

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.28541 OF 2012

ORDER:

1. The writ petition is filed questioning the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") as published in the A.P. State Gazette No.148 on 14.6.2007 and draft declaration under Section 6 of the Act and consequential award dated 22.11.2010, passed by the Land Acquisition Officer and Revenue Divisional Officer, Eluru in Award No.6 of 2010.

2. It is the case of the petitioner that she is the owner of the land over an extent of Ac.3.10 cents in Sy.No.54/4 of Dwaraka Tirumala Village, Eluru Mandal, West Godavari District having purchased the same from one Venkata Ramanuja Charyulu, S/o. Krishnama Charyulu and his sons through a registered sale deed dated 23.07.1986 vide Document No.759 for a valuable consideration and the revenue authorities have issued the title deed and pattedar pass book in the name of the petitioner. The name of the petitioner was also mutated in the revenue records such as Adangal and Pahanies. While things stood thus, in the year 2011, when the petitioner was erecting fencing around her land, it was objected by the revenue officials, and questioning the same the petitioner approached this Court by filing W.P.No.13155 of 2011, and this Court passed an interim order on 30.04.2011 directing the respondents therein not to interfere with the possession and enjoyment of the property.

3. A counter-affidavit has been filed by one Tej Bharath Namburi, S/o. Madhusudana Rao, Revenue Divisional Officer, Eluru, West Godavari District. In the counter-affidavit, it is stated that earlier Smt Seethalam Nagamani, wife of Krishna Rao had filed Writ Petition No.13155 of 2011 before this Court questioning the interference of

her possession over an extent of Ac.3.10 cents in Sy.No.54/4 of Dwaraka Tirumala, West Godavari District; that Sri Venkatewara Swamyvari Devasthanam, Dwaraka Tirumala is a famous and popular temple of West Godavari District and known as “Chinna Tirupathi” and on account of constant flow of pilgrims from various parts of the State of Andhra Pradesh, a request was made by the temple authorities to initiate the land acquisition proceedings for an extent of Ac.40.38 cents in Sy.No.52/1 including the land over an extent of Ac.10.80 cents in Sy.No.54/4 of Dwaraka Tirumala, pursuant to which, a draft notification was issued under Section 4(1) of the Act on 13.04.2007 published in the Gazette on 14.6.2007 in the names of 1) Sri Poluboyina Venkataramaiah, 2) Smt Mallisetti Sitha Nagamani @ Seethalam Nagamani, 3) Sri S.K.V. Raghava Charyulu and 4) Sri S.K.V. Balarama Charyulu, Section 5A notices were issued to the notified land owners and an enquiry was conducted on 6.7.2007. Petitioner has not attended the Section 5A enquiry and after considering the Section 5A enquiry report, the District Collector, West Godavari District, approved the draft declaration on 18.03.2008. After publishing the draft declaration under Section 6 of the Act, notices under Section 9(3) of the Act have been issued to the notified owners. Smt Seethalam Nagamani has not attended the enquiry conducted and failed to prove the title over the land. Accordingly Award No.6 of 2010 was passed on 22.11.2010 and the compensation amount to the extent of Ac.3.75 ½ cents amounting to Rs.13,03,941/- was deposited in civil court on 08.03.2011. It is further stated the possession was taken and handed over to the requisitioning department on 22.03.2011.

3(a) So far as the petitioner’s land is concerned, Award No.6 of 2010 was made on 22.11.2010. Dealing with the specific contention

of the petitioner that her name was not shown in any of the proceedings, it is stated that Malisetti Nagamani's name was reflected in the notification as the petitioner is known under the name of Malisetti Nagamani in the locality and she never requested to update her name as Seelamsetti Nagamani and even after publishing the notices, she has not represented for updating of the name in the land acquisition proceedings as Seelamsetti Nagamani. It is further asserted that the petitioner has to approach the civil court to claim her right over the property and to receive the compensation. It is further stated that the petitioner never approached the Land Acquisition Officer to substitute her name as Mallisetti Naga Mani in the place of Seethalam Nagamani in the award proceedings. It is further asserted that in the draft notification it was mentioned as Seelamsetti Nagamani and there is no willful and *mala fide* intention on the part of the Land Acquisition Officer and the Revenue Divisional Officer has mentioned the name of the petitioner as Mallisetti Nagamani. Inasmuch as the possession of the land has already been taken and there being no bias and *mala fide* in acquiring the land mentioning the wrong name, the writ petition does not deserve any consideration and prayed for dismissal of the same.

4. It is the specific contention of Sri K. Chidambaram, learned counsel for the petitioner that no notice was issued to the petitioner at any point of time and the petitioner was not put on notice while Section 5(A) enquiry was being conducted, and further, the name of the petitioner and the extent and survey number not being reflected in Section 6 declaration, it is deemed that the land of the petitioner was not acquired. Even in the award alleged to have been made, the name of one Smt Seelamsetti Nagamani, was shown and the extent which has been shown is also at variance. In those circumstances,

petitioner seeks a declaration that the award proceedings not bind her and Section 4(1) notification has to be quashed.

5. Learned counsel for the petitioner has placed reliance on the judgments of this Court reported in **Vajja Koteswara Rao and others vs. The Government of A.P., represented by its Secretary, Social Welfare Department and others¹**, **DDA vs. Samey Singh (Dead) by LRs and others²** and **V.K.M. Kattha Industries Private Limited vs. State of Haryana and others³** to support his contention that on account of the proceedings not having been taken in the name of the petitioner, particularly there being no Section 6 declaration, the land acquisition proceedings are vitiated and the award does not bind the petitioner.

6. On the other hand, learned Government Pleader for Land Acquisition (A.P) placed reliance on the judgment of this Court reported in **M. Arun Subramanian and another vs. State of Andhra Pradesh and others⁴**.

7. Perused the record and considered the respective submissions. In the facts of the present case, there cannot be any contradiction if this Court gives a finding to the effect that at no point of time, the petitioner's name has figured in any of the proceedings issued by the Land Acquisition Officer. The name mentioned in Section 4(1) notification with respect to Sy.No.54/4 without any sub division is Smt Mallisetti Nagamani and in the award proceedings it was mentioned as Smt Seelamsetti Nagamani. It may be noted that the petitioner's name is Seethalam Nagamani and against the land in Sy.No.54/4 for an extent of Ac.3.10 cents, the petitioner's name has been reflected as Seethalam Nagamani. As a matter of fact, to that

¹ 1979(1) ALT 65

² (2005) 13 SCC 682

³ (2013) 9 SCC 338

⁴ 2012(2) ALD 642

effect pattedar pass books were also issued in favour of the petitioner and the revenue records also disclose the name of the petitioner as Seethalam Nagamani. The copies of the pattedar pass books, Adangal and Pahani were also filed before this Court and there is no dispute that has been raised with respect to the same. One other aspect of the matter is that in Award No.6 of 2010, it is clear that the extent of the land which is shown as Ac.3.75 ½ cents is against one Smt Seelamsetti Nagamani. The response of the respondent authorities that the name has been reflected as Mallisetti Nagamani as the petitioner is known in the locality has no basis whatsoever. Assuming that the said contention of the respondents is to be taken into consideration, there is no reason as to why the petitioner's name was recorded as Seelamsetti Nagamani instead of Seethalam Nagamani in the award enquiry. While in Section 4(1) notification, the name of "Smt Mallisetti Nagamani" has been mentioned in Section 6 declaration it was shown as "Malisetti Nagamani" and in the award it was shown as "Seelamsetti Nagamani". There is no explanation forthcoming with respect to the discrepancy.

8. More importantly, in the draft declaration made under Section 6 of the Act, Sy.No.54/1 is only mentioned and there is no mention about Sy.No.54/4. The effect of omission of making a draft declaration under Section 6 of the Act is fatal to the land acquisition proceedings as it is well settled in terms of Section 6(3) of the Act, the declaration made thereunder would be final with respect to the identity and the purpose for which the land is being acquired. It may be borne in mind that while an opportunity is to be given to the land owner to object the acquisition proceedings in the process of Section 5A enquiry, there is no such opportunity given to the petitioner when it comes to declaration under Section 6 of the Act. As per the

provisions of the Act, the L.A.O is required to consider the objections that may be raised by the land owner or the person interested in the land with respect to various aspects including the purpose, the suitability of the land for the purpose for which the land is proposed to be acquired and making a report to the District Collector to enable the District Collector to take a final decision and after satisfying to give a go ahead for making a declaration under Section 6 of the Act. It is only for that reason after the approval of the District Collector the report that is made under Section 5A of the Act by the L.A.O, would attain finality by virtue of a declaration under Section 6(3) of the Act.

9. In the present case, there is no declaration that is made under Section 6 of the Act with respect to Sy.No.54/4. In other words, it can as well be said that either the L.A.O or requisitioning authority had chosen not to acquire the land in Sy.No.54/4. That being the legal consequences, the award made with respect to Sy.No.54/4 cannot be sustained and the same would become illegal. Similar consequences also would result on account of the lapses in issuing the land acquisition proceedings right from the inception of Section 4(1) notification to all other proceedings. So far as the judgment reported in **May George vs. Special Tahsildar and others**⁵ as cited by the learned Government Pleader, a close scrutiny of the same discloses that in the said case, the land acquisition proceedings came to be challenged after a long lapse of time and that there was no lacuna in issuing the notification under Section 4(1) and declaration under Section 6 of the Act apart from compliance with other provisions of the Act. The land acquisition proceedings came to be challenged only with respect to noncompliance of the provisions of Section 9 of the Act. In those circumstances, the Supreme Court refused to interfere

⁵ 2010 (5) ALD 34 (SC)

and grant relief to the petitioner therein. Likewise in the judgment of this Court reported in **M. Arun Subramanian** (4 supra), the contention raised was that in the notification under Section 4(1), petitioner's name was not mentioned and further the time frame within which the notifications had to be given was not adhered to. In the facts of the said case, a finding was given that while it is not necessary that the petitioner's name has to be reflected in the Section 4(1) notification, the grounds raised in the present case were not the subject matter in the above judgment.

10. It is also not the contention of the learned counsel for the petitioner that the land acquisition proceedings were vitiated only on account of the petitioner's name not being reflected in the land acquisition proceedings. It is well settled law that even after issuing the notification under Section 4(1) of the Act, if an individual's name is not reflected, it is mandatory for a land owner to be given a notice and an opportunity to submit any objections in Section 5A enquiry and before making Section 6 declaration. The compliance under Section 5A and Section 6 are mandatory. In the case on hand, there being a lacuna with respect to the said aspect, there is no alternative than to set aside the award and to quash the notification under Section 4(1) of the Act so far as the petitioner's land in Sy.No.54/4 is concerned. The award does not bind the petitioner and it cannot be said that there are any land acquisition proceedings initiated with respect to Sy.No.54/4. As the petitioner is alone before this Court, the relief claimed is limited to her only.

11. Accordingly, the writ petition is allowed setting aside the notification issued under Section 4(1) of the Act as published in the A.P. State Gazette No.148 on 14.6.2007 and consequential Award dated 22.11.2010, passed by the Land Acquisition Officer and

Revenue Divisional Officer, Eluru in Award No.6 of 2010, so far as the petitioner's land in Sy.No.54/4, Dwaraka Tirumala, Eluru, is concerned. Miscellaneous Petitions, if any, pending in this writ petition, shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date:28.06.2017,
Gk.



THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM



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