to acquire land for Integrated Satellite Town Ship at the instance of VUDA is not a public purpose and non-disclosure of names of all the allottees of land by Boodan Yagna Board in Sec.4(1) notification cannot and could not be treated as conforming to the procedure stipulated by the Land Acquisition Act. Secondly, dispensing with 5-A enquiry firstly is not supported by valid and tenable reasons and amounts to denying a fair and reasonable opportunity to petitioner to place all the details relating to the

land claimed by the petitioner and therefore, the invocation of urgency clause is arbitrary.

In support of his contention, Sri Hanumantha Rao placed reliance on the judgments of the Hon'ble Supreme Court in '*Radhy Syam vs State of U.P.*'¹, '*Anand Singh vs. State of U.P.*'² and '*Laxmi Devi State of Bihar*'³ and contends that dispensing with 5A enquiry is illegal and unconstitutional and therefore, the impugned proceedings are liable to be set aside.

Sri C.Hanumantha Rao, after taking note of the stand taken by the respondents in the counter affidavit, has confined his challenge to the draft declaration issued through proceedings R.Dis.No.112/2008/G1, dated 02.02.2008 and prayed for setting aside the same and affording fair and reasonable opportunity to the petitioners in the proposed acquisition.

The Government Pleader for Revenue referring to the stand taken in the counter affidavit contends that the petitioners in these writ petitions cannot be treated as either allottees or assignees under Section 14 of the Act, for according to him, Section 14 of the Act deals with power of the 5th respondent to grant land at the disposal of the 5th respondent to eligible allottees and according to Rule 9(i) of the

¹ (2011)5 SCC 553

² (2010) 11 SCC 242

³ (2015) 10 SCC 241

Rules, unless and until the allotment results in assignment, the allotment by itself cannot be treated as creating a right in favour of petitioners. In other words, what remains today is tentative allotment, without assignment, hence the petitioners have no subsisting interest. According to him, as per revenue records, Boodhan Yagna Board/5th respondent is shown as pattadar and by showing the name of person, who has subsisting interest, Section 4(1) Notification is issued and therefore no exception to 4(1) Notification by referring to non-disclosure of petitioners names can be raised. He draws the attention to the averments in the counter affidavit and contends that the entire extent is not sub-divided, the possession pleaded by the petitioners is untenable and further keeping in view the urgency in the matter, enquiry under Section 5-A is dispensed with through proceedings dated 28.01.2008.

Sri Jagadish Chandra Prasad opposes the writ prayers by relying on the stand taken by the 3rd respondent in paragraph '2', which reads thus:-

"In reply to paras 3 and 4 of the affidavit, it is respectfully submitted that the Bhoodan Yagna Board has issued proceedings allotting land to the petitioner in the proceedings of the Board, and as per Sections 9 to 12 of the Bhoodan and Gramdan Act, 1965 the concerned M.R.O./Tahsildar has to issue Patta in Form IV imposing conditions in one part and the second part is that the land has to be subdivided and to be handover physical possession since S.No.132 is a full field with a total extent of Ac.50-56

cts. But the M.R.O./Tahsildar has not issued any Patta and he neither subdivided the land nor handed over physical possession. The contentions of the petitioner that the land was handed over to the petitioner is false. The Tahsildar in a report to the Collector and also to Bhoodan Yagna Board, Hyderabad informed that the land is vacant and there is no such individual by name of G.Sidevi D/o.Late G.C.V.Ramana in the revenue records related to the Paradesipalem Village. Hence, the petitioner's contentions that she was granted 5 acres of land in S.No.132 of Paradesipalem Village, Chinagadili Mandal, Visakhapatnam District are false."

According to him, the name of G.Sidevi is not reflected in the revenue records and there is no such individual by name G.Sidevi. On this aspect of the matter, Sri Hanumantha Rao by referring to various affidavits filed by G.Sidevi contends that the identity, allotment, etc., are matters that can be gone into if enquiry under Section 5-A is conducted.

I have heard Sri C.Hanumantha Rao for petitioners, learned Government Pleaders for Revenue and Land Acquisition and Sri P.Jagadish Chandra Prasad, Standing Counsel for VUDA.

Examining the case on hand, having regard to several disputed questions of fact and also the correspondence on the subject taken up by the 5th respondent with District Collector, Visakhapatnam, the relevant circumstances refined are that the substance of Section 4(1) Notification was published in the local newspaper on 30.01.2008. The 2nd respondent dispensed with 5-A enquiry and issued draft declaration vide Proceedings

R.Dis.No.112/2008/G1 dated 02.02.2008 and the same was gazetted on even date. Section 4(1) Notification was issued for constructing an integrated Satellite Township by 3rd respondent. The Integrated Town Ship ought not to be taken as one of the projects where urgency clause can be invoked and enquiry under Section 5-A can be dispensed with in a monotonous fashion. The burden is on the 2nd respondent to discharge that even to the limited extent the law permits the discretion has been objectively and judiciously exercised. The affidavit filed by the 2nd respondent except referring to approving the proceedings for issuing draft declaration, no other reason which can be related to invoking the urgency clause is stated. This Court has granted stay of dispossession of petitioners and the same is continuing as on date.

Having regard to the position of law and the proximity of dates namely Section 4(1) notification, Draft Declaration, I am satisfied that the writ petitions can be ordered to the limited extent of setting aside the draft declaration in Proceedings R.Dis.No.112/2008/G1, dated 02.02.2008. The 2nd respondent is given liberty to issue notices to all the interested persons and proceed in the matter in accordance with law.

Having regard to the objections raised by the contesting respondents, the 2nd respondent conducts enquiry into all

aspects including identity of individuals and takes note of the letter of 5th respondent dated 08.10.2007 and passes orders in accordance with law. The petitioners as and when receive notices in the proposed enquiry under Section 5-A, are entitled to take all objections and also place documents in support of allotment, assignment or identity of individuals.

The 2nd respondent is given liberty to decide whether to proceed with the acquisition or pass order on the letter communicated by the 5th respondent in this behalf and communicate such decision to petitioners. In other words, if the assignment is treated as incomplete or cancelled, the respondents can proceed with the acquisition with the details already reflected in Section 4(1) notification. On the other hand, if the case of petitioners is accepted by 2nd respondent, the petitioners are afforded opportunity in Section 5-A enquiry.

Status-quo in all aspects, is directed to be maintained, till a comprehensive decision is taken in this behalf.

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

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

S. V. BHATT, J

Date: 09-08-2017
Prv

