

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION Nos.19996 & 20307 of 2017

COMMON ORDER:

The sole petitioner in W.P.No.19996 of 2017 maintained the writ petition against the State of A.P. represented by Principal Secretary, Revenue (LA) Department; District Collector, West Godavari District; Revenue Divisional Officer-cum-Land Acquisition Officer, Kovvur, West Godavari District and Tahsildar, Kovvur, West Godavari District, with a prayer in the writ petition more particularly by way of mandamus declaring the action of respondents to acquire the land owned by the petitioner in S.No.509-1B to an extent of Ac.0.5450 cents and S.No.510-1B to an extent of Ac.1.00 cents of Kovvur Village and Mandal, West Godavari District, without considering the objections raised by the petitioner under Section 15 of the Act No.30/2013 independently and without conducting the social impact assessment and other requirements that to be followed before issuing notification under Section 11 of the Act as illegal and consequently said notification under Section 11(1) dated 14.02.2017 in so far as petitioner and his property concerned and to pass such other just orders.

W.P.No.20307 of 2017 is maintained by the 5 petitioners against selfsame respondent Nos.1 to 4 supra with a prayer in the writ petition more particularly by way of mandamus declaring the action of respondents to acquire the land owned by the petitioners in S.No.509-1C to an extent of Ac.0.29 cents and S.No.509-2B to an extent of Ac.1.08 cents, S.No.509-3 to an extent of Ac.2.48 cents, S.No.510-1C to an extent of Ac.0.46 cents and S.No.510-1D to an extent of Ac.0.05 cents of Kovvur Village and Mandal, West

Godavari District, without considering the objections raised by the petitioners under Section 15 of the Act No.30/2013 independently and without conducting the social impact assessment and other requirements that to be followed before issuing notification under Section 11 of the Act as illegal and consequently said notification under Section 11(1) dated 14.02.2017 in so far as petitioners and their property concerned and to pass such other just orders.

The averments in the respective supporting affidavits of the two writ petitions almost in same line and in particular W.P.No.19996 of 2017 are that pursuant to Section 11 notification, objections submitted on 14.04.2017 after receiving notice dated 17.02.2017 that he is small farmer and only source is agriculture for livelihood and if the land sought to be acquired is deducted what all remains for him is Ac.0.62 cents and there are available lands in the vicinity of big farmers including R.S.No.512 and 49 on the other side of the road in R.S.No.511 and also of the Endowments Department in R.S.No.337 of Ac.5.24 cents and there are nearby to the lands lay outs available for acquisition. It is further averred that in 1999 Government acquired Ac.16.57 cents for providing house sites to the weaker sections of the society and out of said land, some land is vacant and without seeking to utilize the same, the proposed acquisition is unsustainable. Even under Right to Information Act, information sought regarding availability of vacant plots of land acquired in 1999, no information furnished by the A.P. Housing Board, but for orally saying plots are available and the proposed acquisition is without conducting enquiry with regard to number of beneficiaries and extent of land acquired and there is no social impact assessment that was required to be

conducted. The RDO-cum-LAO directed to conduct enquiry on the objections filed by the petitioner and other land owners whose lands sought for acquisition, and Tahsildar submitted the enquiry report stating 3490 beneficiaries were identified during Janmabhoomi and other programs and land of Ac.21.81 cents is required for allotment of house sites under the Urban Housing Program and there is no available government land or any private land nearby. However said report particulars are factually incorrect for what is referred supra and the objections filed by the petitioner and others not properly considered, even nearby to the proposed acquired land there are lands of Pavan Purnima Chowdary, D. Lakshman Rao and N.Rathayamma each having more than 7 acres of land respectively besides Endowments land referred supra. Section 10 of the Act No.30/2013 speaks by special provision for food security and the proposed acquired lands are multi crop dry lands irrigating through bore-wells, even thereby shown in revenue records as dry lands and in view of the same and for social impact assessment not done, no urgency clause under Section 9 of the Act invoked and there is nothing to show any consultation of the local body of the affected area and thereby entitled to the reliefs.

Coming to the affidavit averments of petitioners in W.P.No.20307/2017 supra in addition to what are the facts referred supra what is further averred is similar lands of big farmers are available besides endowment lands and also plots out of the earlier 1999 acquisition, with the housing board and thereby the proposed acquisition cannot be allowed to be proceed with.

The counter affidavit filed by the 3rd respondent-RDO-cum-LAO is with the contentions that several applications received for house sites during Janmabhoomi program and other modes, for providing house sites to the weaker sections in Kovvur Mandal and ultimately 3490 beneficiaries were identified among those applications and for they assessed requirement of Ac.21.80 cents and an extent of Ac.7.51cents in R.S.No.509/1A & 1B etc., in Kovvur Mandal and Town were proposed for acquisition by submitting to the District Collector, Eluru, said proposals from which preliminary notification under Section 11(1) of the Act was approved and RDO issued form VI-B notice to the land owners to attend enquiry Section 15(2) of Act 2013 dated 17.02.2017 and the petitioners attended for enquiry with other land owners and filed objections before the RDO on 18.04.2017 and RDO on the objections reported to the District Collector, who after examining the objections and report of the RDO issued an endorsement to the land owners of the notification stating the request of petitioners could not be considered. The contention that there is no social impact assessment under the Act 2013 is not correct apart from the notified lands are agricultural dry and there is no displacement of families involved during the acquisition and thereby social impact assessment to the persons being affected, if any, does not arise in the case on hand and the contra contentions are far from truth. So far as availability of endowment land concerned, there is a prohibitory order to acquire the endowment land in the pending W.P.No.10547/2006 and thereby for no other private lands available, the proposed acquisition is sought for allotment of house sites to the weaker sections by negating the contra contentions in

the writ petition affidavits. It is also the submission that the petitioners and other land owners attended the enquiry under Section 15(2) of the Act at the RDO Office, Kovvur, on 18.04.2017 pursuant to the notices dated 17.02.2017. Coming to the alienation of the land by Alapati Satyanarayana & Smt. Alapati Krishnaveni to Smt. Garapati Ramya Krishna in R.S.No.509/3 and 510/1D total 2.53 cents concerned same is not carried in the records of ROR Act and said Ramya Krishan who filed application online for mutation of the subject land in her favour and it is from objections filed by Alapati Satyanarayan and his wife Alapati Krishnaveni saying Garapati Ramya Krishna is vendee from them and notices sent to said Ramya Krishna also and the contra averments are untrue and the beneficiaries of 3490 are ascertained as genuine to the eligibility for the proposed acquisition for them. It is also contended that the land is a dry land as per revenue records and only Ac.7.51 cents notified of the required extent of Ac.21.81 cents, it is only in first phase and other extents being acquired in the later phases and thereby sought for dismissal of the writ petitions.

From the respective pleadings, Section 11 of the Act speaks with regard to publication of preliminary notification that where it appears to the Government of the land in any area required for any public purpose, the details of the land to be acquired to be published in the official gazette and in two daily newspapers circulating in the locality of such area of which one shall be in the regional language and also in local language in the Panchayat, Municipality or Municipal Corporation and in the offices of the District Collector, Sub Divisional Magistrate and Tahsildar and by

upload in the website of the appropriate Government concerned in such manner as may be prescribed and after issuance of said notification supra, the concerned Gram Sabha or Sabhas in village level, municipalities in case of municipal areas and Autonomous Councils of the areas be informed of the contents of the notification by calling for a meeting specially for the purpose. The notification shall also contain nature of public purpose involving reasons necessitating displacement of affected persons and summary of social impact assessment report and rehabilitation and resettlement under Section 43 by appointment of the administrator if any and once there is a preliminary notification there shall not be any transactions creating any encumbrance etc., and Collector is entitled on application of any owner to exempt in any special circumstances in writing, such owner from operation of the preliminary notification and after notification under Section 11(1) Collector shall before declaration under Section 19 of the Act undertake and complete the exercise of updating land records within two months.

Section 5 of the Act speaks public hearing for social impact assessment which is required to be prepared under Section 4 by consulting Panchayat or Municipality or Corporation as the case may be at the village or ward level of the affected area in consultation with them and a notification for that to be made available at the Panchayat, Municipality or Corporation as the case may be and in the office of District Collector, Sub Divisional Magistrate and Tahsildar and the social impact assessment shall be completed within 6 months and to be made available to the public by publication under Section 6 and the assessment

included whether proposed acquisition serves public purpose, the estimate of affected families and number of families should be likely displaced, extent of lands, public and private houses, settlements and common properties likely to be affected by the proposed acquisition and whether the extent of land proposed for acquisition is the absolute bare-minimum extent needed for the project and any alternative place considered and found not feasible and environmental impact assessment study also be carried out simultaneously apart from various aspects of social impact study. It also requires for that a public hearing at the affected area with adequate publicity of date, time and venue of hearing to ascertain views of affected families recorded and include and social impact assessment report. Section 10 of the Act speaks no irrigated multi crop land be acquired but for exceptional circumstances as a last resort in aggregate for all projects of District or State, in no case exceed such limits notified as per the specific factors and circumstances and whenever multi-crop irrigated land acquired equitable land of cultivable for agricultural purpose by investment in agriculture for enhancing food security. However the provisions of Section 10 shall not apply in case of projects that are linear in nature relating to railways, highways, major district roads irrigation canals, power lines and the like.

From the above, no doubt the counter affidavit filed by respondents clearly show there is no rehabilitation and resettlement required for no displacement of any abodes from the proposed acquisition and same is also clear from reading of the writ petition affidavits, for nothing done contrary to any

requirement of compliance of Sections 16 to 18 of the Act in this regard.

Coming to the hearing when the material shows including from the writ petition averments of notice given of the date and venue fixed, there is a public hearing as contemplated under Sections 4 & 5 of the Act in relation to the social impact assessment and it is in fact for the house site purpose from the applications received for providing houses to the weaker sections and the entire acquisition is from the private land by saying there is no Government land available in and around and so far as availability of endowment land, the counter affidavits are very clear of there is a High Court Division Bench order against acquisition of the endowments land. Coming to the other objection from the writ petition averments to the proposed acquisition, from Section 15 objections to the Section 11 notification, from the enquiry of lands of big landlords available opposite to the road. In fact from the writ petition averments in 1999 there is acquisition of land for house sites and there are still some plots available of the petitioners saying of nearly 200, such plots available even taken the same when the beneficiaries finalized from the Janmabhoomi program and other applications received with reference to the scrutiny by social impact assessment of 3490, the said availability of 200 plots as per housing board information no way sufficient even. In fact the counter affidavits clearly show the required acquisition is Ac.21.81 cents, where in the first phase proposed acquired about Ac.7.81 cents. Even the proposed acquisition in and around there are house sites and earlier acquisition also when not in dispute, it cannot be said that there is any other better

suitable land than that of the petitioners. Apart from it even as per Section 10 of the Act requirements concerned, it is undisputedly a dry land including as per revenue records and there is no open water source like with canals provided for wet cultivations but for saying bailing water through ground bore-wells for the cultivation. Even on the other not from the writ petition averments, it shows in and around the petitioners alienated part of the land same purchased and divided as house plots and the earlier acquisition is nearby to it including some portion of some of the extents of the petitioners, that itself shows the area of the lands are with house sites and not any irrigated multi crop lands. Thus, there is nothing to show prima facie of the procedure contemplated by Sections 4 to 18 of the Act not strictly followed even what is loosely stating of social impact assessment not required even at one breath while showing compliance and done and any other breath in the counter affidavits.

Having regard to the above, there is nothing to interfere with the process finalized under Section 11 of the Act preliminary notification and hearing of objections in arriving at a conclusion to the requirements of declaration under Section 19 of the Act. It is however giving further opportunity to the petitioners by virtue of this order before taking up the declaration under Section 19 of the Act, within one week from the date of receipt of the order herein, to submit any detailed objection as to in the same area of the proposed acquisition there is any other available land belongs to the Government other than endowments in view of the writ petition prohibition order to acquire endowments land including of any big farmers for the respondents once again to consider any such

suitability and take a final decision and proceed further and but for that there is nothing for this Court from the material available on record to quash the Section 11 preliminary notification and the subsequent proceedings discussed supra.

Accordingly and in the result, both the writ petitions are disposed of.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 01.08.2017
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