

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

WRIT PETITION NO.24983 OF 2017

ORDER: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri K.S.Murthy, learned counsel for the petitioner and the learned Advocate-General for the State of Telangana and, with their consent, the Writ Petition is disposed of at the stage of admission.

The relief sought for in this Writ Petition, filed by six land owners, is to declare the action of the respondents in executing agreements with other land owners in the subject villages for the purpose of construction of Kondapochammasagar reservoir under Kaleswaram project without disposing of the objections filed subsequent to the Section 11 notification; in acting upon the rules notified in G.O.Ms.No.120 dated 30.06.2017 as being contrary to the provisions of Act 30 of 2013 as amended by Act 21 of 2017; and in issuing tender notification for construction without necessary statutory clearances, as illegal, arbitrary, discriminatory, unconstitutional and ultra vires Articles 14, 19, 21 and 300-A of the Constitution of India; and consequently to strike down/read down Rules 6 to 10 of the Telangana State Land Acquisition (Consent Award, Voluntary Acquisition and Lump sum payment towards Rehabilitation and Resettlement) Rules, 2017 (hereinafter called the "2017 Rules") issued in G.O.Ms.No.120 dated 30.06.2017 declaring them as ultra vires Act 30 of 2013 as amended by Act 21 of 2017; to declare the agreements entered into till date as null and void; and to direct the respondents to take

further action with regard to the said lands, only after disposing of the objections filed by the petitioner as per law.

While the relief sought for in the Writ Petition is no doubt wide, Sri K.S.Murthy, learned counsel for the petitioner, has confined his submissions only to the scope of Rules 6 to 11 of the Telangana State Land Acquisition (Consent Award, Voluntary Acquisition and Lumpsum Payment towards Rehabilitation and Resettlement) Rules, 2017 (the “2017 Rules” for short). Learned Counsel would submit that Rule 6 of the 2017 Rules, which enables the District Collector to issue a notification in Form-C, at any stage of the land acquisition proceedings, invoking the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Telangana Amendment) Act, 2016 (the “2017 Act” for short) for settlement of the proceedings by negotiation, is ultra-vires Section 23-A of the 2017 Act which enables the Collector to pass a consent award only when all the persons interested in the land, and who have appeared before him, have agreed in writing; it is impermissible for the Collector to pass a consent award even before a declaration is made under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (the “2013 Act” for short); and Form G-I issued by the respondents, under Rule 9 of the 2017 Rules and in terms of Section 23-A and 31-A of the 2017 Act, could only have been issued after a declaration was made under Section 19 of the 2013 Act, and not prior thereto.

On the other hand, the learned Advocate General for the State of Telangana would submit that Section 23-A of the 2017 Act

enables the Collector to pass an award on his being satisfied that all persons interested in the land have agreed in writing on the matters to be included in the award; Section 30-A relates to voluntary acquisition of land; unlike Section 23-A which enables the Collector to pass an award by consent, Section 30-A enables the State Government or its authorised officer to enter into an agreement with willing land owner to sell their land in favour of the State; while Rule 6 of the 2017 Rules relates to a consent award passed under Section 23-A of the Act, it is Rules 11 to 15 which are attracted in the case of voluntary purchase of lands under Section 30-A; and the agreement to be entered into with the land owners is in Form G-III, and with persons other than land owners in Form G-IV.

Section 23 of the 2013 Act relates to the award of the Collector without enquiry in case of agreement of interested persons. It prescribes the procedure for the Collector to enquire into the objections submitted by the land owner during the award enquiry, and to then make an award under his hand on matters specified in Clauses (a) to (c) thereunder. Section 23-A (1) of the 2017 Act provides that notwithstanding anything contained in Section 23, if, at any stage of the proceedings, the Collector is satisfied that all persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector, in the form prescribed by rules made by the State Government, he may, without making further enquiry, make an award according to the terms of such agreement. The heading of Section 23-A reads as "*Award of Collector without enquiry in case of agreement of interested persons*". Section 23-A(1) enables the

Collector to pass an award on his being satisfied that all persons interested in the land, who appeared before him, have agreed in writing on the matters to be included in the Award. The effect of the non-obstante clause is that Section 23-A would prevail, notwithstanding anything contrary thereto in Section 23 of 2013 Act, and consequently the Collector is empowered, notwithstanding anything contained in Section 23 of the 2013 Act, to make an award in terms of Section 23-A of the 2017 Act on fulfilment of the conditions stipulated therein. A consent award, either under Section 23 of the 2013 Act or under Section 23-A of the 2017 Act, can only be passed after a declaration is made under Section 19(1) of the 2013 Act.

Unlike Section 23-A(1), which relates to matters to be included in the award made by the Collector with the agreement of persons interested in the land who appeared before him, Section 30-A relates to voluntary acquisition of land and, as the heading of the said provision indicates, it relates to ***“Acquisition of land by the State Government by entering into agreement”***. Section 30-A(1) also has a non-obstante clause and provides that, notwithstanding anything contained in the principal Act (i.e the 2013 Act) or any other law, whenever it appears to the State Government that land is needed in any area for any public purpose it may enter into an agreement with the willing land owner to sell the land in favour of the State, for the matters specified therein, in a prescribed form. The form prescribed in terms of Section 30-A are the forms referred to in Rules 11 to 14 of the 2017 Rules.

Unlike Section 23-A which makes the said provision applicable notwithstanding anything contained in Section 23 of the

2013 Act, Section 30-A(1) confers power on the State Government, notwithstanding any of the provisions of the 2013 Act or any other law, and whenever it appears to it that the land is needed in any area for any public purpose, to enter into an agreement with the willing land owner to sell the land in favour of the State. The words “*whenever*” in Section 30-A(1) makes it clear that the State Government is entitled to enter into an agreement with the willing land owners, to purchase their land, at any stage of the proceedings; and need not await a declaration being made under Section 19 of the 2013 Act.

Rule 6 of the 2017 Rules falls under the title “*Consent award under Section 23-A*”. The said Rule requires the District Collector to issue a notification in Form-C and enables him, at any stage of the land acquisition proceedings, to invoke the provisions of the Act for settlement of the proceedings by negotiation. The words “*at any stage of the land acquisition proceedings*” used in Rule 6 must be read in conjunction with Section 23-A of the 2017 Act, since this rule itself is made in terms of Section 23-A. A Rule made in exercise of the powers conferred under an enactment must be construed harmoniously with the provisions of the Parent Act, and not as travelling beyond the Act under which it was made. So construed, Rule 6 can be invoked only after a declaration is made under Section 19 of the 2013 Act, and not at any stage anterior thereto. Consequently the notification which the District Collector can issue in Form-C, in terms of Rule 6 of the 2017 Rules, is only after a declaration is made under Section 19 of the 2013 Act.

Unlike Rule 6 which is applicable only to a consent award made under Section 23-A, Rules 11 to 14 of the 2017 Rules relate

to voluntary acquisition (sale) of land. Rule 12 enables the District Collector, on receipt of a requisition in Form B and after due verification, to issue a public notice in Form-C inviting claims, from all the persons interested/affected, for settlement by negotiation. While the public notice in Form-C is common both to Rules 6 and 12, the former relates to a consent award and the latter to purchase of land by the State through private negotiations or voluntary acquisition (sale) of land. After a public notice is issued in terms of Rule 12 of the 2017 Rules, the negotiation committee is required to carry out negotiations, and the settlement reached thereby is required to be entered into an agreement in Form G-III for land owners, and in Form G-IV for persons other than land owners.

The submission of Sri K.S.Murthy, learned counsel for the petitioner, that Form G-I as is referred to in Rule 9 only refers to Section 23-A and Section 31-A and not to Section 30-A, is of no avail. A detailed procedure is prescribed for a consent award to be passed in terms of Rules 6 to 10. It require a notification to be issued in Form – C by the District Collector under Rule 6, for a notice to be issued in Form D in terms of Rule 7(a), for Forms E-I and E-II to be submitted by the persons interested in terms of Rule 7(b), and for the District Collector to issue a notification in Form - F in terms of Rule 7(c). Rule 8 requires negotiations to be carried out by a negotiation committee consisting of the District Collector, the Joint Collector, the RDO/Deputy Collector – convener of the committee, the Executive Engineer of a Works Department (other than the requisitioning Department), and a representative of the Requisitioning Department. Rule 9 requires the settlement,

reached pursuant to negotiations, to be recorded as an agreement in Form G-I for the land owners, and in Form G-II for persons other than land owners. The agreement in Form G-I is referable to Rule 9 whereas, for voluntary acquisition in terms of Rule 14, the agreement is required to be entered in Form G-III for land owners and in Form G-IV for persons other than land owners. Form G-I is the form in which the settlement, reached in the negotiations, is required to be recorded as an Agreement, and Rule 10 requires the Collector to make an award in terms of such agreement. Form G-I has no application to voluntary acquisition (sale) of land. The said form would apply only where a consent award is sought to be passed in terms of Section 23-A of the 2017 Act.

The apprehension of Sri K.S.Murthy, learned counsel for the petitioner, that the order now passed by us may be construed as disabling the petitioner from challenging the vires of the 2017 Act or the 2017 Rules, is unfounded. The vires of statutory provisions, either under the 2017 Act or under the 2017 Rules, are not under challenge in this Writ Petition, and the scope of enquiry in these proceedings is limited only to the construction to be placed on the aforesaid provisions, and not regarding their constitutional validity.

Sri K.S.Murthy, learned counsel for the petitioner, states that the petitioner's objections under Section 15 of the 2013 Act may at least be disposed of at an early date. Learned Advocate General for the State of Telangana would submit that, in case the objections have not already been disposed of, they would be considered with utmost expedition.

The Writ Petition stands disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

17th August 2017
RRB

