

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.11697 OF 2007

ORDER:

This Writ Petition is filed seeking the following relief:

“....to issue a Writ of Mandamus declaring the action of the 1st respondent in issuing notification in Rc.G4.1751/07, dt.23.04.2007 published in Telugu Daily Andhra Jyothi dt.01.05.2007 under Section 4 (1) of the Land Acquisition Act preparing to acquire the petitioner's land to an extent of Ac.1.01 cents situate in Sy.No.52/1 at Garikaparru Village, Thotlavalluru Mandal, Krishna District as arbitrary and illegal and further direct the respondents not to proceed further in pursuance of the said notification and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances.”

Petitioner claims that he is a small farmer owing an extent of Ac.1.01 cents in Sy.No.52/1 of Garikaparru Village, Thotlavalluru Mandal, Krishna District; the land is in the midst of Sy.Nos.121/4 and 125/3 and proposed for acquisition, which is not suitable for house sites. However, the said land has been recommended by local Revenue Officials only on account of political rivalry in the village.

It is the contention of the learned Government Pleader that in view of urgency in providing house sites to the weaker section people, enquiry under Section 5-A of the Land Acquisition Act, 1894 (for short 'the Act') has been dispensed with duly invoking urgency clause depriving liberty to the petitioner to put forward the objections.

While admitting the Writ Petition, this Court granted interim stay by order dated 07.06.2017.

A counter affidavit is filed by the Land Acquisition Officer, Vijayawada, Krishna District on behalf of the respondents, wherein

he stated that the subject land was identified for the purpose of providing house sites for poor under “Indiramma Housing Programme”. The Tahsildar, Thotlavallur Mandal has submitted the Draft notification under Section 4 (1) and Draft Declaration under Section 6 of the Act to the Revenue Divisional Officer, Vijayawada vide letter dated 09.04.2017. The Revenue Divisional Officer in turn has submitted proposals to the District Collector, who approved the draft notification on 23.04.2017 and 26.05.2017 respectively. Thereafter, the draft notification and draft declaration were published in the District Gazette and two daily news papers in the locality, as required under the Act as follows:

Sl. No.	Made of Publication	Date of Publication of Draft notification	Date of publication of Draft Declaration
1	Krishna District Gazette	25-4-2007	29-05-2007
2	Andhra Jyothi Daily News Paper	1-5-2007	6-6-2007
3	Indian Express Daily Paper	1-5-2007	
4	Deccan Chronicle Daily News Paper		6-6-2007
5	Substance in the locality	15-5-2007	10-6-2007

On account of the stay granted by this Court, further proceedings have been stalled.

Learned Government Pleader submits that in view of urgency clause under Section 17 (4) of the Act, conducting preliminary enquiry or delegation of powers or conducting 5-A enquiry does not arise. Upon getting instructions from the Special Collector (FAC) dated 10.06.2017, learned Government Pleader further submits that even as on date the land is required for providing house sites.

The Hon'ble Supreme Court in ***Laxmi Devi vs State of Bihar and another***¹ categorically held that the valuable right of the land owner is to file objections and resist the acquisition by virtue of Section 5-A of the Act and unless a grave urgency is shown as per Section 17 (4) of the Act, dispensing with Section 5-A enquiry shall not be resorted to.

As can be seen from the counter affidavit, there was a pre-determination. Even while making the proposal for acquiring the land, the Collector has to approve the proposal to issue notification under Section 4 (1) of the Act as well as declaration under Section 6 of the Act within one month.

Having regard to the above, by invoking the urgency clause possession of the land shall not be taken unless payment of 80% of compensation amount, which is required to be paid, is made. In normal circumstances, once the Court finds that notification of urgency clause is bad or the conditions stipulated for taking possession or payment of compensation is not complied with, a direction can be given to conduct 5-A enquiry to provide an opportunity to the land owner. However, as on date, the L.A Act has been repealed and only limited saving of the proceedings initiated under the old Act are saved under the new Act 30 of 2013.

In the present case on account of non compliance of the mandatory conditions of either taking possession or payment of compensation, declaration under Section 6 of the Act cannot be sustained.

It is also not possible at this stage, to conduct enquiry under Section 5-A of the Act and as per Section 24 (1) (a) of the Right to Fair Compensation and Transparency in Land Acquisition,

¹ 2015 (10) SCC 241

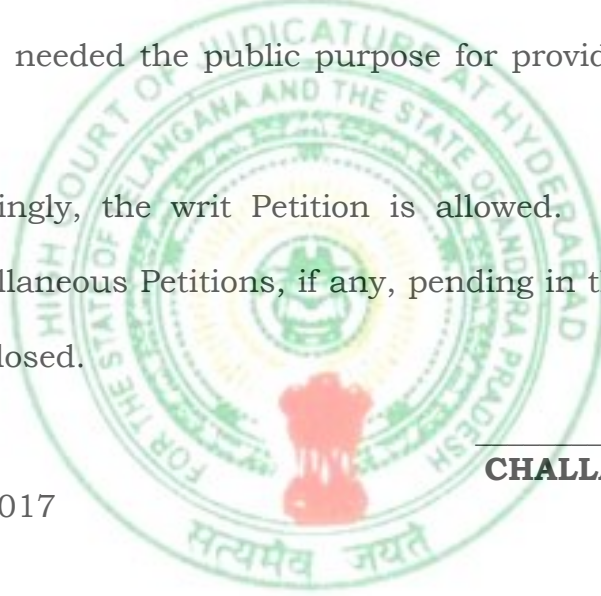
Rehabilitation and Resettlement Act 30 of 2013 where no award under Section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act, relating to the determination of compensation shall apply.

In these circumstances notwithstanding the fact that the land is needed for providing house sites on account of the statutory impediments, unless the proceedings initiated under Section 5-A of the Act are completed notification under Section 4 (1) of the Act cannot be sustained and accordingly, the impugned proceedings are quashed, however, giving liberty to respondent to initiate proceedings in accordance with law as applicable in the event land is needed the public purpose for providing house-sites otherwise.

Accordingly, the writ Petition is allowed. No order as to costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

Date:25.07.2017
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CHALLA KODANDA RAM,J





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WRIT PETITION No.11697 OF 2007



Date:25.07.2017

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