

HON'BLE SRI JUSTICE S. V. BHATT

Writ Petition No.5513 of 2009

ORDER:

Heard Mr. Venkat Challa for petitioners and the learned Assistant Government Pleader for respondents.

2. The petitioners challenge notice under Section 4(1) of the Land Acquisition Act (for short 'the Act') dated 16.12.2008 and also proceedings No.G4/ 7087/ 2008 dated 18.12.2008 of 1st respondent dispensing with enquiry under Section 5A of the Act and the resultant declaration under Section 6 of the Act in proposing to acquire lands i.e., H.No.4-63/ 1 Ac.0.24 cents and Ac.0.14 cents in Sy.No.174/ 2A and 187/ 1B respectively, of 1st petitioner and the land in an extent of Ac.0.39 cents in Sy.No.173/ 2A2 of 2nd petitioner, of Nagullanka H/o Manepalli, P.Gannavaram Mandal, East Godavari District, as illegal, arbitrary, null and void.

3. The circumstances warrant for disposal of writ petition are as follows:

The 2nd respondent issued 4(1) notification proposing to acquire subject matter of the writ petition for the purpose of providing land for widening and rising of Vainatheya Right Flood Bank. The petitioners challenge the proceedings dated 18.12.2008, as illegal, arbitrary and contrary to ratio laid down by the Hon'ble Supreme Court in '*Radhy Syam vs State of U.P.*'¹, '*Anand Singh vs. State of U.P.*'² and '*Laxmi Devi State of Bihar*'³, that dispensing with 5A enquiry is illegal, unconstitutional and unavailable, the valuable rights of the petitioners

¹ (2011)5 SCC 553

² (2010) 11 SCC 242

³ (2015) 10 SCC 241

are affected and the proceedings are liable to be set aside. Further challenge to land acquisition proceedings is that admittedly on 27.12.2008, the draft declaration under Section 6 was published in the locality by respondents. On 23.03.2009, this court merely granted stay of dispossession of petitioners from subject matter of the writ petition. The legal objection raised against continuation of land acquisition proceedings is that though there is no stay of proceedings of the 4(1) notification, the respondents failed to pass award within two years from the date of draft declaration and hence the land acquisition proceedings are lapsed.

4. In support of the contention, counsel for the petitioners relies upon the unreported decision of this court in '*Mandava Venkata Svarama Prasad vs. The Collector, Machilipatnam* (WP No.11620 of 2008 dated 19.01.2017) and '*K. Appa Rao vs. State of Andhra Pradesh*⁴'. Hence, he prays for allowing the writ petition.

5. The Assistant Government Pleader (Revenue) by referring to the stand taken in the counter-affidavit of respondents 2 and 3 contends that Section 4(1) notification was issued for the purpose of providing land for widening and rising Vainatheya Right Flood Bank. The public purpose in acquisition is not disputed or challenged. On the necessity to dispensing with 5A enquiry, he contends that dispensing with 5A enquiry is strictly in accordance with scheme of the Act considering the purpose for which the land is acquired. The respondents keeping in mind the urgency in providing land dispensed with the normal procedure of conducting of 5A enquiry, affording opportunity to petitioners and thereafter passing order on the objections raised by petitioners etc.

⁴ 2016(6) ALT 715

6. On the question of passing award within two years, he contends that even assuming that this court granted stay of dispossession, the understanding of the officers is that entire proceedings are stayed and consequently, the award as required by Section 11 of the Act has not been passed. From this circumstance alone the proceedings are not vitiated. He alternatively submits that if this court comes to the conclusion that dispensing with 5A enquiry is illegal and erroneous, the proceedings dated 18.12.2008 can be set aside and the matter may be remitted to respondents for conducting 5A enquiry in this behalf.

7. The chronology of dates and events are not in dispute. As per the ratio of the Hon'ble Supreme Court in the cases cited supra, the burden is on the respondents to show that power to dispensing with 5A enquiry is exercised objectively and in the judicial review, the respondents are in a position to show that for valid reasons, the power of dispensing with Section 5-A enquiry has been exercised.

8. After perusing the counter-affidavit, this court is of the view that burden fastened on respondents to discharge in this behalf is not satisfactorily stated. Therefore, firstly the dispensing with 5A enquiry is unsustainable and illegal and accordingly, the proceedings dated 18.12.2008 by following the ratio laid down by the apex court, without further deliberations on this aspect and declared as illegal. Consequently, the draft declaration issued on 18.12.2008 is liable to be set aside.

9. Once this court by accepting the arguments of the petitioners sets aside the proceedings dated 18.12.2008 for all purposes there is no draft declaration. Therefore, this court at this stage of the matter is not inclined to examine further whether the very proceedings initiated

through 4(1) Notification dated 16.12.2008 are lapsed for not passing the award within two years. Hence, the writ petition is allowed by setting aside the proceedings dated 18.12.2008 and it is left open to respondents to proceed in accordance with law, if the circumstances still prevail for proceeding with the acquisition. The petitioners, as and when are given notice, are entitled to raise all objections available in this behalf.

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

Date: 01.08.2017
BSS



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