

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.25945 OF 2006

Date 25.07.2017

Between:

P.Sudha Madhavi.

... Petitioner

AND

The District Collector/Land Acquisition Officer,
Visakhapatnam and others.

.....Respondents



HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.25945 of 2006

ORDER:

Petitioner's lands are sought to be acquired by issuance of notification dated 23.05.2006 under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'), and draft declaration dated 22.06.2006 under Section 6 of the Act. Urgency clause was invoked under Section 17(4) of the Act and enquiry, under Section 5-A of the Act, was dispensed with mechanically. Hence the writ petition.

Impugned notification states that acquisition is for the purpose of Integrated Special Economic Zone. This requirement is not of such an emergent nature as would justify invocation of urgency clause and dispensing with the enquiry under Section 5-A of the Act. Enquiry under Section 5-A of the Act is a salutary statutory provision intended for affording a reasonable opportunity to the owners of lands to object to the acquisition on any relevant ground as they wish to submit.

Land Acquisition Act provides for special powers in the case of perceived urgency, in terms of Section 17. Objections preferred under Section 5A constitute the Constitutional right to property of every citizen; and inasmuch as Section 17(4) enables the obliteration of this valuable right, this Court has repeatedly stated that valid and pressing reasons must be present to justify the invocation of these provisions by the Government. It is

apparent that urgency provisions cannot be pressed into service or resorted to if the acquisition of land is for Companies; and possession of the land can be taken on grounds of urgency if and only if there is contemporaneous payment of eighty per cent of the estimated compensation, otherwise making the acquisition vulnerable to vitiation. Even where the urgency provisions contained in Section 17 are resorted to, ordinarily the provisions of Section 5A have to be adhered to, i.e. inviting and then deciding the objections filed by the landowners. Significantly, sub-Section (4) of Section 17 does not exempt compliance with the publication of the declaration under Section 6 and the hearing of parties preparatory to the passing of an award under Sections 9 to 11 of the Act. The L.A. Act postulates that the urgency clause can be pressed into service at two stages. Firstly, ordinarily possession can be taken fifteen days after the publication of the Section 9 notice. The decision to procure possession on an urgency basis can be taken by the Government either at the very inception of the proceedings or at any time preceding or contemporaneous to the date of the issuance of the Section 9 notice. In both these contingencies the valuable right of the landowner to file objections and resist the acquisition by virtue of Section 5A remains unimpaired. Secondly, the Government can invoke sub-Section (4) and dispense with the valuable Section 5A right; in which event, logical, cogent and well-

reasoned notings must be simultaneously articulated in writing for taking this decision.

This Court, while admitting the writ petition on 13.12.2016, stayed all further proceedings pursuant to notification. It means, award under Section 11 has still not been made, and payment of compensation was not made. As on date, the possession is with the petitioner. Acquisition of land under the urgency provisions was required to be set aside for the reason that the State had failed to pass an award under Section 11 within two years and had also failed to pay eighty per cent of the estimated compensation required under Section 17(3A). The acquisition dated 23.05.2006 is set aside for non-compliance with the provisions of Section 11A and 17 of the L.A. Act.

The Writ Petition is, accordingly, allowed. However, liberty is given to the respondents to initiate proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 if the land is required for any public purpose.

Miscellaneous petitions pending, if any, in the writ petition shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date: 26.07.2017
Gk

