

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 24153 of 2008

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondent in issuing notification under section 6 of the Land Acquisition Act in Ref. No.B1/ 1277/ 2008, dated 20.10.2008 and in Ref.No.G2/ 3778/ 2008 dated 30.05.2008 for acquiring the lands of the petitioners under notifications, as illegal, arbitrary and violative of principles of natural justice.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioners claim to be owners and possessors of the land admeasuring Ac.03.09 cents in Sy.No.5/ 1 of Latchipalem Village. It is stated that the first respondent issued notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short "the Act, 1894") on 30.06.2008 to acquire the said land for the purpose of providing house sites to the beneficiaries under Indiramma Pathakam. On coming to know about the said notification, the 1st petitioner made a representation to the first respondent, marking copies to respondents 2 and 3, stating that the said land was already transferred in the name of petitioner Nos.2 and 3. It is also stated in the representation that vast poramboke land is also available in and around Latchipalem village. While things stood thus, petitioners 2 and 3 filed W.P.No.20504 of 2008 dated 19.09.2008 questioning the

acquisition of the said land as illegal, arbitrary and against the principles of natural justice. The said writ petition was disposed of directing the respondents to take into account the representation made by the petitioners in response to the notice under section 5-A of the Act, 1894 and to take further steps. Thereafter, petitioners submitted their objections. Without considering the said objections, the respondents sought acquisition of land in question, despite the fact that certain government and poramboke lands are available nearby. The first respondent published declaration under Section 6 of the Act 1894 on 30.05.2008 vide Ref.No.G2/ 3778/ 2008, without making any enquiry. Hence, the present writ petition came to be filed.

3) A counter came to be filed by the respondents stating that the land of the petitioners was proposed to be acquired for providing house sites to the beneficiaries under Indiramma programme. Draft notification was approved by the District Collector, East Godavari on 02.07.2008 and the same was published in the district gazette on 03.07.2008 and in local newspapers on 04.07.2008. Notices were issued to the interested persons to attend the enquiry on 11.08.2008. The petitioners submitted their objections. The said objections were rejected by the Land Acquisition Officer vide proceedings dated 30.08.2008. Thereafter, the District Collector issued draft declaration under Section 6 of the Act, 1894 on 30.09.2008. Thereafter, the Land Acquisition Officer issued notices under Sections 9 (3) and 10 of the Act, 1894 on 06.10.2008, asking the petitioners to attend the

award enquiry on 24.10.2008 and to establish their title over the land. On 20.10.2008 the Land Acquisition Officer also issued notice in Form-I asking the petitioners to appear before the Negotiation Committee on 29.10.2008 and to state their willingness to settle their claims through the Negotiation Committee. While the matter stood thus, W.P.No.20504 of 2008 came to be filed questioning the proceedings. The said writ petition was disposed of directing the authorities to consider the objections. As per the directions, the Land Acquisition Officer verified the records and found that no objections were filed. The petitioners filed the present writ petition questioning the draft declaration. It is further stated that the draft notification and draft declaration are legal, valid and in accordance with the provisions of the Land Acquisition Act.

4) By an order, dated 07.11.2008 this Court granted “interim stay of all further proceedings.”

5) Learned counsel for the petitioners submits that though other government lands are available for the purpose of acquisition, so as to provide house sites to weaker sections under Indiramma Housing Scheme, the authorities are intentionally taking the land of the petitioners, which was cultivated by the petitioners for their livelihood.

6) Before proceeding further, it would be appropriate to refer to Section 11-A of the Act, 1894.

“Section 11-A of the Act, 1894: A period within which an award shall be made: The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the 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, 1894, the award shall be made within a period of two years from such commencement.

Explanation: In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court, shall be excluded.

7) A perusal of the material placed before the Court would show that the enquiry before the Negotiation Committee came to be posted on 29.10.2008. On the said date no body attended the enquiry. On 07.11.2008 this Court passed an order granting interim stay of further proceedings. In view of the interim order the authorities failed to proceed further under the 1894 Act. Meanwhile, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the Act, 2013”) came into force with effect from 01.01.2014. Section 24 (1) (a) of the Act, 2013 prescribes that if the land acquisition proceedings were initiated under the Act and no award under Section 11-A of the Act, 1894 has been made, all the provisions of the Act, 2013 shall apply for determination of compensation.

8) Issue identical to the case on hand came up for consideration before a learned Single Judge of this Court in W.P.Nos.22781 of 2008, 18274 and 18619 of 2009. It was a case where declaration under Section 6 of the Act, 1894 was made in the year 2009 and no award was passed by virtue of *status quo* order granted by this Court. Dealing with Section 11-A of the Act, 1894, a learned single Judge of this Court held as under:

“Under Section 11 (A) of the Act, the award has to be passed within a period of two years from the date of publication of the declaration and in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration stayed by the order of Court shall be excluded. Even if that period is excluded and an award is liable to be passed, now it cannot be done under the provisions of the Act, as the action has to be taken as per Section 24 (1) (a) of Act 30 of 2013.

The Interplay of Section 11 (A) of the Act and Section 24 (1) (a) of the New Act was considered by the Apex Court in *Laxmi Devi v. State of Bihar and others*¹, wherein the Apex Court held that the acquisition proceedings initiated under the Act are liable to be *set aside* and the respondents were given liberty to issue a fresh notification, if they so choose, under New Act.”

9) In order to determine the compensation and the period within which an award shall be made, the Act, 2013 provides a procedure under Sections 25 and 26 of the Act, 2013, which reads as under:

¹ (2015) 10 SCC 241

“Section 25. Period within which an award shall be made:
The Collector shall make an award within a period of twelve months from the date of publication of the declaration under Section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same.

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

Section 26. Determination of market value of land by Collector:

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land namely:

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.”

10) Under Section 26 of the Act, 2013, the Collector has to determine the market value of the land for the purpose of payment of compensation under Section 24 of the Act, 2013. Methodology to be adopted for arriving at the market value is prescribed under Section 26 of the Act, 2013. Proviso to Section 26 of the Act, 2013 states that the market value shall be as on the date on which the notification under Section 11 of the Act, 2013 has been issued. An argument is advanced saying that Section 11 of the Act, 2013 has to be equated to Section 4 (1) of the Act, 1894. I am afraid, the same cannot be accepted for the reason that if really the intention of the legislature was to equate Section 11 of the Act, 2013 with Section 4 of the 1894 Act, definitely there would have been some indication to that effect in the Act, 2013. On the other hand, though the Act, 2013 takes care of many situations and shortfalls under the Act, 1894 but it is silent on this aspect. Apart from that it is to be noted that Section 4 of the 1894 Act does not anywhere indicate fixation of market value. While determining the compensation to be paid in respect of the lands acquired under the Act, 1894, the market value prevailing as on the date of the award is normally taken into consideration. But situation under the Act, 2013 appears to be different. Therefore, the argument that the Section 11 of the Act, 2013 has to be equated to Section 4 of the Act, 1894 cannot

be accepted. On this score, the proceedings under Old Act should lapse, giving liberty to initiate fresh proceedings under the Act, 2013.

11) In cases where lands are acquired for the purpose of housing under Indiramma Housing Scheme, came up for consideration before this Court in W.P.Nos.454 and 14091 of 2009. It was a case where notification under Section 4 (1) of the Act, 1894 was issued for acquiring the land admeasuring Ac.5.85 cents situated in Mudinepalli Village, Krishna District for the purpose of providing house sites to the weaker sections of the society under Indiramma programme. A learned Single Judge of this Court, while dealing with the said issue, held as under:

“This Court granted interim stay of all further proceedings, as a result of which the respondents could not complete the acquisition proceedings. In the meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force with effect from 01.01.2014 and seven years have lapsed from the date of publication of Section 4 (1) notification. It is not known whether the earlier scheme of providing house sites to the weaker sections of the society is being pursued by the Government due to changed circumstances.”

12) The Government Pleader for Land Acquisition submits that said orders are not challenged and have become final. Further, the Government Pleader could not place any material on record to show that, the said land is still required for providing house sites

to weaker sections. Infact, a doubt is raised as to the very existence of the said scheme.

13) For the aforesaid reasons, the writ petition is disposed of and the impugned proceedings initiated under the Act, 1894, are set aside, giving liberty to the respondents to initiate fresh proceedings for acquisition of the above mentioned land of the petitioners, if the land is still required, in accordance with the provisions of the Act, 2013. There shall be no order as to costs.

14) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

23.02.2017
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JUSTICE C. PRAVEEN KUMAR

