

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.15737 OF 2006

ORDER:

The proceedings dated 22.05.2006 issued by the 1st respondent-District Collector, Nellore District, under the Land Acquisition Act, 1894 (in short "Act 1894") is challenged before this court.

2. While issuing Notification under Section 4 (1) of the Act 1894 the 1st respondent has dispensed with the Section 5(A) enquiry by invoking the powers under Section 17(4) of the Act 1894. The purpose of proposed acquisition of land was for providing house sites to the weaker sections of the society. A specific ground has been raised in the Writ Petition that though the Notification under Section 4(1) of the Act 1894 was published in newspapers, the same was not published in the official gazette as required under the Act. Apart from that it was also contended that there was no urgency when it comes to the matter of providing house sites and thereby the invocation of Section 17(4) of the Act 1894 itself is illegal. The petitioners also contended that they are small farmers owning only Ac.3-51 cents of dry land situated in Survey Nos.183-A, 183-B and 183-C of Vavilla village, Vidavaluru Mandal, Nellore District, and thus eligible for the benefit of small farmers. There are other various grounds which have been raised in the writ petition.

3. In the counter affidavit filed by the respondents it was stated that the Draft Notification was published in District Gazette on 29.05.2006, likewise the Draft Declaration was also published in

District Gazette on 01.06.2006. The *factum* of notifying urgency clause admitted and thereafter it was asserted that the Award has been made on 05.12.2006.

4. Petitioners filed a reply affidavit categorically denying any notice having been issued to them either under Section 9 (3) or under Section 10 (1) of the Act 1894 with respect to the Award, enquiry and the method that has been adopted by way of substitute notice with a *mala fide* intention. Petitioners further asserted in the reply affidavit that the petitioners are permanent residents of Vavilla village and the question of serving substituted notice would not have arisen and the Award which is made antedate after receiving interim orders of this Court dated 22.01.2007 to defeat the issues raised in the Writ Petition.

5. Having heard learned counsel for the petitioners and learned Government Pleader for the Land Acquisition, one important aspect which is required to be noticed is that the Land Acquisition Act, 1894 has been repealed by the Act "the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "Act 30 of 2013"). In terms of Act 30 of 2013, except in certain circumstances, the land acquisition proceedings initiated under the Act 1 of 1894 would stand lapsed. Apart from that in the present case though the counter affidavit filed asserting that the procedure has been followed, one crucial aspect which requires to notice is that absence of specific assertion that 80% of the compensation as is required to be paid in cases of invocation of urgency clause under Section 17(4) of the Act of 1894, either by

way of payment or by way of deposit to the appropriate court. To enable the learned Government Pleader to ascertain this aspect time was granted on 04.07.2017 and learned Government Pleader submits that there is no material evidencing the payment of 80% of the compensation amount having been made prior to making Award on invocation of the urgency clause, as mandated under Section 17 of the Act 1894. The non-compliance of the depositing of money and the consequences thereof are well settled by the judgment of the Supreme Court in **LAXMI DEVI V. STATE OF BIHAR AND OTHERS**¹, which is also followed subsequently. In terms of the judgment of the Supreme Court in Laxmi Devi case (1 supra) the land acquisition proceedings under Section 4(1) of the Act 1894 is required to be quashed.

6. Accordingly the Writ Petition is allowed quashing the impugned proceedings dated 22.05.2006. No order as to costs.

7. Consequently, the Miscellaneous Petitions pending, if any, shall also stand closed.

CHALLA KODANDA RAM, J

Date:12.07.2017.

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¹ (2015) 10 SCC 241