

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.6892 of 2009

ORDER:

Heard Mr. B. S. Prasad for the petitioners and the learned Government Pleader (Land Acquisition) for respondents.

2. The petitioners challenge 4(1) notification Rc.G4/ 5170/ 2008 dated 28.11.2008 and that the order of the 2nd respondent bearing No.Rco.G4/ 5170/ 2008 dated 14.02.2009 passed under Section 5-A of the Land Acquisition Act, 1984 (for short 'the Act'), as illegal and arbitrary.

3. The admitted and relevant dates for consideration are taken out from the counter-affidavit of the 2nd respondent. On 28.11.2008, 1st respondent approved draft notification under Section 4(1) of the Act. On 02.12.2008, 4(1) notification was published in the District Gazette and the last of the statutory compliance was on 10.12.2008 by publishing the substance of 4(1) Notification in the locality. On 14.02.2009 objections raised by the petitioners were over ruled and now the challenge in the writ petition is consideration of objections, is lacuna and not confirming to the law laid down by this court and the Hon'ble Supreme Court. On 17.02.2009 draft declaration was published.

4. On 01.04.2009 the following interim order was granted by this court.

"There shall be interim direction to the respondents not to interfere with the peaceful possession and enjoyment of the petitioners over the property in question until further orders. However, all further proceedings may go on."

5. From the above it is clear that stay of dispossession alone was granted in favour of the petitioners and simultaneously, the authorities were allowed to take up further proceedings in this behalf.

6. Section 11-A of the Act reads as follows:

“(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.

7. In the counter-affidavit, the respondents admit that not only in respect of the subject matter of the writ petition, but also in respect of the land for which consent was granted, the proceedings could not be completed and award passed.

8. With the lapse of several years and on account of not passing an award within the time stipulated by Section 11-A of the Act, the proceedings are illegal and cannot be continued.

9. Now the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013), governs the field of acquisition, opportunity of hearing and payment of compensation. Hence, this court is of the view that the proceedings since already lapsed, the impugned notification is liable to be set aside and is accordingly set aside.

10. The writ petition is, accordingly, allowed. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S.V.BHATT, J

Date: 02.08.2017
BSS

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