

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 25386 OF 2006

ORDER:

This Writ Petition is filed seeking a *mandamus* to declare the action of the respondents in proposing to acquire the land of the petitioners in an extent of Ac.1.94 cents and Ac.0.50 cents respectively in R.S. No. 109/2 of Akunuru Village, Vuyyuru Mandal, Krishna District by issuing proceedings under the Land Acquisition Act, 1894 (for short, 'the Act'), as illegal and arbitrary.

The petitioners claim to be the owners and possessors of the above-said land. Subsequently, out of Ac.1.94 cents, Ac.0.70 cents was given to Smt. Sunkara Padmavathi, who is none other than the sister of the 1st petitioner, by virtue of a registered deed dated 24.12.1968. However, notification under Section 4(1) of the Act was issued and published on 06.07.2006, notifying the entire extent of land for the purpose of providing house sites to the weaker sections of the society and declaration under Section 6 of the Act was published on 12.08.2006. Initially, urgency clause under Section 17(4) of the Act was also invoked.

According to the petitioners, though it was stated in the notification that inquiry under Section 5 was dispensed with, a notice under Section 5-A of the Act was issued, for which, they have also submitted their objections on 12.09.2006. The grievance of the petitioners is that without considering and disposing their objections, the respondents are trying to dispossess them from the subject land.

In the counter-affidavit filed on behalf of the respondents, it is stated that notwithstanding the invocation of Section 17(4),

notice under Section 5-A was issued to the petitioners on 20.08.2006 asking them to appear before the Land Acquisition Officer on 12.09.2006. The 1st petitioner accordingly attended the inquiry under Section 5-A on 12.09.2006 and submitted objections before the Land Acquisition Officer and sought exemption from the land acquisition proceedings on the ground that the land belongs to his minor daughter i.e. the 2nd petitioner. The objections were not considered tenable. It is further stated that on consideration of the objections raised before the Land Acquisition Officer and considering the report of the Land Acquisition Officer, the Collector has approved the draft declaration proposals on 28.07.2006. Accordingly, the draft declaration was published on 29.07.2006 in Krishna District Gazette, thereafter, in local newspapers on 12.08.2006, 13.08.2006 and in the locality on 28.08.2006. The above dates disclose that the draft declaration under Section 6 has not preceded the inquiry under Section 5-A. In other words, the inquiry under Section 5-A, which is alleged to have been conducted, as asserted in the counter, is only a make-believe as it is only after conducting inquiry under Section 5-A of the Act and based on the report of the Land Acquisition Officer, the Collector is required to give consent for publication of the draft declaration under Section 6.

In the present case, as revealed from the counter-affidavit of the respondents themselves, the fact that the declaration under Section 6 of the Act has preceded the inquiry under Section 5-A, is *per se* illegal. In those circumstances, declaration under Section 6 of the Act is vitiated on account of the procedural irregularities. Inasmuch as there is no declaration under Section 6, the land

acquisition proceedings under Section 4(1) of the Act also gets vitiated.

Though Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 saves the land acquisition proceedings initiated earlier under the Land Acquisition Act, 1894, a careful reading of the said provision discloses that the land acquisition proceedings initiated under the 1894 Act get saved only to the limited extent. Section 24(1)(a) saves the land acquisition proceedings initiated earlier which reached finality up to the stage of Section 9, leaving only determination of the compensation in terms of Sections 9 to 11 of Act 1 of 1894. In the present case, that stage has not reached on account of there being irregularities in publication of the declaration under Section 6 of the Act. Inasmuch as, as on today, the acquisition proceedings under the 1894 Act cannot be proceeded on the ground that the same being vitiated on account of the procedural irregularities, the Writ Petition is allowed.

It is needless to mention that if the subject land is required for any public purpose, the State is always entitled to take recourse to the provisions of the 2013 Act. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

19th July 2017

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