

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.2914 OF 2008

ORDER:

This Writ Petition is filed questioning the Notification, dated 05.09.2007, issued under Section 4(1) of the Land Acquisition Act, 1894 (in short "Act 1894") and the Draft Declaration dated 02.02.2008 made under Section 6 of the Act 1894.

2) It is the case of the petitioners that the 2nd respondent has issued Section 4(1) Notification, dated 05.09.2007, proposing to acquire an extent of Ac.190-31 cents of land, for the purpose of issuing house site pattas to the weaker sections of the society, out of which Ac.16-16 cents of land, situated in Sy.Nos.35/2; 46/3; 49/2; 46/1; 46/2A of Modameedipalli Village of Proddatur Mandal, Cuddapah District, belongs to the petitioners. Petitioners are all small farmers and the land is a dry land. Pursuant to the notice issued for enquiry under Section 5-A of the Act 1894, they have submitted their detailed objections on 04.10.2007, thereafter, petitioners were issued with a notice on 14.12.2007 directing them to appear on 29.12.2007 for hearing and petitioners promptly attended on that date. However, no enquiry was conducted on that date and they were informed that fresh notices would be sent to them in due course. Surprisingly, thereafter, Section 6 Draft Declaration was made on 30.01.2008, which was published on 02.02.2008. Not giving an opportunity to the petitioners is in violation of the principles of natural justice, apart from the mandatory procedure prescribed under the Act 1894.

3) Learned counsel for the petitioners submits that this Court while admitting the writ petition granted interim stay of

dispossession on 14.02.2008. Learned counsel for the petitioners places reliance on the judgment of the Supreme Court in **LAXMI DEVI V. STATE OF BIHAR AND OTHERS**¹ besides placed reliance on the order of the Division Bench in W.A.No.327 of 2017, dated 01.02.2017, wherein this Court had taken into consideration that the stay of dispossession does not bar passing of an Award and in the circumstances when the Award is not made within two years period, as mandated under Section 11-A of the Act 1894, the Notification issued under Section 4(1) of the Act 1894 would lapse.

4) Learned Government Pleader by making a reference to the counter affidavit and further to the material enclosed along with the counter affidavit would submit that the contention of the petitioners that they were not given an opportunity of hearing, is not correct and is not borne out from the record. As a matter of fact, on 31.12.2007 all the petitioners appeared, as is evident from the signatures which are appended to the objections, which bears a date. In the circumstances, learned Government Pleader opposed the Writ Petition and submits that the writ petition deserves to be dismissed.

5) Having considered the respective submissions and the facts of the present case, it cannot be said that no opportunity was given to the petitioners as the material placed before this court discloses that petitioners were present on 31.12.2007 before the Land Acquisition Officer. In the circumstances, so far as the Draft Declaration is concerned, it cannot be said that the same is vitiated on account of the violation of principles of natural justice. However, when the petitioners filed the Writ Petition before this

¹ (2015) 10 SCC 241

Court, on 14.02.2008 this Court granted only stay of dispossession. In other words, there was no impediment on the Land Acquisition Officer to conduct Award enquiry and to pass orders. Inasmuch as, Section 6 Draft Declaration was made on 02.02.2008, the Award ought to have been passed within two years from 02.02.2008. Admittedly, no Award was made within the period as mandated under proviso to Section 11-A of the Act 1894. In such circumstances, the Land Acquisition Proceedings would lapse in terms of the proviso to Section 11-A of the Act 1894 and this matter is no more *res integra* as the order of the learned Single Judge in W.P.No.6026 of 2012 has been confirmed by the Division Bench of this Court in W.A.No.327 of 2017.

6) Accordingly, the writ petition is allowed, quashing the Section 4(1) Notification and Section 6 Draft Declaration. There shall be no order as to costs.

7) Consequently, miscellaneous petition pending, if any, shall stand closed.

JUSTICE CHALLA KODANDA RAM

Dated:25.07.2017
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