

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.5910 of 2009

ORDER:

Heard P. Sri Ram for petitioners and the Government Pleader (Land Acquisition) for respondents.

2. Section 4(1) Notification dated 28.02.2009 was published on 03.03.2009 proposing to acquire agricultural land of petitioners in Sy.Nos.96/ 1G and 120/ 2 in an extent of Ac.2.72 cents situated at Kuttubadipalem H/o Kowluru Village, G.Konduru Mandal, Krishna District. According to petitioners the notification is violative of Election Code and also contrary to mandate of Land Acquisition Act, 1984 (for short 'the Act'). The petitioners pray for setting aside the notification impugned in the writ petition.

3. Counsel appearing for both parties submit that the following are the admitted and relevant dates necessary for disposing of the writ petition.

4. On 03.03.2009, Notification under Section 4(1) of the Act was published. On 20.05.2009 notice of enquiry under Section 5-A of the Act was issued. On 20.03.2009, this court granted interim direction restraining the respondents from dispossessing the petitioners from the subject matter of the writ petition, but at the same time allowed other proceedings to go on. Thus further proceedings pursuant to Section 4(1) notification are allowed to be proceeded with.

5. Section 6 of the Act, reads as follows:

“Section 6: Declaration that land is required for a public purpose:-

(1) Subject to the provisions of Part VII of this Act, appropriate Government is satisfied after considering the report, if any,

made under Section 5-A, sub-section (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some Officer duly authorised to certify its order [and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2)],

Provided that no declaration in respect of any particular land covered by a notification under Section 14, sub-section (1), -

- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification; or
- (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification.

6. Learned Government Pleader, on instructions, submits that on 03.03.2010, draft declaration was issued and further steps under Section 9 of the Act were also taken up.

7. Counsel for petitioners challenges the notification primarily on two grounds, namely, that the respondents are under obligation to discharge the burden that draft declaration under Section 6 of the Act was published within the time stipulated by proviso as stated above. Secondly, assuming that the draft declaration was, in fact, published on 03.03.2010, according to him, proceedings initiated for acquisition through Section 4(1) notification must result in passing award within two years.

8. Learned Government Pleader, having regard to the instructions sent on 30.07.2017 and also admitted dates and events, tries to convince this court that the land, in fact, even as on date is required for providing

houses to weak and needy people. On the legal objection raised by the counsel for petitioners, he draws the attention of this court to the stand taken in the counter-affidavit and prays for dismissing the writ petition.

9. The circumstances referred to above not only speak on failure to adhere to time schedule but also suggest that the consequences of such default are attracted. For both the reasons viz., that the respondents failed to satisfy the court that draft declaration was, in fact, made or published within one year from 03.03.2009 and also that award was passed under Section 11-A, hence the proceedings impugned in the writ petition are vitiated and are liable to be set aside and are accordingly set aside.

10. The writ petition is, ordered, as indicated above. The respondents, if are interested in acquiring the land of the petitioners, it is needless to observe that the same shall be in accordance with law under Act 30 of 2013. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S.V.BHATT, J

Date: 02.08.2017
BSS

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