

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.5667 OF 2008

ORDER:

This writ petition is filed questioning the action of the 1st respondent in issuing the notification dated 04.02.2008 under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") in Andhra Jyothi Telugu daily news paper and making declaration under Section 6 of the Act with regard to taking over the possession of the land of the 1st petitioner for an extent of Ac.4.02 cents and Ac.1.64 cents of land belongs to the 2nd petitioner, situated in Sy.No.1928/2, N.Mydukuru Village, Mydukuru Mandal, Kadapa District, as illegal and arbitrary.

2. The facts of the case, according to the petitioners, are that the 1st petitioner is the owner of the land in an extent of Ac.4.02 cents and the 2nd petitioner is holding the land in an extent of Ac.1.64 cents at Sy.No.1928/2, N.Mydukuru Village, Mydukuru Mandal, Kadapa District. The petitioners are the owners and possessors of the lands in question as the same were purchased through the registered sale deed dated 26.10.2002. The respondents without conducting any enquiry under Section 5(A) of the Act and without giving any opportunity to the petitioners before acquisition proceeded with the land acquisition process. The said lands are acquiring for the purpose of granting of house site pattas to the weaker sections under the scheme of "Indiramma Padakam-2". The notification directed the 2nd respondent to take over the possession of the said lands within a period of fifteen days from the date of issuance of notice under Section 9(1) of the Act. The said

land is not "Government Beedu" as mentioned in the notification issued under Section 6 of the Act. It is further stated that the Government lands are there near the lands of the petitioners and due to political reasons, the petitioners' lands are sought to be acquired.

3. A counter affidavit has been filed on behalf of the respondents stating that there is no Government land or Pormaboake land in N.Mydukur Village for grant of house sites to the weaker sections. The Tahsildar, Mydukur Mandal has submitted the land acquisition proposals of draft notification under Section 4(1) of the Act to the Revenue Divisional Officer, Jammalamadugu vide his letter dated 03.12.2007 and after due enquiry, the Revenue Divisional Officer, Jammalamadugu has submitted the said draft notification and draft declaration proposals to the District Collector, Kadapa for approval. Thereafter, the District Collector has approved the draft notification under Section 4(1) and Section 6 of the Act on 27.08.2007. The draft notification was published in the District Gazette on 05.02.2008 in Andhra Bhoomi daily news paper and also in other daily news papers on 13.02.2008 and the substance was published in the locality on the same day. Section 6 declaration was made on 16.02.2008 and the objections were called for on 23.02.2008. At that stage, the petitioner has approached this Court.

4. On 17.3.2008, this Court while ordering notice before admission, granted interim stay of dispossession of the petitioners, if the petitioners were not already dispossessed from the land in question.

5. Today, when the matter has come up for hearing, learned Government Pleader for Land Acquisition submitted further written instructions dated 26.10.2017 of the Revenue Divisional Officer, Jammalamadugu in the matter. According to those instructions, possession of the land has not been taken by the respondents. It is further mentioned therein that the award was not passed due to the interim orders of this Court. It is also stated that the lands are very much suitable for construction of houses and it has become inevitable to acquire the lands of the petitioners.

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

7. Section 4(1) notification under the Act was made on 06.02.2008 and Section 6 declaration was made on 16.02.2008. As there was stay of dispossession, no further steps have been taken by the respondents even since 17.03.2008.

8. An identical case came up for consideration before a learned single Judge of this court in WP Nos.22781 of 2008, 18274 and 18619 of 2009, wherein also declaration under Section 6 of the Act was made in the year 2009 and no award was passed by virtue of *status quo* granted by this court. While dealing with Section 11-A of the Act, the learned single Judge held as follows:-

“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 to be taken as per Section-24(1)(a) of Act 30 of 2013.

In interplay of Section 11-A of the Act and Section 24(1)(a) of Act 30 of 2013 was considered by the Supreme Court in **Laxmi Devi Vs. State of Bihar and others** and in view of the conflicting situation, it was held that the acquisition proceedings initiated under the Act are liable to be set aside and the respondents-State were given liberty to issue a fresh notification, if they so choose, under Section-24(1)(a) of Act 30 of 2013.

9. In the instant case, the lands of the petitioners were sought to be acquired for the purpose of providing house sites to the weaker sections under 'Indiramma Pathakam-2'. In view of the interim stay granted by this court, the respondents have not taken any further steps in this matter.

10. In view of the facts and circumstances of the case and in view of the decision of this court referred to supra, this writ petition is allowed, setting aside the impugned 4(1) notification dated 04.02.2008 issued by the 1st respondent, 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 30 of 2013. No order as to costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

KONGARA VIJAYA LAKSHMI,J

Date: 13.11.2017.
Gk.

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

231

WRIT PETITION No.5667 OF 2008



Date:13.11.2017

Gk