

**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**WRIT PETITION No. 18238 of 2008**

**ORDER:**

1) Heard learned counsel for the petitioners, Government Pleader for Land Acquisition.

2) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the proceedings of the 1<sup>st</sup> respondent/District Collector, East Godavari vide Ref.G2/2244/08 dated 21.04.2008 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act, 1894") and the consequential proceedings dated 29.07.2008 vide Ref.G2/2244/2008, insofar as it relates to acquisition of the petitioners' land to an extent of Ac.1.45 cents of the 1<sup>st</sup> petitioner and Ac.1.44 cents belonging to the 2<sup>nd</sup> petitioner situated in Sy.No.102 of Nellipudi village, Sankhavaram Mandal, East Godavari District as arbitrary, illegal and opposed to the Government policy and consequently direct the respondents not to interfere with the said lands.

3) The averments in the affidavit filed in support of the writ petition would show that the second petitioner is having agricultural dry land to an extent of Ac.1.45 cents in S.No.102 situated in Nellipudi village, Sankhavaram Mandal, East Godavari District. Out of the said land, he gifted land an extent of Ac.1.00 to his daughter at the time of her marriage towards her Pasupu Kumkuma. The left

over land admeasuring Ac.0.45 cents was in favour of his family only. Similarly, the first petitioner, who is the elder brother of the second petitioner, was also having land to an extent of Ac.1.44 cents in the same survey number. The first petitioner was having 3 sons. Out of which, 2 sons were married and one is remained unmarried. In notional partition, the 1<sup>st</sup> petitioner was to get about 0.36 cents. As such, both the petitioners are small farmers. It is further stated that while things stood thus, the 1<sup>st</sup> respondent issued a notification under Section 4(1) of the Act, 1894 proposing to acquire the land to an extent of Ac.7-64 cents in S.No.102 of Nellipudi village, Sankhavaram Mandal, which includes the land to an extent of Ac.1-45 cents and Ac.1-44 cents belonging to both the petitioners, for the purpose of providing house-sites to the poor persons belonging to Nellipudi village under Indiramma Pathakam vide proceedings No.G2/2244/2008 dated 21.04.2008 published in Andhra Jyothi Telugu Daily Newspaper dated 29.04.2008, whereunder the 1<sup>st</sup> respondent authorized the 2<sup>nd</sup> respondent to act as Land Acquisition Officer for the said acquisition proceedings. Subsequently, the 2<sup>nd</sup> respondent issued notice in Form-3 u/s.5-A of the Act, calling upon the petitioners to submit objections if any, informing that an enquiry be held on 16.06.2008 in his office at about 11.00 a.m. The petitioners submitted their objections stating that the petitioners are small farmers having no other land and if the lands are acquired they will be deprived of their livelihood, moreso,

when the lands are not fit for providing house-sites. Hence, filed the present writ petition.

4) A counter came to be filed by the respondents denying the allegations made in the petition affidavit except to the extent admitted. It is submitted that land to an extent of Ac.7.64 cents covered by S.Nos.102 etc., of Nellipudi village was proposed for acquisition under Indiramma scheme-3<sup>rd</sup> phase and 4(1) notification was published in two daily news papers and also in E.G. District Extraordinary Gazette No.1364/2008, dated 21.04.2008. A notice in Form-3 u/s.5A of the Land Acquisition Act was also issued vide Ref.E.576/08, dated 25.06.2008 calling upon objections from the land owners. The said notices were also served on the land owners on 30.05.2008. Pursuant thereto, the petitioners along with other land owners attended before the Land Acquisition Officer & Revenue Divisional Officer on 16.06.2008 and filed their objections. Considering the same, the Collector, East Godavari, issued orders vide proceedings Ref.G2/2244/08 dated 29.07.2008, rejecting the objections raised by the petitioners. Meanwhile, the petitioners herein filed the present Writ Petition. It is further stated that the gift made by the second petitioner to his daughter is not a registered one and that the property in dispute is a joint property of the petitioners and that they are not small farmers. It is urged that, there is no suitable government land in Nellipudi village for the

purpose of house-sites and that the proposed schedule land is quite suitable for construction of pucca houses.

5) By an order, dated 22.08.2008, this Court while admitting the writ petition, passed the following order:

"Pending further orders, there shall be interim stay of dispossession of the petitioners from the land in question."

6) Before proceeding further, it would be appropriate to refer to Section 11-A of the Act, 1894.

"Section 11-A of the Act, 1894: **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 been published before the commencement of the Land Acquisition (Amendment) Act, 1894, the award shall be made within a period of two years from such commencement.

Explanation: In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court, shall be excluded.

7) A perusal of the record would show that a notification under Section 4 (1) of the Act, 1894 was published in District Gazettee on 21.04.2008 and also in the local news papers. As per the Act, the

declaration under Section 6 of the Act, 1894 has to be issued within a period of one year from the said date. However, the period of stay if any has to be excluded for the purpose of calculating the period of one year for publication of declaration. Section 11A of the Act, 1894 prescribes passing of an award within a period of two years from the date of said declaration excluding the period of stay/injunction if any granted by a Court. In the instant case there is no stay of further proceedings by any Court, as this Court only directed the respondents not to dispossess the petitioners from the land in question.

8) In the process, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act, 2013") came into force with effect from 01.01.2014. Section 24 (1) (a) of the Act, 2013 prescribes that if the land acquisition proceedings were initiated under the Act and no award under Section 11-A of the Act, 1894 has been made, all the provisions of the Act, 2013 shall apply for determination of compensation.

9) Issue identical to the case on hand came up for consideration before a learned Single Judge of this Court in W.P.Nos.22781 of 2008, 18274 and 18619 of 2009. It was a case where declaration under Section 6 of the Act, 1894 was made in the year 2009 and no award was passed by virtue of *status quo* order granted by this

Court. Dealing with Section 11-A of the Act, 1894, a learned single Judge of this Court held as under:

"Under Section 11 (A) of the Act, the award has to be passed within a period of two years from the date of publication of the declaration and in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration stayed by the order of Court shall be excluded. Even if that period is excluded and an award is liable to be passed, now it cannot be done under the provisions of the Act, as the action has to be taken as per Section 24 (1) (a) of Act 30 of 2013.

The Interplay of Section 11 (A) of the Act and Section 24 (1) (a) of the New Act was considered by the Apex Court in *Laxmi Devi v. State of Bihar and others*<sup>1</sup>, wherein the Apex Court held that the acquisition proceedings initiated under the Act are liable to be *set aside* and the respondents were given liberty to issue a fresh notification, if they so choose, under New Act."

10) In *Mohan v. State of Maharashtra*<sup>2</sup> the Apex Court observed as under:

"In our opinion under Section 11-A what has to be seen is the date of last publication of the declaration under Section 6, and not any subsequent corrigendum to the said declaration. The only circumstance under which the period between the declaration under Section 6 and the

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<sup>1</sup> (2015) 10 SCC 241

<sup>2</sup> AIR 2007 SC 2625

award can be extended is mentioned in the explanation to Section 11-A which states: In computing the period of two years referred to in Section 11-A, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court is excluded. There is no mention in Section 11-A that the period after the publication of the declaration under Section 6 and the publication of any corrigendum to the said declaration has also to be excluded. We will be adding words to the statute if we put such interpretation to section 11A, and it is well settled the Court should not add or delete words in a statute."

- 11) In order to determine the compensation and the period within which an award shall be made, the Act, 2013 provides a procedure under Sections 25 and 26 of the Act, 2013, which reads as under:

**"Section 25. Period within which an award shall be made:**  
The Collector shall make an award within a period of twelve months from the date of publication of the declaration under Section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same.

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

**Section 26. Determination of market value of land by Collector:**

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land namely:

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11."

12) Under Section 26 of the Act, 2013, the Collector has to determine the market value of the land for the purpose of payment of compensation under Section 24 of the Act, 2013. Methodology to be adopted for arriving at the market value is prescribed under Section 26 of the Act, 2013. Proviso to Section 26 of the Act, 2013 states that the market value shall be as on the date on which the notification under Section 11 of the Act, 2013 has been issued. An argument is advanced saying that Section 11 of the Act, 2013 has to be equated to Section 4 (1) of the Act, 1894. I am afraid, the same cannot be accepted for the reason that if really the intention of the legislature was to equate Section 11 of the Act, 2013 with Section 4

of the 1894 Act, definitely there would have been some indication to that effect in the Act, 2013. On the other hand, though the Act, 2013 takes care of many situations and shortfalls under the Act, 1894 but it is silent on this aspect. Apart from that it is to be noted that Section 4 of the 1894 Act does not anywhere indicate fixation of market value. While determining the compensation to be paid in respect of the lands acquired under the Act, 1894, the market value prevailing as on the date of the award is normally taken into consideration. But situation under the Act, 2013 appears to be different. Therefore, the argument that the Section 11 of the Act, 2013 has to be equated to Section 4 of the Act, 1894 cannot be accepted. On this score, the proceedings under Old Act should lapse, giving liberty to initiate fresh proceedings under the Act, 2013.

13) In cases where lands are acquired for the purpose of housing under Indiramma Housing Scheme, came up for consideration before this Court in W.P.Nos.454 and 14091 of 2009. It was a case where notification under Section 4 (1) of the Act, 1894 was issued for acquiring the land admeasuring Ac.5.85 cents situated in Mudinepalli Village, Krishna District for the purpose of providing house sites to the weaker sections of the society under Indiramma programme. A learned Single Judge of this Court, while dealing with the said issue, held as under:

"This Court granted interim stay of all further proceedings, as a result of which the respondents could not complete the acquisition proceedings. In the meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force with effect from 01.01.2014 and seven years have lapsed from the date of publication of Section 4 (1) notification. It is not known whether the earlier scheme of providing house sites to the weaker sections of the society is being pursued by the Government due to changed circumstances."

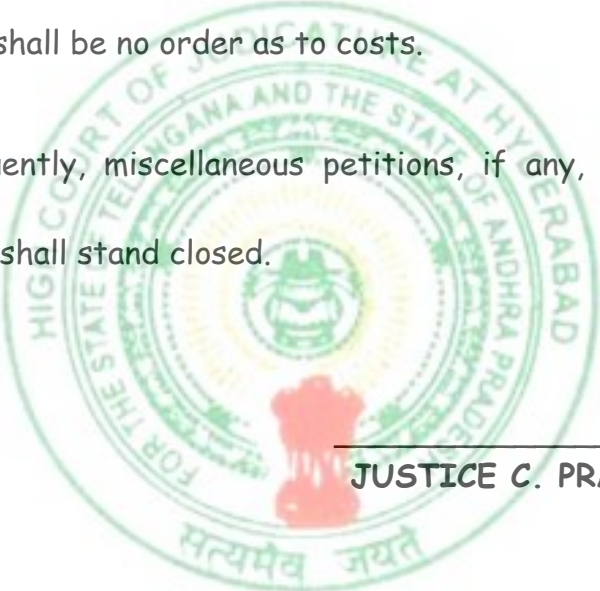
14) The Government Pleader for Land Acquisition submits that said orders are not challenged and have become final.

15) In the instant case, declaration under Section 6 of 1894 Act could not be issued in view of the interim direction directing the authorities not to dispossess the petitioners from the subject land. In the meanwhile, the Act, 2013 came into force. The interim order granted by this Court is only a direction to the authorities not to dispossess the petitioners from the subject land. Though there was no stay of any proceedings, the authorities failed to pass an award. Section 11-A of the Act, 1894 which prescribes that an award has to be passed within a period of two years from the date of declaration. Though there is no interim order staying the proceedings, the authorities failed to proceed further, thereby violating the mandate of Section 11-A of the Act, 1894. Further, the Government Pleader

could not place any material on record to show that, the said land is still required for providing house sites to weaker sections. Infact, a doubt is raised as to the very existence of the said scheme.

16) For the aforesaid reasons, the writ petition is disposed of and the impugned proceedings initiated under the Act, 1894, are set aside, giving liberty to the respondents to initiate fresh proceedings for acquisition of the above mentioned land of the petitioner, if the land is still required, in accordance with the provisions of the Act, 2013. There shall be no order as to costs.

17) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.



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JUSTICE C. PRAVEEN KUMAR

27.02.2017  
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