

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.1040 OF 2007

ORDER:

The land acquisition proceedings dated 29.05.2006, initiated under Section 4(1) of the Land Acquisition Act, 1894 (in short "the Act") invoking urgency clause under Section 17(4) of the Act and subsequent declaration dated 01.06.2006 under Section 6 of the Act, is challenged before this Court.

2. Briefly stated the grounds urged are that there are alternative government lands available for acquisition and it is only on account of political rivalry in the village the lands of the petitioner were acquired and further the lands acquired earlier for the purpose of house sites are still vacant and they were not been utilised and in that view of the matter the acquisition *per se* is *malafide* and liable to be set aside.

3. A detailed counter affidavit is filed by the Land Acquisition Officer stating that since the State Government has taken up Indiramma Programme as a prestigious programme, introduced for providing benefits to the weaker sections in a time bound manner, they invoked the urgency clause under Section 17(4) of the Act for dispensing with the enquiry under Section 5-A of the Act and issued a Notification under Section 4(1) of the Act on 29.05.2006 to acquire the land to an extent of Ac.5-10 cents, situated in R.S.Nos.232 and 233 of Lingavaram village, Gudivada Mandal, Krishna District, for the purpose of providing house sites to the weaker sections of the society. Accordingly, a Draft Notification under Section 4(1) of the Act was published in Gazette E.O.No.32/06, dated 01.06.2006 and a Draft Declaration under

Section 6 of the Act was also published in Gazette E.O.No.45/06, dated 09.06.2006 and published the same in newspapers. It is further asserted that after publishing / serving Notices under Section 9(1), 10 & 9(3), 10 of the Act a final Award enquiry was conducted on 29.08.2006. Since no individual attended the enquiry, after publication of notices tendering 80% compensation under Section 17(3)(A)(a) of the Act, possession of the land was taken on 02.09.2006 and as the land owners have not turned up to receive the said compensation, the same was deposited to the Court of Senior Civil Judge, Gudivada, under Section 31(2) of the Act on 28.03.2007. It is further asserted that the poramboke lands situated in R.S.Nos.162 & 163 cannot be utilised as they were intended for public utility and all the lands in Gudivada Mandal are wet / irrigated dry lands under Krishna Barrage Ayacut and those lands are low lying than the residential areas and as there are no dry lands fit for house sites and the proposed land is quite suitable for house sites, Government initiated land acquisition proceedings for the subject land. It is further submitted that the owner of the subject land belongs to a rich family and residing in U.S. and his position will not be affected by the proposed acquisition and he never raised any objections about the acquisition except simply mentioning about the village factionism in his letters. Hence, prayed for dismissal of the writ petition.

4. Learned counsel for the petitioner Sri P. Vinayaka Swamy would urge that though in the counter affidavit it was stated that the possession has been taken over on 02.09.2006, even as on date the land is in possession and enjoyment of the petitioner and

there is no details about the alleged compensation having been deposited in the Civil Court. It is further submitted that the land acquired in the year 1985 is still unallotted and vacant apart from this there is Government land, which is unused and uncultivable land available between main village and the Banjar land. Hence, prayed for quashing of the impugned proceedings.

5. On the other hand, learned Government Pleader by reiterating the contents in the counter affidavit submitted that the land which was acquired earlier in the year 1985 has been assigned then and there only but for want of approach road the assignees did not occupy the plots and further submitted that at present construction of houses have already been taken up under Indiramma Scheme in the said land and the work is in progress.

6. Having considered the respective submissions and material placed on record, it may be noted that there is no reply affidavit filed by the petitioner denying the averments in the counter affidavit, especially for the reasons mentioned in the counter why the land, which was earlier acquired, could not be utilised for the purpose of house sites and also with regard to the unsuitability of the Government land which was available. In the circumstances, the grounds urged on behalf of the petitioner cannot be accepted. However, the fact remains that though it was asserted in the counter affidavit that the compensation has been deposited in the Court, no particulars have been mentioned. In the light of the judgment of the Supreme Court in **Laxmi Devi v State of Bihar and Others**¹ if the compensation amount is tendered and the same is refused it shall be deemed that 80% of the compensation has

¹ (2015) 10 Supreme Court Cases 241

been paid. In the present case, it is a specific assertion on the part of the respondents that the compensation has been deposited in the Civil Court in terms of Section 31 of the Act, which has not been denied by the petitioner. In the circumstances and in the light of the ratio laid down in **Laxmi Devi case** (1 supra), it is deemed that the compensation has been tendered in compliance with the provisions of the Act, 1894. However, though Section 6 declaration was made there is no Award passed. In the circumstances, Section 24(1)(A) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short "Act, 2013"), would apply to the present case on hand, which mandate computation of compensation to be done in accordance with the provisions of the Act, 2013.

7. In this particular case, it may be noted that the land acquisition proceedings have been initiated by invoking the urgency clause under Section 17(4) of the Act. Here a glance may be taken on Sections 17 (3-A) and Section 17 (5)(a) of the Act:

Section 17 (3-A) – Before taking possession of any land under sub-section (1) or sub-section (2), the Collector shall, without prejudice to the provisions of sub-sec.(3), -

- (a) Tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested entitled thereto, and
- (b) Pay it to them, unless prevented by some one or more of the contingencies mentioned in Section 31, sub-section (2),

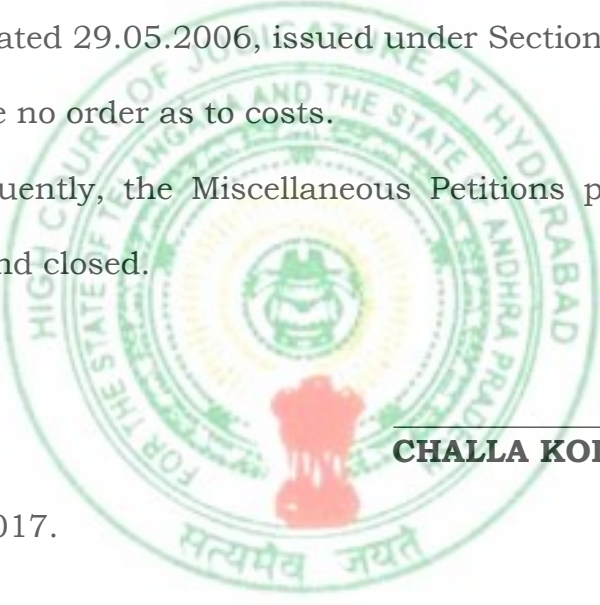
And where the Collector is so prevented, the provisions of Section 31, sub-section (2), except the second proviso thereto, shall apply as they apply to the payment of compensation under that section.

Section 17 (5)(a) – In any case where the State Government have directed under sub-section (4) that the provisions of Section 5-A shall not apply, the Collector shall take possession of the land within three months thereof.

8. In the present case on hand the possession has been taken on 02.09.2006 i.e., after lapse of three months from the date of Notification, under Section 4(1) of the Act, dated 29.05.2006, and further it is to be noted that after taking possession only 80% of the compensation amount has been deposited in the Civil Court on 28.03.2007, that is only after passing interim order by this Court on 26.03.2007, and thereby failed to follow the provisions as mandated under Section 17 (3-A) of the Act. Therefore, the entire proceedings are vitiated.

9. Accordingly, the Writ Petition is allowed quashing the Notification dated 29.05.2006, issued under Section 4(1) of the Act. There shall be no order as to costs.

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



CHALLA KODANDA RAM, J

Date:09.08.2017.
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