

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.13490 of 2006

ORDER:

Present Writ Petition came to be filed under Section 226 of the Constitution of India seeking to declare the notification issued u/s.4 (1) of the Land Acquisition Act, 1894 (for short 'the Old Act') dated 07.06.2006 published in Eenadu Daily News Paper as illegal and arbitrary.

2) The averments made in the affidavit filed in support of the Writ Petition would show that petitioners 1 and 2 are the owners of land admeasuring Ac.1.32 cents in survey No.204/1 and Acs.2.40 cents in survey No.193/3 respectively having acquired the same towards their share out of joint family properties. It is further averred that petitioners 1 and 2 have given some property in survey No.193/3 to 3rd petitioner. While things stood thus, for the purpose of providing houses to scheduled caste people of Lingavaram Village, Gudiwada Mandal, Krishna District, the 1st respondent initiated Land Acquisition proposal by issuing notification u/s.4 (1) in Form 2-A published in Eenadu News Paper dated 07.06.2006 for acquisition of lands in survey Nos.193/3 and 204/1 admeasuring Acs.3.75 cents and Ac.1.32 cents respectively. It is further stated that in an earlier occasion also, the Government acquired land and distributed pattas to scheduled caste people of Lingavaram Village. But, most of the people sold the pattas to other villagers. It is further alleged that in order to appease the people in the Village, the land in question was proposed for acquisition under Indiramma Padakam. The action of the respondents in issuing 4 (1) notification is the subject matter of challenge in the present Writ Petition.

3) By an order dated 04.07.2006, this Court granted interim stay of all further proceedings pursuant to the notification dated 07.06.2006.

4) Seeking to vacate the said order, learned Government Pleader for Land Acquisition filed W.V.M.P.No.27 of 2007 along with a counter affidavit opposing the averments made in the affidavit filed in support of the writ petition and stating that the lands of the petitioners are abutting the existing S.C. Colony as such the lands of the petitioners were identified for the purpose of acquisition. It is further contended that family members of the 1st petitioner got partitioned the said land and other properties were not partitioned, which indicates that alleged partition was made for the purpose of getting exemption from acquisition. Thus, prayed for dismissal of the Writ Petition.

5) Heard the learned counsel for the petitioners and learned Government Pleader for Land Acquisition. Perused the material on record.

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

“Section 11-A : 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, 1984, 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 material placed before this Court would show that as soon as 4 (1) Notification was published in News Paper, the petitioners approached this Court and this Court granted interim stay of all further proceedings. As such, no further proceedings took place thereafter.

8) Meanwhile, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the Act 30 of 2013”) came into force with effect from 01.01.2014. Section 24 (1) (a) of the Act 30 of 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 30 of 2013 shall apply for determination of compensation.

9) In order to determine the compensation and the period within which an award shall be made, the Act 30 of 2013 provides a procedure under Sections 25 and 26 of the Act 30 of 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.”

10) Under Section 26 of the Act 30 of 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 30 of 2013. Methodology to be adopted for arriving at the market value is prescribed under Section 26 of the Act 30 of 2013. Proviso to Section 26 of the Act 30 of 2013 states that the market value shall be as on the date on which the notification under Section 11 of the Act 30 of 2013 has been issued. An argument is advanced saying that Section 11 of the Act 30 of 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 30 of 2013 with Section 4 of the Act, 1894, definitely there would have been some indication to that effect in the Act 30 of 2013. On the other hand, though the Act 30

of 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 Act, 1894 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 30 of 2013 appears to be different. Therefore, the argument that the Section 11 of the Act 30 of 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 30 of 2013.

11) 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***¹, 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.”

12) Case where land was 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 Acs.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.”

13) The Government Pleader for Land Acquisition submits that said orders are not challenged and have become final. 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 with regard to very existence of the same.

¹ (2015) 10 SCC 241

14) For the aforesaid reasons, the writ petition is disposed of and the impugned notification issued under the Old Act is set aside, giving liberty to respondents to initiate fresh proceedings for acquisition of the above mentioned lands of the petitioners, if the lands are still required, in accordance with the provisions of the Act 30 of 2013. There shall be no order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

19.01.2017
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