

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.2235 OF 2009

ORDER:

The petitioner prays for Mandamus declaring endorsement Rc.No.3204/2008/G2 dated 09.01.2009 issued by 2nd respondent rejecting the objections raised by petitioner and draft declaration under Section 6 in Rc.3204/08/G2 dated 09.01.2009 under the Land Acquisition Act, 1894 (for short 'the Act'), as illegal, arbitrary and unconstitutional.

The subject matter of impugned objections/declaration is agricultural land of an extent of Acs.1-40 Cts in Sy.Nos.272/1, 272/2 and 272/3 of Nagaram Village and Mandal, Guntur District.

The petitioner alleges to be the owner of subject land acquired through the impugned proceedings. On 06.08.2008, the 2nd respondent issued notification under Section 4(1) of the Act proposing to acquire subject land for providing house sites to weaker section. On 18.09.2008, the 3rd respondent issued notice of enquiry under Section 5-A of the Act. On 30.09.2008, the petitioner submitted objections against the acquisition pursuant to notification dated 06.08.2008. The 2nd respondent through endorsement dated 09.01.2009 overruled the objections raised by petitioner. Later on, the draft declaration was approved and also published on 09.01.2009.

On 10.02.2009, this Court granted interim stay of dispossession until further orders.

The petitioner challenges the order rejecting objections and declaration dated 09.01.2009 as illegal and the enquiry conducted under Section 5-A is unsustainable in law, for the objections were overruled in a routine and monotonous way vide proceedings dated 09.01.2009. With effect from 01.01.2014, Act No.30 of 2013 has been holding the field in the matter of acquisition of land by State in exercise of its power under eminent domain. Hence, counsel for petitioner made submissions keeping in view the overruling of Land Acquisition Act, 1894, effect of repeal/savings and ultimately if circumstances warrant necessity to follow the mandate of Sections 12 to 18 of Act 30 of 2013. The first limb of submissions against rejection of objections and Section 6 declaration dated 09.01.2009 is that vast extent of Government land is available for providing house sites and acquiring the subject land is unnecessary and the acquisition is illegal, arbitrary and objectionable. The counter affidavit though refers to communicating proceedings dated 09.01.2009 to petitioner, no material is placed on record either on the alleged despatch of proceedings dated 09.01.2009 or that the proceedings dated 09.01.2009 satisfy the requirements of Section 5-A of the Act and the binding precedents of Apex Court in RADHY SHYAM v. STATE OF U.P.¹, ANAND SINGH v. STATE OF U.P.² & LAXMI DEVI v. STATE OF BIHAR³. Therefore, the petitioner prays for setting aside the draft declaration dated 09.01.2009. The petitioner further contends that under Section 11-A of the Act, the Award is required to be passed

¹ (2011)5 SCC 553

² (2010)11 SCC 242

³ (2015)10 SCC 241

within two years from the date of publication of declaration i.e., 09.01.2009, in default, the acquisition gets lapsed. In the case on hand, admittedly Award is not passed within two years from 09.01.2009. Therefore, the petitioner prays for setting aside the declaration dated 09.01.2009.

Mr. C.V.R.Rudra Prasad for petitioner contends that without prejudice to the legal contentions adverted to above, the respondents are under obligation to follow Chapter IV of Act 30 of 2013 to continue the proceedings already initiated. According to him, once the proceedings dated 09.01.2009 are set aside as not conforming to the binding precedents referred to above, then what remains is Section 4(1) notification dated 06.08.2008. Either for continuation or completion of acquisition of land under Section 4(1), the respondents are required to follow the entire scheme in Chapter IV of Act 30 of 2013. Slightest deviation in this behalf, according to him, would result in acquisition of property, otherwise than in accordance with law. Therefore, he prays for allowing the writ petition.

The Assistant Government Pleader for Land Acquisition relies on the stand taken in the counter affidavit and contends that the grounds raised by petitioner are untenable and the petitioner is not a small farmer and has sufficient landed property. On the applicability of Section 11-A of the Act, he fairly submits that award, as a matter of fact, is not passed as on date though the interim order granted by this Court was to the limited extent of stay of dispossession. According to him, the land is required for public

purpose of providing house sites to weaker section. For any reason, if this Court accepts the contention of petitioner under Section 11-A of the Act, he seeks liberty to proceed under Act 30 of 2013.

Section 11-A of the Act reads thus:

“11-A. Period within which an award shall be made. -The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse: Provided that in a case where the said declaration has published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.”

In the case on hand, the relevant dates for consideration are as follows:

Section 4(1) notification is dated 06.08.2008.

Section 6 declaration is dated 09.01.2009.

Interim order of dispossession granted by this Court is dated 10.02.2009.

Coming into force of Act No.30 of 2013 is dated 01.01.2014.

From the above dates, it is clear that the Award is not passed as on date and further the respondents are not in a position to satisfy this Court that they have followed the requirements of Section 5-A of the Act, while enquiring into objections.

Without much deliberation, keeping in view the above circumstances, this Court is satisfied that the endorsement dated 09.01.2009 rejecting the objections of petitioner and declaration

dated 09.01.2009 issued under the Land Acquisition Act are illegal and, accordingly, set aside.

The writ petition is ordered. The respondents, however, are given liberty to proceed, if circumstances warrant, for acquisition of subject land by following the procedure prescribed under Act 30 of 2013. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand closed.

21st August 2017

Lrkm



S.V.BHATT,J