

HON'BLE SRI JUSTICE S. V. BHATT

Writ Petition No.28397 of 2008

ORDER:

Heard Mr. N. Ravi Prasad for petitioners and the learned Assistant Government Pleader (Land Acquisition) for respondents.

2. The petitioners challenge Section 4(1) notification published in Gazette No.2683/ 2998, G1 dated 29.09.2008 and the proceedings of 2nd respondent dispensing with section 5-A enquiry under the Land Acquisition Act (for short 'the Act') and thereafter, issuing declaration under Section 6 approving the draft declaration vide proceedings No.2883/ 08, G1 dated -09-2008 published on 19.11.2008, as illegal, arbitrary and contrary to the mandatory provisions of the Act.

3. The respondents through land acquisition proceedings challenged in writ petition propose to acquire an extent of Ac.9.55 cents in Sy.Nos.21/ 1 to 21/ 13, 21/ 14-A, 21/ 14-B, 21/ 15 of N.G.R. Puram, Gajapathinagaram Mandal, Vizianagaram District, for providing house sites under a welfare scheme implemented by the Government. The petitioners challenge 4(1) notification and also dispensing with enquiry under Section 5-A of the Act and thereafter issuing the proceedings approving draft declaration as violative of the scheme of the Act. The emphasis to challenge is that there is no reason for invocation of urgency clause when acquisition of land is for providing house sites and no circumstance warranting dispensing with the enquiry under Section 5-A is available. The petitioners further contend that under the welfare scheme, the respondents can after following the procedure under the Act, take decision dispensing with 5A enquiry. Therefore petitioners are denied opportunity of raising objections either against the public

purpose for which the land is sought or the availability of the Government land etc. before the Land Acquisition Officer.

4. On 31.12.2008, this court granted interim stay of dispossession for four weeks and on 22.01.2009 the interim order was extended until further orders.

5. The respondents filed petition to vacate the interim order dated 31.12.2008. The respondents, on the circumstances warranting invocation of urgency clause, in paragraph 7 of the counter affidavit, state as follows:

“...In answer to the averments made in paragraph 6 of the petitioners affidavit, it is submitted that it is true that the land in S.No.21/ 1 to 21/ 15 measuring an extent of Ac.9.55 cents of N.G.R. Puram Village has been initiated the land acquisition proposals dispensing with Section 5-A enquiry under the Land Acquisition Act invoking the provisions U/ s 17(4) of the Act for the purpose of providing house sites to the landless poor as it is a very urgent Indiramma Programme. Therefore the action in dispensing with Section 5-A proceedings and issuing Section 4(1) Notification exercising the powers U/ s 17(4) is legal and valid.”

6. The right of land owners on participation in an enquiry under Section 5-A and the circumstances under which the enquiry can be dispensed with by invoking urgency clause has been decided by Hon'ble Supreme Court in '*Radhy Shyam vs State of U.P.*'¹, '*Anand Singh vs. State of U.P.*,'² and '*Laxmi Devi vs. State of Bihar*'³. The dispensing with 5-A enquiry ought not to be routine or monotony if so it becomes illegal and unconstitutional. By such measure, the valuable rights of the petitioners are affected and the proceedings are liable to be set aside as vitiated.

¹ (2011)5 SCC 553

² (2010) 11 SCC 242

³ (2015) 10 SCC 241

7. In the case on hand, the answer given in the counter-affidavit does not satisfy the test of judicial review on the touch stone of decisions referred to above and hence the invocation of urgency clause for dispensing with Section 5-A enquiry is untenable and illegal.

8. Keeping in view the binding precedent and also after considering explanation given by respondents, I am satisfied the invocation of urgency clause in the case on hand is unsustainable. Consequently, the draft declaration and proceedings No.2883/ 08/ G1 dated -09-2008, published on 09.11.2008 are set aside. The respondents are given liberty to proceed with land acquisition proceedings, in accordance with the requirements of the Act 30 of 2013, if the subject land is still required for providing house sites. As and when petitioners receive notice, they are free to raise all objections available in this behalf vis-à-vis proposed acquisition.

9. The writ petition is ordered as indicated above. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S.V.BHATT, J

Date: 16.08.2017
BSS

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30

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