

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.13056 OF 2006

ORDER:

The writ petition is filed questioning the notification issued by the 1st respondent herein under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") on 23.05.2006 proposing to acquire agricultural land measuring Ac.2.17 cents belong to the petitioner in Sy.No.974-1A, 976-1A, 976-2A and 977-1 of Madaraju Guduru Village, Nellore Mandal & District, as illegal and arbitrary.

Though various grounds have been raised in the writ affidavit, for the purpose of disposal of the writ petition, the following grounds would suffice:

- a) The entire land acquisition proceedings initiated by the 1st respondent proposing to acquire petitioner's land is vitiated in law on the ground that the District Collector is not conferred with any power under Section 17(4) of the Act to invoke urgency clause.
- b) The entire land acquisition proceedings initiated by the 1st respondent proposing to acquire petitioner's land is vitiated in law, due to non compliance with the administrative instructions issued by the Social Welfare Department, Government of Andhra Pradesh, Hyderabad, on acquisition of land for provision of house sites for scheduled castes, scheduled tribe and backward caste. A Full Bench of this Court in **Yadaiah vs. Government of Andhra Pradesh**¹ ruled that any acquisition of private lands found to be contrary to the applicable administrative instructions would be null and void.
- c) The notification issued under Section 4(1) of the Act and invoking of urgency clause under Section 17(4) of the Act is vitiated in law as the said notification does not indicate the urgency for taking possession and consideration of any

¹ 1983 (1) ALT page 233

relevant material to dispense with Section 5-A enquiry and there is no real and genuine urgency.

d) The notification issued under Section 4(1) of the Act is bad in law for non-compliance with the requirement of Section 17(3-A) of the Act. It envisages that the Collector should tender 80% of the compensation of the land as estimated by him before taking possession of the land.

In the counter-affidavit filed by the respondents, it was denied that the mandatory provisions have not been followed. However in Para 9 of the counter-affidavit it was stated that though Section 17(4) was invoked neither possession was taken nor 80% of the compensation was paid to the petitioner.

Heard the learned counsel for the petitioner and the learned Government Pleader for Revenue.

Having considered the respective submissions, it is not necessary for this Court to deal with all the grounds raised and urged by the petitioner before this Court. Now it is well settled by the Supreme Court in **Laxmi Devi vs. State of Bihar and others**² and observed that after invoking the urgency provision it is mandatory to comply with the payment of 80% of the compensation. Non compliance of the mandatory condition of payment of 80% of compensation estimated would vitiate the proceedings and invocation of urgency clause. As it is not possible at this stage for Section 5A enquiry to be conducted, Section 6 declaration is bad in law. Further on account of repeal of the Act, 1894, there is no possibility of following mandatory procedures under the old Act, 1894.

In those circumstances, the writ petition is allowed setting aside the notification dated 23.05.2006 issued by the 1st respondent under Section 4(1) of the Act and resultant draft declaration under Section 6 of the Act dated 24.05.2006 published in the Gazette Extraordinary on 29.05.2006 in the Nellore District and notice issued by the 2nd

² (2015) 10 SCC 241

respondent. Miscellaneous Petitions, if any pending in this writ petition shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J

Date:09.08.2017.
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