

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 13833 of 2008

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the Notification in Ref.No.G3/ 4007/ 2006 dated 23.08.2006 to acquire the land of the petitioner in an extent of Ac.2.00 cents in Sy.No.409 of Farijellipeta Village, Rajanagaram Mandal, East Godavari District, as illegal, arbitrary and contrary to the provisions of the Land Acquisition Act, 1894 (for short "the Act, 1894) and *set aside* the same; consequently direct the respondents to drop all further proceedings including dispossession of the petitioner from the said land.

2) The facts in issue are as under:

The petitioner claims to be owner and possessor of land to an extent of Ac.2.00 cents in Sy.No.409 of Farijellipeta Village, Rajanagaram Mandal, East Godavari District, having acquired the same on succession and after due verification of record, the fourth respondent issued pattadar pass book in her favour. The second respondent issued notification under Section 4 (1) of the Act, 1894 vide reference No.G3/ 4007/ 2006, dated 23.08.2006 to acquire land referred to above for providing house sites to the weaker sections under Indiramma scheme. Pursuant to the said notification a notice under Section 5 (A) of the Act, 1894 came to

be issued, to which the petitioner filed a detailed objections before the third respondent. Without considering the objections in proper way, the same were forwarded to the Joint Collector, who passed an order on 02.11.2006 rejecting the objections. Questioning the orders of the Joint Collector, the petitioner preferred W.P.No.24511 of 2006. By an order dated 19.06.2007 this Court allowed the said writ petition quashing the declaration under Section 6 of the Act and also the rejection order passed by the Joint Collector, dated 02.11.2006. It is further stated that after disposal of the writ petition, the Collector passed the order on 02.12.2007 rejecting the objections filed by the petitioners. The said order was again questioned in W.P.No.4175 of 2008, which was dismissed. Thereafter notices under Sections 9 (1) and 10 of the Act came to be issued, the fourth respondent inspected the lands and instructed the staff to take possession of the same, which action is subject matter of challenge in the present writ petition.

3) A counter came to be filed by the respondents disputing the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that the Government has taken a decision to provide residential houses/ house sites to the eligible beneficiaries in all the villages under Indiramma Scheme. On verification it was found that nearly 80 families in Farijellipeta Village are not having own houses or house sites and they have been selected duly conducting Grama Sabha in the village. In this regard, the Sub-Collector, Rajahmundry, along with the Mandal

Revenue Officer, Mandal Surveyor, Mandal Revenue Inspector of Rajanagaram Mandal and Panchayat Secretary inspected the village on 29.07.2008 and found that the land of the petitioner being suitable for providing house sites to the poor people. It is also stated that there are no suitable government lands or ceiling surplus lands available in the village. Accordingly, the Sub-Collector, Rajahmundry, submitted proposals for draft notification to the District Collector for approval and the same was approved on 23.08.2006. Section 4 (1) Notification was published in East Godavari District Gazette and two daily news papers. Notices under Section 5-A of the Act was issued proposing enquiry on 25.09.2006. The petitioner has not attended the said enquiry, but she filed her objections on 23.10.2006 before the Land Acquisition Officer. The said objections were got enquired and enquiry report was submitted to the Collector, Kakinada. The same was rejected on 02.11.2006. The draft declaration under Section 6 of the Act, 1894 was approved by the Collector vide Ref.No.G3/ 4007/ 2006, dated 04.11.2006 and it was published. Notices under Sections 9 (1) and 10 and 9 (3) of the Act, 1894 were issued on 07.11.2006 proposing award enquiry on 22.11.2006. Questioning the same, the petitioner filed W.P.No.24511 of 2006 which was disposed on 19.06.2007. As per the directions of the High Court, the District Collector, issued 5 (A) (2) orders holding that there are no valid grounds in the objections raised and accordingly directed the Revenue Divisional Officer, Rajahmundry to submit draft declaration under Section 6 of the Act, 1894. Later Notices were

issued proposing award enquiry. The petitioner refused to take notice and filed W.P.No.4175 of 2008, which was dismissed. In view of the above, it is urged that there are no merits in the writ petition and the same is liable to be dismissed.

4) By an order, dated 01.07.2008, this Court granted interim stay of dispossession of the petitioner from the land in question pursuant to the notification dated 23.08.2006 published under Section 4 (1) of the Act.

5) 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.

6) As seen from the record, earlier declaration dated 07.11.2006 came to be quashed by the High Court in

W.P.No.24511 of 2006 directing the competent authority to exercise power under section 5 (A) (2) of the Act, 1894. Thereafter, the District Collector considered the objections and opined that there are no other valid grounds to consider the objections and further directed the Revenue Divisional Officer to submit draft declaration under Section 6 of the Act, 1894. The draft declaration was submitted by the Revenue Divisional Officer and it was approved by the Collector on 28.12.2007 and thereafter award enquiry notices came to be issued.

7) Section 11A of the Act, 1894 prescribes passing of an award within a period of two years from the date of said declaration excluding the period of stay/ injunction if any granted by a Court. In the instant case there is no stay of further proceedings by any Court, as this Court only directed the respondents not to dispossess the petitioner from the land in question.

8) In the process, 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.

9) 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.”

10) In *Mohan v. State of Maharashtra*² the Apex Court observed as under:

“In our opinion under Section 11-A what has to be seen is the date of last publication of the declaration under Section 6, and not any subsequent corrigendum

¹ (2015) 10 SCC 241

² AIR 2007 SC 2625

to the said declaration. The only circumstance under which the period between the declaration under Section 6 and the award can be extended is mentioned in the explanation to Section 11-A which states: In computing the period of two years referred to in Section 11-A, 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 is excluded. There is no mention in Section 11-A that the period after the publication of the declaration under Section 6 and the publication of any corrigendum to the said declaration has also to be excluded. We will be adding words to the statute if we put such interpretation to section 11A, and it is well settled the Court should not add or delete words in a statute.”

11) 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:

“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.”

12) 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.

13) 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.”

14) The Government Pleader for Land Acquisition submits that said orders are not challenged and have become final.

15) In the instant case, award could not be passed in view of the interim direction directing the authorities not to dispossess the petitioner from the subject land. In the meanwhile, the Act, 2013 came into force. The interim order granted by this Court is only a direction to the authorities not to dispossess the petitioner from the subject land. Though there was no stay of any proceedings, the authorities failed to pass an award. Section 11-A of the Act, 1894 which prescribes that an award has to be passed within a period of two years from the date of declaration. Though there is no interim order staying the proceedings, the authorities failed to proceed further, thereby violating the mandate of Section 11-A of the Act, 1894. 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.

16) 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 petitioner, if the land is still required, in accordance with the provisions of the Act 30 of 2013. There shall be no order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

19.01.2017
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