

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.16740 OF 2009

ORDER:

Heard Smt.SMadhavi for Si C.Raghu, counsel for petitioner and the Government Pleader for Land acquisition for respondents.

The petitioner prays for Mandamus declaring proceedings of 2nd respondent in Rc.G4.3520/2006 dated 23.08.2008 issued under Section 5-A of the Land Acquisition Act, 1894 (for short 'the Act'), consequential Section 6 declaration vide Gazette No.85/2008 dated 01.09.2008 and Award No.30 of 2008 dated 14.10.2008 of 3rd respondent in respect of petitioner's property in an extent of 355 square yards, forming part of Ac.3-68 cents in RS. No.38/1, Kurada Village, Gudlavalleru Mandal, Krishna District, as illegal arbitrary and in violation of principles of natural justice.

The subject matter of writ petition is a plot of land measuring 355 square yards forming part of Ac.3-68 cents in RS. No.38/1, Kurada Village. The petitioner claims to be the owner and possessor of the plot by virtue of registered sale deed No.1293/1984 dated 19.10.1984.

The grievance of petitioner is that land acquisition proceedings were initiated without issuing notice to petitioner who is the absolute owner and possessor of subject matter of writ petition.

On 14.08.2006, notification under Section 4(1) of the Act was issued proposing to acquire an extent of Ac.8.00, including subject matter of writ petition. Thereafter, Section 5-A enquiry was

conducted by issuing notice to petitioner's vendor V.Subba Rao and by order dated 23.08.2008, the 2nd respondent rejected the objections filed by petitioner's vendor. Subsequently, Section 6 declaration dated 01.09.2008 was issued and award dated 14.10.2008 was passed.

On 13.08.2009, this Court granted *status quo* obtaining as on that date. The respondents filed a petition to vacate the *status quo* order dated 13.08.2009 and in the counter affidavit, it is stated that the Government has taken a policy decision to launch a housing scheme under a welfare programme to provide houses to poor families and have selected patta lands in an extent of Acs.8.00 as there was no Government or Poramboke land available in Kurada Village. The vendor of the petitioner attended the 5-A enquiry, filed his objections and thereafter objections were rejected.

I have heard the counsel appearing for the parties and also perused the record. The admitted circumstances are that (i) petitioner purchased an extent of 355 square yards forming part of Acs.3-68 cents in R.No.38/1 of Kurada Village, Gudlavalleru Mandal, Krishna District by virtue of sale deed dated 19.10.1984; (ii) the petitioner was not put on notice by respondents in the enquiry at any stage or while issuing the proceedings to acquire the land; and (iii) the respondents contend that they had served notice on the vendor of the petitioner. The sale deed was executed several years ago before the initiation of land acquisition proceedings. The presumption available in law with the execution

of register sale deed is that knowledge of sale is in common knowledge; and the name of petitioner is incorporated in revenue records. Therefore, it can be said that the respondents initiated land acquisition proceedings behind the back of petitioner. The rights under Section 5-A of the Act are substantial rights. The petitioner is a person interested in the subject matter of acquisition and the steps initiated to conduct enquiry, without even notice to petitioner/person interested, substantially vitiates the proceedings taken from draft declaration onwards. On the ground that Section 5-A of the Act is deviated in the case on hand, the draft declaration under Section 6 of the Act through Gazette No.85/2008 dated 01.09.2008 is set aside.

Having regard to the above circumstances, I am satisfied that the writ petition can be ordered by setting aside the impugned proceedings dated 23.08.2008 and consequential Section 6 declaration dated 01.09.2008 and Award dated 14.10.2008 insofar as subject matter of writ petition. The respondents, if at all want to continue with the land acquisition proceedings already initiated, the same shall be according to Chapter IV of Act 2013.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

4th August 2017

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