

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.23579 of 2007

ORDER:

Heard Mr. B.Srinivasa Rao for petitioners, Learned Assistant Government Pleader for Respondents 1 to 3, no representation for 4th respondent and Mr.Sunil Reddy, holding for Mrs. A. Jayanthi for 5th respondent.

2. The petitioners pray for *mandamus* declaring the action of respondents in acquiring the agricultural lands of petitioners in an extent of Ac.33.47 cents in Sy.Nos.200-1, 201, 202-1, 202-2, 203-A, 203-B1, 207-1, 207-2, 207-3, 351-1 to 351-6 and 358-1 of Kesanupalli Village, Narasaraopet Mandal, Guntur District, through Section 4(1) Notification dated 24.01.2007 and the consequential proceedings in Rc.No.4481/ 06-G3 dated 08.10.2007, as illegal, arbitrary and contrary to the mandate of Land Acquisition Act (for short 'the Act') and unconstitutional.

3. The Assistant Government Pleader, places on record the written instructions dated 20.10.2016 and instructions are directed to be placed on record.

4. The 3rd respondent issued Section 4(1) Notification dated 24.01.2007 under the Act, proposing to acquire subject matter of the writ petition for the purpose of establishing Autonagar either at the instance of respondents 4 and 5 or for the benefit of members of 4th respondent-Association. The petitioners claim to be small farmers, a few of them belong to Scheduled Caste/ Scheduled Tribe and eking out their livelihood by doing agriculture in the lands proposed to be acquired. This court in WP No.6058 of 2007, vide order dated 26.03.2007, directed

conducting of enquiry under section 5-A, considering the objections of petitioners and pass orders as are deem fit and proper in the circumstances of the case. The petitioners rely upon the order of this court in WP No.6058 of 2007. To avoid repetition and appreciating the grievance, I considered it appropriate to excerpt the operative portion of the order in WP No.6058 of 2007, reads thus:

“The 2nd respondent by a notification dated 16-1-2007 under Section 4 (1) of the Land Acquisition Act 1894 notified in draft, proposals for acquisition of these lands for the stated public purpose of forming an Auto Nagar for benefiting the workers of the auto industry. No urgency clause was invoked nor the enquiry under Section 5-A dispensed with. Notice in form 5-A was issued to the petitioners soliciting objections to the acquisition proposals. All the petitioners state to have lodged their objections. No possession as yet been taken by the competent authority under Section 5-A. No decision under Section 5 A (2) of the Act was communicated to the petitioners. No draft declaration under Section 6 has yet been issued. However, the petitioners allege, the officials of the respondents are coming on to the lands and demarcating the lands even without a declaration under Section 6 having been issued.

As the petitioners have lodged their objections pursuant to a notice under Section 5-A of the Act, the respondents are obligated to consider their objections to the acquisition process. Since the consideration of such objections is not a ritual but a substantive obligation of the respondents which is a corollary of the right of the petitioners under Section 5-A of the Act, principles of administrative law require that the respondents must communicate the decision taken under Section 5 A (2), to the petitioners. Accordingly, the respondents in particular the 2nd respondent is directed to communicate the decision taken under Section 5-A (2) of the Act to each of the petitioners by registered post acknowledgement due and only thereafter take further proceedings for acquisition. Till communication of the decision as directed above, the petitioners shall not be dispossessed.”

5. The petitioners filed objections and the 2nd respondent broadly considered the objections into four categories and through the proceedings dated 08.10.2007 over-ruled the objections. Now the writ petition is filed challenging Section 4(1) Notification dated 24.01.2007 and the endorsement of the Collector dated 08.10.2007.

6. This court on 06.11.2007, directed the respondents not to dispossess the petitioners from the land proposed to be acquired and further granted liberty to respondents to complete other legal formalities.

7. The counsel for petitioners contends that respondents could have complied with the requirements of Section 6 of the Act and published draft declaration within one year from 24.01.2007 and that consideration of the objections and rejection vide endorsement 08.10.2007, are contrary to the order of this court in WP No.6058 of 2007 and also *ratio decidendi* laid down by 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.

8. He further contends that the award is not passed within two years from at least endorsement dated 08.10.2007 and for all purposes, the land acquisition proceedings are deemed to have been lapsed and prays for setting aside Section 4(1) notification and endorsement dated 08.10.2007.

9. Section 6 and Section 11-A of the Act, read thus:

“Section 6: Declaration that land is required for a public purpose:-

¹ (2012) 1 SCC 792

² (2013) 1 SCC 403

- (1) Subject to the provisions of Part VII of this Act, appropriate Government is satisfied after considering the report, if any, made under Section 5-A, sub-section (2) that any particular land is needed for a public purpose, or for a company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some Officer duly authorised to certify its order [and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification under Section 4, sub-section (1), irrespective of whether one report or different reports has or have been made (wherever required) under Section 5-A, sub-section (2)],

Provided that no declaration in respect of any particular land covered by a notification under Section 14, sub-section (1), -

- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification; or
- (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification.

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Section 11-A – Period within which an award shall be made:-

- (1) The Collector shall make an award under Section 11 within a period of two years from the date of publication of declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse;

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984 the award shall be

made within a period of two years from such commencement.

10. The Hon'ble Supreme Court in *RAGHBIR SINGH SHEARWAT*'s case and in *SURINDER SINGH BRAR*'s case, on the extent of fairness in action and consideration of objections of land owners, considered and held as follows:

“In all the cases, challenge to the acquisition proceedings was negated primarily on the ground of delay. An additional factor which influenced this Court was that physical possession of the acquired land had been taken by the concerned authorities. In none of these cases, the landowners appear to have questioned the legality of the mode adopted by the concerned authorities for taking possession of the acquired land. Therefore, these judgments cannot be relied upon for sustaining the High Court's negation of the appellant's challenge to the acquisition of his land. The next issue which merits consideration is whether the acquisition of the appellant's land is vitiated due to violation of Section 5A(2) and the rules of natural justice. A careful scrutiny of record reveals that the Land Acquisition Collector had fixed 29.10.2006 as the date for hearing the objections. He issued notices dated 2.11.2006 to inform the objectors that hearing will take place on 29.11.2006 at 11 a.m. in P.W.D. Rest House, Rai and asked them to appear either in person or through their agent. The notices were delivered to some of the landowners, who acknowledged the receipt thereof. However, the notices issued to the appellant and his wife were not served upon them. This is evident from the fact that other objectors had acknowledged the receipt of notices by putting their signatures, the notices allegedly served upon the appellant and his wife do not bear their signatures and no explanation has been offered by the respondents about this omission. The Land Acquisition Collector proceeded to decide the objections by assuming that the notice has been delivered to all the objectors. Not only this, someone in the office of Land Acquisition Collector forged the appellant's signature to show his presence in P.W.D. Rest House, Rai on 29.11.2006. A bare comparison of the signatures appearing against the appellant's name at serial No.90 (page 184 of the paper book) and those appearing on the

vakalatnama and affidavit filed in support of the special leave petitions shows that there is no similarity in the two signatures. Not only this, in the list, appended with Annexure R-3, the appellant's wife has been shown as widow of Raghbir Singh. It is impossible to believe that a woman who knows how to sign a document would put signatures against her name showing her as a widow despite the fact that her husband is alive.

From what we have stated above, it is clear that the appellant had not been given opportunity of hearing as per the mandate of [Section 5A\(2\)](#)."

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In this context, it is necessary to remember that the rules of natural justice have been ingrained in the scheme of [Section 5A](#) with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land. At the hearing, the objector can make an effort to convince the Land Acquisition Collector to make recommendation against the acquisition of his land. He can also point out that land proposed to be acquired is not suitable for the purpose specified in the notification issued under [Section 4\(1\)](#). Not only this, he can produce evidence to show that another piece of land is available and the same can be utilized for execution of the particular project or scheme. Though, it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons.

11. In *SURINDER SINGH BRAR*'s case, the Apex Court held as follows:

“What needs to be emphasised is that hearing required to be given under Section 5A(2) to a person who is sought to be deprived of his land and who has filed objections under Section 5A(1) must be effective and not an empty formality. The Collector who is enjoined with the task of hearing the objectors has the freedom of making further enquiry as he may think necessary. In either eventuality, he has to make report in respect of the land notified under Section 4(1) or make different reports in respect of different parcels of such land to the appropriate Government containing his recommendations on the objections and submit the same to the appropriate Government along with the record of proceedings held by him for the latter's decision. The appropriate Government is obliged to consider the report, if any, made under Section 5A(2) and then record its satisfaction that the particular land is needed for a public purpose. This exercise culminates into making a declaration that the land is needed for a public purpose and the declaration is to be signed by a Secretary to the Government or some other officer duly authorised to certify its orders. The formation of opinion on the issue of need of land for a public purpose and suitability thereof is sine qua non for issue of a declaration under Section 6(1). Any violation of the substantive right of the landowners and/or other interested persons to file objections or denial of opportunity of personal hearing to the objector(s) vitiates the recommendations made by the Collector and the decision taken by the appropriate Government on such recommendations. The recommendations made by the Collector without duly considering the objections filed under Section 5A(1) and submissions made at the hearing given under Section 5A(2) or failure of the appropriate Government to take objective decision on such objections in the light of the recommendations made by the Collector will denude the decision of the appropriate Government of statutory finality. To put it differently, the satisfaction recorded by the appropriate Government that the particular land is needed for a public purpose and the declaration made under Section 6(1) will be devoid of legal sanctity if statutorily engrafted procedural safeguards are not adhered to by the concerned authorities or there is violation of the principles of natural justice. The cases before us are illustrative of flagrant violation of the mandate of

Sections 5A(2) and 6(1). Therefore, the second question is answered in affirmative.”

12. By examining the case on hand, in the light of the binding precedents what appears to this court is most of the petitioners have brought to the notice of 2nd respondent that they are small farmers and are living by doing agriculture in the lands proposed to be acquired and if the acquisition is proceeded with, their livelihood would be at stake.

13. There is no reference to a few other objections raised by petitioners and further findings can be recorded after examining the objections raised by land owners. In the case on hand, an abstract is prepared and objections are over-ruled. The first ground, this court finds in the case on hand, that consideration of objections through endorsement dated 08.10.2007 is not legal and sustainable. Therefore, publication of draft declaration dated 08.11.2007 is liable to be set aside and accordingly set aside.

14. The other ground urged by petitioners basing on the written instructions is that the award is not passed within two years from the date of publication of draft declaration. The legality of land acquisition can certainly be tested on the additional grounds available to the petitioners against the acquisition proceedings. The requirement of Section 11-A of the Act is that the award shall be passed within two years from the date of draft declaration.

15. Learned Assistant Government Pleader submits that stay of dispossession granted by this court is understood as stay of all further proceedings in the land acquisition proceedings and therefore, the award is not passed within the time stipulated by law.

16. The objection is merely noted to be rejected. The written instructions on this aspect go to show that the award is not passed pursuant to draft declaration dated 08.11.2007.

17. For the above reasons, I am satisfied Section 4(1) Notification and endorsement dated 08.10.2007 are liable to be set aside and accordingly set aside, by declaring the land acquisition proceedings as lapsed. The respondents, if still require the land for Autonagar, are always free to initiate proceedings under the Act 30 of 2013.

18. The writ petition is ordered. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

Date: 09.08.2017
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S.V.BHATT, J

HON'BLE SRI JUSTICE S.V. BHATT

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