

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 28748 of 2008

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the notification Rc.G4/ 5266/ 2008 dated 05.12.2008 issued by the first respondent in Form-2A under Section 4 (1) of the Land Acquisition Act, 1894, published in Saakshi Newspaper on 14.12.2008 to acquire part of petitioner's land in Sy.Nos.296/ 5 and 296/ 6 of Arisepalli Village, Machilipatnam Mandal, Krishna District, as illegal, arbitrary; and contrary to the provisions of the Land Acquisition Act, and consequently set aside the same.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner claims to be owner and possessor of land admeasuring Ac.0.82 cents in Sy.No.296/ 5 and Ac.0.36 cents in Sy.No.296/ 6 of Arisepalli Village, Machilipatnam Mandal, Krishna District, having acquired the same through gift settlement deed bearing document NO.445/ 1996 dated 27.03.1996. The second respondent issued notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short "the Act") vide reference No.G4/ 5266/ 2008, dated 05.12.2008, to acquire part of petitioner's land referred to above, for providing house sites to the weaker sections under Indiramma scheme. Challenging the said notification the petitioner preferred the present writ petition.

3) A counter came to be filed by the respondents stating that the Government has taken a decision to provide residential houses/ house sites to the eligible beneficiaries in all the villages under Indiramma Scheme and the village Chittipalem was also selected under Indiramma Housing Programme Phase-III for issuing house site pattas to the eligible beneficiaries. As the land of the petitioner was fit for providing house sites to the poor people, the same is proposed for acquisition, moreover, as the husband of the petitioner is a big business man dealing in wholesale business in oil, jaggery and tamarind, deriving more income and acquisition of the said land will in no way effect the financial status of the petitioner. Hence, draft notification was approved and accordingly notification under Section 4 (1) of the Act vide Rc.G4/ 5262/ 2008 dated 05.12.2008 came to be published in Sakshi Newspaper and Hindu News Paper on 14.12.2008 and there is no illegality or arbitrariness in issuing the notification. It is also stated in the counter that since the scheme is intended to benefit weaker section people, the Land Acquisition Officer has taken up the acquisition for public purpose and there is no motive behind it.

4) On 30.12.2008, this Court while admitting the writ petition passed the following order:

“Learned Government Pleader for Land Acquisition takes notice on behalf of the respondents and seeks three weeks time to file counter affidavit.

Sri C. Raghu, learned counsel for the petitioner would state that the second respondent-Revenue Divisional Officer has no jurisdiction to conduct Section 5-A enquiry and he should be held disentitled from holding Section 5-A enquiry.

I see no reason to pass such an order at this stage. While Section 5-A enquiry may go on it is made clear that the said enquiry and any orders passed pursuant thereto shall be subject to further orders in the W.P.M.P.”

5) The point that arises for consideration is whether the proceedings initiated under the provisions of the Land Acquisition act, 1894 gets lapsed since no declaration is passed till date.

6) A perusal of the material placed before the Court would show that the notification under Section 4 (1) of the Act came to be issued on 05.12.2008 and the writ petition was filed on 29.12.2008. On 30.12.2008 this Court passed an order that Section 5-A enquiry shall go on and any orders passed pursuant thereto shall be subject to further orders in the W.P.M.P. Since Section 5-A enquiry was directed to be continued, consequent declaration under Section 6 (1) of the Act should have made within a period of one year from the date of declaration of Section 4 (1) notification. Though there is a specific direction to proceed further, the authorities failed to do so. As the authorities failed to comply with the mandatory requirements of law, the writ petition is allowed, quashing the notification dated 05.12.2008 issued under Section 4 (1) of the Act. However, it shall not preclude the respondents from initiating fresh proceedings in

accordance with the provisions of the New Act, if they still feel that the land is necessary. There shall be no order as to costs.

7) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

23.02.2017
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