

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 21311 of 2008

ORDER:

1) Challenging the proceedings of the first respondent dated 14.09.2008 in ref. No.G2/ 2973/ 2008 in rejecting the objections filed to the proceedings initiated under Section 5-A of the Land Acquisition Act (for short "the Act"), the present writ petition came to be filed.

2) The petitioner claims to be owning land to an extent of Ac.0.43 cents and Ac.0.20 cents in Sy.No.165/ 2 of Kondevaram Village, which was being used for raising paddy crop. While things stood thus, notification under Section 4 (1) of the Act came to be issued seeking acquisition of the land for providing house sites to weaker section under Indiramma Housing Programme. The second respondent herein issued notice under Section 5-A of the Act for conducting enquiry. On receipt of the said notice, the petitioner herein submitted his objections stating that there are other suitable lands in the village, as such the land of the petitioner, which is the main source of his livelihood, may not be acquired. He also placed on record the repeated acquisitions sought to be initiated against the present land. It is his case that even in the year 1981 also the land of the petitioner was acquired but the same was subsequently given up after accepting the objections given by the petitioner in 5-A enquiry. It is his case that though the petitioner went to the office of the second respondent to

submit his explanation, but without hearing him, the impugned proceedings came to be passed. It is also his case that instead of giving an opportunity a personal hearing as required under Section 5-A (2) of the Act, the authorities are proceeding further with the acquisition of the land, the present writ petition is filed.

3) By an order, dated 26.09.2008 this Court while issuing notice ordered interim stay of all further proceedings.

4) Thereafter a counter came to be filed disputing the averments made in the affidavit filed in support of the writ petition. It is stated that notice under Section 5-A of the Act came to be issued to the land owner to attend an enquiry on 11.08.2008. The said notice came to be published and was served on the person as per the Rules under the Act. The petitioner attended the enquiry and filed objections. The objections filed by the land owners were enquired and remarks were also submitted. After considering the objections filed by the land owners and remarks offered by the Land Acquisition officer, the Collector rejected the objections on 14.09.2008 and the same was communicated to the land owner on 16.09.2008. Thereafter, award enquiry notices under Sections 9 (1) and 10 of the Act for publication and notices under Section 9 (3) and 10 of the Act for service on the land owners have been issued, posting the award enquiry to 20.10.2008. Questioning the rejection of objections the present writ petition came to be filed.

5) Learned counsel for the petitioner submits that though other lands are available for the purpose of acquisition, so as to provide house sites to weaker sections under Indiramma Housing Scheme, the authorities are intentionally taking the land of the petitioner, who is a small farmer, owning small extent of land.

6) Admittedly the proceedings for acquisition of the land are initiated under the provisions of the Land Acquisition Act, 1984. Pursuant to an interim order passed by this Court, the authorities could not proceed further. Meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "The New Act") came into effect from 01.01.2014. Admittedly, no award has been passed till date.

7) The question now is whether the proceedings would get lapsed in view of the passage of time.

8) Section 24 of the New Act mainly envisages two situations.

(1) Where the land acquisition proceedings had already been initiated under the 1894 Act but no award was passed till the date the new Act came into force, (ii) where the award has been passed but neither the owner has been dispossessed nor has he been paid the compensation. Under the first, where the award had not been passed, the acquisition proceedings could continue; but the compensation will have to be determined under the scheme of 2013 Act. Under the second category, there is a statutory lapse of the proceedings. There is also an incidental

third situation, where award under the 1894 Act had already been passed prior to coming into force of the 2013 Act, but payment is yet to be made and possession is yet to be taken. In that case, the further proceedings after the award could continue under the old Act of 1894; but if either payment or possession has not taken effect in five years prior to the 2013 Act, then proceedings would be lapsed. (*Aligarh Development Authority v. Megh Singh and others*¹) The Apex Court also held that since no award has been passed, there is no question of proceedings getting lapsed. It has been held that the land acquisition proceedings would continue but with the rider that the award will have to be passed and compensation determined under the provisions of 2013 Act.

9) In the instant case the proceedings were stayed pursuant to the order passed by this Court. The main plea taken by the petitioner was that the objections of the petitioner to the enquiry under Section 5-A of the Act was not properly considered and no personal hearing was given. A reading of the enquiry report which has been placed before the Court would show that the petitioner failed to attend the enquiry in spite of giving an opportunity to him and the objections sent by the petitioner by “Registered Post with Acknowledgment Due” were considered and suitable remarks were also made against the objections. Therefore, the main ground urged by the learned counsel for the petitioner that no opportunity was given and that the objections of the petitioner were not properly considered cannot be accepted.

¹ (2016) 4 ALD 172 (SC)

10) Having regard to the judgment referred to above, this Court is of the view that the proceedings would not lapse, but if the land is still required, the authorities have to proceed in terms of the New Act.

11) Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

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

08.02.2017
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JUSTICE C. PRAVEEN KUMAR

