

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.5325 OF 2008

ORDER:

Proceedings dated 28.12.2007, issued by respondent No.2 – Collector, West Godavari, rejecting the objections of the petitioner, under Section 5-A of the Land Acquisition Act, 1894 (for short 'Old Act'), is questioned in this Writ Petition as being illegal and arbitrary.

Petitioner claims to be the owner and possessor of land admeasuring Ac.1.11 cents situated in Sy.Nos.325/1 and 325/3, Mahalakshmi cheruvu Village, Tanuku Mandal, West Godavari District. Draft notification, under Section 4(1) of the Old Act, was issued on 30.04.2007. Notice dated 24.08.2007 was issued to the petitioner, under Section 5-A of the Act, requiring objections to be filed by 10.09.2007. Petitioner states that her mother filed objections on 08.09.2007. Impugned order dated 28.12.2007 was passed by respondent No.2 rejecting the objections made by the petitioner's mother without affording an opportunity of personal hearing as mandated under Section 5A of the Old Act. Hence the writ petition.

Learned Counsel for the petitioner submits that land acquisition proceedings are vitiated due to violation of the rule of hearing enshrined in Section 5A(2).

Learned Government Pleader for land Acquisition submits that, as a matter of fact, petitioner's objections were

considered and, as no alternative land was available for providing house sites to weaker sections, it has become imminent to acquire the subject land. He further submits that, in so far as compensation is concerned, as claimed by the petitioner, the subject land yielding Rs.25.00 lakhs per acre is incorrect and, in terms of the material available, petitioner would be paid just compensation.

Heard the learned counsel for the petitioner and learned Government Pleader for Land Acquisition and perused the record.

Section 5A(1) of the LA Act gives a right to any person interested in any land which has been notified under Section 4(1) as being needed or likely to be needed for a public purpose to raise objections to the acquisition of the said land. Sub-section (2) of Section 5A requires the Collector to give the objector an opportunity of being heard in person or by any person authorized by him in this behalf. After hearing the objections, the Collector can, if he thinks it necessary, make further inquiry. Section 5A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the concerned authority, inter alia, that the important ingredient namely 'public purpose' is absent in the proposed acquisition or the acquisition is mala fide. The LA Act being an ex-proprietary legislation, its provisions will have to be strictly construed.

Hearing contemplated, under Section 5A(2), is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report.

There is no dispute that the petitioner's mother filed objections, which were disposed of on 28.12.2007. The petitioner approached this Court by filing Writ Petition. This Court, while ordering notice, stayed dispossession. In pursuance of the order of stay, no further proceedings have been taken till date. In other words, declaration under Section 6 of the Act has not been made. It may be noted that the Land Acquisition Act, 1894, stands repealed by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act 30 of 2013'). Acquisition proceedings initiated under the Land Acquisition Act, 1894 are saved only to a limited extent in terms of Section 24 of Act 30 of 2013. Admittedly, in the present case, declaration under Section 6 was not made, on account of which, determination of compensation payable under Section 11A has not been arrived at. Only in cases where determination of compensation alone is pending, acquisition proceedings are saved under Section 24(1)(a) of Act 30 of 2013. Since no hearing was given to the petitioner resulting in non-compliance of Section 5A of the Old Act, and there being no possibility of Section 6 declaration which alone declares conclusiveness with respect to requirement of land for the

public purpose, and the same not being possible at this stage, land acquisition proceedings cannot be proceeded further under the impugned notification.

Accordingly, the Writ Petition is allowed quashing Section 4(1) Notification dated 30.04.2007. There shall be no order as to costs.

Consequently, miscellaneous petition pending, if any, shall stand closed.

Dated:26.07.2017
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CHALLA KODANDA RAM,J

