

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.14008 of 2007

ORDER:

This Writ Petition under Article 226 of the Constitution of India came to be filed by the petitioners seeking issuance of Writ of Mandamus declaring the 4 (1) Notification issued by the 1st respondent under the Land Acquisition Act in ROC No.G1/327/2007 dated 18.06.2007 as illegal and arbitrary.

The facts in issue are as under:

Petitioners claim to be the owners and possessors of land admeasuring Acs.7.17 cents in survey Nos.540, 541/2, 541/3 and 541/4B, Ac.0.99 cents in survey Nos.541/1 and Ac.2.78 cents in survey No.540/2A situated at Anantapalli Village, Nallajerla Mandal, West Godavari District having purchased the same under separate registered sale deeds respectively. The revenue authorities also issued pattadar passbooks and title deeds, in their favour, in respect of said lands. While things stood thus, a notification under Section 4 (1) of the Land Acquisition Act (for short 'the Act') came to be issued on 18.06.2007 proposing to acquire the lands of the petitioners. The said notification shows that the Governor of Andhra Pradesh has delegated the powers to the 2nd respondent to conduct 5A enquiry. Questioning the said notification, present writ petition came to be filed.

Heard the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition.

The ground raised by the learned counsel for the petitioners, seeking to set aside the 4 (1) notification, is that the agricultural land cannot be converted to non-agricultural purpose without obtaining

prior permission of the competent authority as required under Section 3 of the A.P. Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006.

On 03.07.2007, this Hon'ble Court while admitting the writ petition granted interim stay of all further proceedings pursuant to the impugned notification. Seeking to vacate the said order, WVMP No.1267 of 2015 came to be filed by the learned Government Pleader for Land Acquisition along with a counter affidavit stating that pursuant to the notice issued under Section 5A of the Act, the petitioners have attended 5-A enquiry on 13.07.2007, however, they failed to adduce any evidence. After perusing the report submitted by the Revenue Divisional Officer, the 1st respondent issued proceedings on 20.07.2007, duly rejecting the objections of the petitioners as untenable. Thereafter, the District Collector has approved the Draft Declaration under Section 6 of the Act and the same was published in West Godavari District Gazette and two daily News Papers. Further proceedings could not be taken up in view of the interim order passed by this Court.

A reply affidavit came to be filed by the learned counsel for the petitioners disputing the averments made in the counter. It has been specifically urged in the reply that the petitioners were not served with any notice under Section 5-A of the Act and that the petitioners did not participate in 5-A enquiry and that proceedings dated 20.07.2007 were not served on the petitioners.

At this stage, this Court instructed the learned Government Pleader to produce the original record. Accordingly, he placed the same before this Court today and a perusal of the same would show that

there are no proceedings dated 20.07.2007, rejecting the objections raised by the petitioners. The said fact is not disputed by the learned Government Pleader.

From the above, it is clear that no enquiry was conducted on 13.07.2007, though the petitioners have raised objections with regard to acquisition of lands pursuant to notification under Section 4 (1) of the Act. Without passing any orders on the objections raised by the petitioners, the draft declaration under Section 6 of the Act was approved and the same came to be published in the District Gazette of West Godavari.

Section 5 of the Act clearly contemplates that a notice has to be given to the petitioners inviting objections and the objections raised by the petitioners, if any, shall be considered under Section 5A (2) of the Act. It further states that the Collector shall give an opportunity of hearing to the petitioners and after hearing the petitioners, necessary orders be passed on such objections, by causing inquiry, if necessary. Since the said provision, which has been held to be mandatory, is not complied with, the authorities shall issue a fresh notice to the petitioners inviting their objections and then proceed further in accordance with law.

With above directions, the Writ Petition is disposed of.

Miscellaneous petitions pending in this writ petition, if any, shall also stand closed. No order as to costs.

06.02.2016
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C. PRAVEEN KUMAR, J