

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.7223 of 2005

ORDER:

This Writ Petition has been filed by the 1st petitioner, which is an Ahsram/Mutt represented by its Matadhikari challenging the action of 1st respondent in issuing notification under Section 4(1) of the Land Acquisition Act, 1874 (for short “the Act”) vide G.O.Ms.No.170 Rev (Endts.IV) Department dt.02-02-2005 proposing to acquire land for the development of the 5th respondent religious institution of Ac.0.20 cents in Dwaraka Tirumala of the West Godavari District by invoking sub-Section (4) of Section 17 of the Act and dispensing with the inquiry under Section 5-A of the Act.

2. Learned counsel for petitioners contends that there is in fact no real urgency for invoking sub-Section (4) of Section 17 of the Act since development of 5th respondent religious institution to provide facilities to pilgrims cannot be said to be so important, necessary and urgent as to dispense with the inquiry under Section 5-A of the Act. He placed reliance on the judgments in **Radhy Shyam (Dead) Through L.Rs. and others Vs. State of Uttar Pradesh and others¹**, **Hindustan Petroleum Corpn. Ltd. Vs. Darius Shapur Chenai and others²** and **Union of India and**

¹ (2011) 5 SCC 553

² AIR 2005 SC 3520

others Vs. Kishan Lal Arneja and others³ in support of his contentions.

3. It is not in dispute that on 11-04-2005 there was a stay of dispossession of the petitioners, which continued till date. It has not been vacated and pursuant thereto, the petitioner's Ashram continues to be in possession of the land notified by 1st respondent in the impugned notification.

4. Learned Government Pleader appearing for respondent Nos.1 to 4 and Smt.K.Lalitha, learned Standing Counsel for 5th respondent submit that 5th respondent-Temple is an ancient temple popularly known as "China Tirupathi"; there is heavy inflow of pilgrims from various parts of Andhra Pradesh; and there was no adequate infrastructure to provide facilities to the pilgrims. It is stated that in order to provide amenities to the pilgrims like cottage facilities to the invitees of the marriages performed at the temple, parking places to the vehicles, construction of additional Kalyana Mandapams, to widen the roads to provide roads to reach the deity on the hill etc., the Commissioner of Endowments instructed the 5th respondent to acquire surrounding lands to provide amenities; and as per the said requisition dt.20-10-2000 made to the 2nd respondent, the impugned notification was issued. It is stated that in all Ac.103.82 cents of land in Dorsanipadu village and Ac.19.00 cents in Dwaraka Tirumala village were notified including

³ 2004(5) ALD 47 (SC)

the land of the petitioners by invoking Section 17(4) of the Act by dispensing with inquiry under Section 5-A of the Act. It is stated that the declaration under Section 6 of the Act was published on 24-02-2005 and that the petitioners cannot oppose the acquisition of the land in question by 1st respondent for the benefit of 5th respondent-temple for providing amenities to the pilgrims, who visit the said temple. It is stated that the question of urgency is a matter of subjective satisfaction of the Government and it cannot be scrutinized by this Court.

5. In **Kishan Lal Arneja** (3 supra), the Supreme Court considered the circumstances under which the power under sub-Section (4) of Section 17 of the Act can be invoked and inquiry under Section 5-A of the Act can be dispensed with. It observed that Section 17 of the Act confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5-A of the Act in exceptional cases of urgency; and such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. It held that a public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power, as use of such power deprives a landowner of his right in relation to the immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act, and that the authority must have subjective

satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e. whether taking possession of the property cannot wait for a minimum period within which the objections could be received from the landowners and the inquiry under Section 5-A of the Act could be completed. It held that such power can be invoked only if the very purpose for which the land is being acquired urgently would be frustrated or defeated, if such power is not invoked. It stated that normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations due to earthquake, flood or some specific time-bound project. It held that a citizen's property can be acquired in accordance with law but it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its objections for due consideration of the acquiring authority. It held that while applying the urgency clause, the State should indeed act with due care and responsibility and invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State Administration.

6. This principle has been reiterated in **Hindustan Petroleum Corpn. Ltd.** (2 supra) and held that when the decision making process for invoking the urgency clause under Section 17 of the Act itself is in question, the power of judicial review can be exercised by

the Court in the event the order impugned suffers from illegality, irrationality and procedural impropriety, and that in case of non-application of mind on the part of the State Government, the Court ought to interfere with the exercise of power under Section 17(4) of the Act.

7. In **Radhy Shyam** (1 supra), the Supreme Court again reiterated these principles. The Court held that Section 5-A embodies the most important dimension of the rules of natural justice and that it lays down that any person interested in any land notified under Section 4(1) of the Act may file objections in writing within 30 days of the publication of the notice opposing the proposed acquisition. It considered several cases decided by the Supreme Court on this point and held that the satisfaction of the Government on the issue of urgency is subjective but is a condition precedent to the exercise of power under Section 17(1) of the Act and the same can be challenged on the ground that the purpose for which the private property is sought to be acquired is not a public purpose at all or that the exercise of power is vitiated due to *mala fides* or that the authorities concerned did not apply their mind to the relevant records and factors. It held that the power under Section 17(1) read with Section 17(4) of the act can be invoked only when the purpose of acquisition cannot brook the delay of even a few weeks or months, and that before excluding the application of Section 5-A of the Act, the authority concerned must be fully satisfied that time of few weeks or months likely to be taken in

conducting inquiry under Section 5-A will, in all probability, frustrate the public purpose for which the land is proposed to be acquired. It held that acquisition of land for residential, commercial, industrial or institutional purposes can be treated as an acquisition for public purposes, but that by itself, does not justify the exercise of power by the Government under Section 17(1) and/or 17(4) of the Act and that the Court can take judicial notice of the fact that planning, execution and implementation of the schemes relating to the development for such purposes take a few years and in such circumstances, private property cannot be acquired by invoking Section 17 and dispensing with Section 5-A of the Act.

8. The notification mentioned that the acquisition is for the purpose of development of the 5th respondent-temple. It cannot be said that this purpose mentioned in the notification warrants invoking of sub-Section (4) of Section 17 of the Act and dispensing with inquiry under Section 5-A of the Act. In view of the above settled legal position, I am of the view that the purpose for which the lands of the petitioners are sought to be acquired by the impugned notification is clearly not one where it can be said that conducting of 5-A inquiry, which may take a few weeks or months, would frustrate the very purpose of acquisition. It is clearly a case of non-application of mind by 1st respondent on the aspect as to whether urgency clause under sub-Section (4) of Section 17 of the Act should be invoked at all.

9. Accordingly, it is declared that there was no urgency for invoking sub-Section (4) of Section 17 of the Act by 1st respondent and for dispensing with inquiry under Section 5-A of the Act. Consequently, the declaration under Section 6 of the Act issued by the 1st respondent and which was published in the West Godavari District Gazette No.10 dt.24-02-2005 apart from publication being published in Eenadu daily Telugu Newspaper dt.25-02-2005 are set aside.

10. Since it is not possible to issue any declaration under Section 6 of the Act at this point of time, having regard to the repeal of the Act by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the impugned notification under Section 4 of the Act published vide G.O.Ms.No.170 Revenue (Endowments IV) Department dt.02-02-2005 is also set aside insofar as the land of the petitioners are concerned. However, this will not preclude the respondents, if they so desire to acquire the land of petitioners under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to do so strictly in accordance with the provisions laid down therein.

11. The Writ Petition is allowed with the above directions with costs of Rs.5,000/- (Rupees Five Thousand only) to be paid by respondents to the petitioners.

12. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 21-08-2017

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