

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.17375 of 2017

ORDER :

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“...to issue a writ, order or direction more particularly one in the nature of writ of Mandamus –declaring the action of respondents 1 and 2 in issuing the impugned notice in RCA No.687/ 2006 Dt.28.4.2017 is arbitrary, illegal, unfair, unconstitutional and against to the principles of natural justice and against to the provisions of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, Act 30 of 2013 and also violative of Articles 14, 19, 21 and 300-A of Constitution of India, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Heard learned counsel for the petitioner and learned Government Pleader for Land Acquisition representing respondents and perused the prayer in the writ petition with supporting affidavit and other material on record including stay vacate petition with counter-affidavit of the 3rd respondent-Land Acquisition Officer and Revenue Divisional Officer, Machilipatnam.

Undisputedly, by order of this Court dated 26.02.2016 in W.P.No.21751 of 2006 maintained by the self same petitioner against respondents 2 and 3 herein, it was held with reference to Section 24 of the Act 30 of 2013 that if at all the respondents want to acquire the land, they have to proceed under the Act 30 of 2013 because there is no award passed. In fact, it is the

contention of the 3rd respondent in his counter-affidavit that the proceedings already initiated under the Old Act, before the Act 30 of 2013 came into force shall continue, even there is an observation in the writ petition order supra of the New Act provisions to follow to mean only for the further proceedings to follow. It is not, in fact, the same of the law, much less, that is the observation in the said order of the learned Judge of this Court supra, on the scope of Section 24 of the Act 30 of 2013. The Apex Court in *Pune Municipal Corporation v. Harak Chand Misrimal Solanki*¹ that is also quoted with approval by the Division Bench of this Court in *P.Narasimhulu v. Land Acquisition Officer, Madanapalle and others*², wherein at para-16 held as follows:

“16. In *Pune Municipal Corporation* (1 supra) on the scope of Section 24(2) of the Act, 2013 it was held at paras 10 and 11:

10. Insofar as sub-section (1) of [Section 24](#) is concerned, it begins with non obstante clause. By this, Parliament has given overriding effect to this provision over all other provisions of 2013 Act. It is provided in clause (a) that where the land acquisition proceedings have been initiated under the 1894 Act but no award under [Section 11](#) is made, then the provisions of 2013 Act shall apply relating to the determination of compensation. Clause (b) of [Section 24\(1\)](#) makes provision that where land acquisition proceedings have been initiated under the 1894 Act and award has been made under [Section 11](#), then such proceedings shall continue under the provisions of the 1894 Act as if that Act has not been repealed.

11. [Section 24\(2\)](#) also begins with non obstante clause. This provision has overriding effect over [Section 24\(1\)](#). [Section 24\(2\)](#) enacts that in relation to the land acquisition proceedings initiated under 1894 Act, where an award has been made five years or more prior to the commencement of the 2013 Act and either of the two contingencies is satisfied, viz; (i) physical possession of the land has not been taken or

(ii) the compensation has not been paid, such acquisition proceedings shall be deemed to have lapsed. On the lapse of such acquisition

¹ 2014(3) ALT 18(SC)

² 2016(3) ALT 250 (D.B.)

proceedings, if the appropriate government still chooses to acquire the land which was the subject matter of acquisition under the 1894 Act then it has to initiate the proceedings afresh under the 2013 Act. The proviso appended to [Section 24\(2\)](#) deals with a situation where in respect of the acquisition initiated under the 1894 Act an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in [Section 4](#) notification become entitled to compensation under 2013 Act.”

Thus, as per Section 24(1) and (2) of the Act 30 of 2013, once there is no award passed, the earlier proceedings if at all totally lapse and nothing will continue, much less, to adopt the earlier proceedings to continue the New Act proceedings. Same is also the expression of the recent Division Bench of this Court in *Mahesh Kumar v. State of Telangana*³.

Thus, the counter contention is nothing but mis-conception of the very clear provision of law that also interpreted by the Apex Court and two Division Benches of this Court.

Now, coming to the other contention, invoking Section 11-A of the Old Act, to say, the Old Act provision shall continue because of the writ petition filed in 2006 by interdicting further award proceedings under the Old Act and Section 11-A of the Old Act, more particularly, its proviso saves the proceedings to continue the Old Act provisions. In fact, Section 11-A is very clear, leave apart, the same is also interpreted by the Apex Court in very recent expression in *Delhi Development Authority v. Radha Nagpal and others*⁴, wherein it was held that failure to make award within two years as provided under Section 11-A of

³ 2017(1) ALT 400

⁴ 2017 (1) SCC 411

the Land Acquisition Act, 1894, the acquisition proceedings as a result of lapse of the plea taken that award could not be passed due to stay order granted by the Court with reference to Section 11-A is held not tenable for no such apparently after 2010 to interdict the Authorities. From this expression also, it is very clear that even there was any stay, once the stay lapsed and not continued, the Authorities cannot take advantage, but for, only during the period of stay. Even taken from that analogy in the case on hand, there is nothing to show there was any stay interdicting the proceedings and thereby, the respondents also cannot take the aid of Section 11-A of the Old Act, 1894.

Having regard to the above, the Writ Petition is allowed by holding that the entire proceedings under the Old Act ceases its force by virtue of the specific provision under Section 24 of the Act 30 of 2013 and it is left open to the respondents to initiate fresh proceedings totally as per the provisions of the Act 30 of 2013.

Consequently, miscellaneous petitions pending, if any, shall stand dismissed. No costs.

Dr. B. SIVA SANKARA RAO, J

Date:30-06-2017
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Note:
L.R.Copy to be marked - Yes

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+WRIT PETITION No.17375 of 2017

%30.06.2017

#Between:

1. Maj.Gen.Kantamneni Babayya ...Petitioner

AND

1. The State of Andhra Pradesh, Rep. by Secretary, Revenue Department,
Secretariat Buildings, Velagapudi, Amaravathi, Guntur District and two
others

... Respondents

!Counsel for the petitioner : Y.Ramatirtha

Counsel for the respondents: Learned Government Pleader
for Land Acquisition

<Gist :

>Head Note:

? Cases referred:

¹ 2014(3) ALT 18(SC)

² 2016(3) ALT 250 (D.B.)

³ 2017(1) ALT 400

⁴ 2017 (1) SCC 411

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.17375 of 2017

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1. Maj.Gen.Kantamneni Babayya

...Petitioner

AND

1. The State of Andhra Pradesh, Rep. by Secretary, Revenue
Department, Secretariat Buildings, Velagapudi, Amaravathi, Guntur
District and two others

... Respondents

Counsel for the petitioner : Y.Ramatirtha

Counsel for the respondents: Learned Government Pleader
for Land Acquisition

DATE OF JUDGMENT PRONOUNCED: 30.06.2017

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/ No |
| 2 | Whether the copies of judgment may be marked to Law Reports/ Journals | Yes/ No |
| 3 | Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? | Yes/ No |



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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