

HON' BLE SRI JUSTICE S.V. BHATT

Writ Petition No.12143 of 2009

ORDER:

Heard Mr. K. Jayakumar for petitioners and the Assistant Government Pleader (Land Acquisition) for respondents.

2. The petitioners challenge Draft Declaration under Section 6 of the Land Acquisition Act, 1894 (for short 'the Act') in Ref.No.G2/ 3273/ 2008 dated 08.06.2009, published in 'Vaartha daily' dated 09.06.2009, without considering the objections raised by petitioners under Section 5-A of the Act, as illegal and arbitrary.

3. The averments in the writ petition are briefly stated thus:

The 1st respondent issued Draft Declaration dated 08.06.2009, under Section 6 of the Act, published in 'Vaartha daily' on 09.06.2009, proposing to acquire the land of the petitioners in an extent of Ac.4.00 cents, as follows:

Sy. No.	Description of the land	Name of the owner/ Occupier	Extent Ac. cents
66	G.Pallam	1. Gajula Venkayamma 2. Ravula Satyavathi 3. Chaganti Manikyam	3.65
67/ 2	G. Pallam	1. Gajula Venkayamma 2. Chaganti Manikyam	0.35
		Total	4.00

4. The petitioners claim to be owners and possessions of the land under acquisition. The petitioners were served notice of enquiry under Section 5-A of the Act. The petitioners in response to notice, filed objections dated 08.07.2008. The 1st respondent through proceedings No.G2/ 3273/ 2008 dated 01.06.2009, rejected the objections raised by petitioners. Hence, the writ petition.

5. The petitioners in this writ petition confined the challenge to the irregularity or illegality of enquiry conducted by respondents 1 and 2 under Section 5-A of the Act. Non-consideration or failure to refer to all objections has vitiated the enquiry under Section 5-A of the Act and also the proceedings dated 08.06.2009. The scope and object of Section 5-A of the Act is well defined and has been considered in great detail by the Hon'ble Supreme Court in '*RAGHBIR SINGH SHEARWAT v. STATE OF HARYANA AND OTHERS*'¹ and '*SURINDER SINGH BRAR AND OTHERS v. UNION OF INDIA AND OTHERS*'² and the ratio squarely applies to the case on hand.

6. The proposition of law on which petitioners are relying upon is not in dispute and the consideration of the instant writ petition is limited to the extent of finding out whether the proceedings dated 08.06.2009 satisfy the requirements of law and the binding precedents.

7. Mr. K. Jayakumar contends that the objections on the proposed public purpose, necessity of acquiring land for providing house sites to the weaker sections etc. are stated by petitioners. The objections, as well as report of the Revenue Divisional Officer, referred to selectively and respondents 1 and 2 have not been adverted to a vital objection raised in the objection dated 08.07.2008, which reads as follows:

"...There are some other lands which are more suitable for the housing scheme and those lands are very adjacent to the village. Further there are land lords whose extent of holding is very high in extent and they are politically pressuring Mandal officials not to take their lands for this scheme and forcing to acquire our land since we are poor, ladies and having no political background. There are some other lands belongs to M.S.N. Charities and they are not cultivable lands and being idle and more suitable for house sites for this scheme. There are some more lands which are idle and not used for the purpose stated and acquired by the government to install irrigational pipe lines long back and these lands are very much suitable to convert into house sites for this particular housing scheme.

¹ (2012) 1 SCC 792

² (2013) 1 SCC 403

The Mandal level officers had not surveyed properly and without any proper inquiry, hurly-burly they prepared lists for proposals for acquisition of land under this scheme.”

8. According to him, the non-application of mind to the objection raised by petitioners would be evident from the concluding portion of proceedings dated 01.06.2009, which reads as follows:

“The LAO & RDO, Kakinada stated that the land owners are not depending on agricultural income and they are residing elsewhere with their families who are government Employees and their livelihood will not be effected due to proposed acquisition.

Further, the land owners have called for personal hearing on 01.06.2009. The land owners attended before the District Collector and filed objection petition as stated before the LAO & Revenue Divisional officer, Kakinada. The objects are heard, examined and devoid of merit and hence over-ruled.”

Therefore, he prays for setting aside the order dated 01.06.2009.

9. I have perused the proceedings of the 1st respondent in Ref.G2/ 3273/ 2008 dated 01.06.2009, and *prima-facie* I am satisfied that the consideration of objections or manner of conducting enquiry under Section 5-A of the Act, having regard to the purpose of acquisition are unsustainable. The consideration of objections is selective. By following the principle laid down by the Apex Court in the decisions referred to above, the proceedings of the 1st respondent dated 01.06.2009 are set aside. Consequently, the draft declaration under Section 6 of the Act dated 01.06.2009 is also set aside.

10. The respondents 1 and 2 are given liberty, if circumstances still subsist for continuing with the acquisition, to follow the procedure stipulated in Chapter-IV of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) and acquire the land. The petitioners are also given liberty to raise all objections

available as and when a notice is issued proposing to conduct enquiry in this behalf.

11. 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.

Date: 21.08.2017
BSS

S.V.BHATT, J



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