

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 5139 OF 2008

Date 26.07.2017

Between:

Vastavai Veera Venkata Satyanarayana Raju.

... Petitioner

AND

The District Collector, E.G., Kakinada and others.

.....Respondents



HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.5139 OF 2008

ORDER:

Petitioner challenges acquisition, of an extent of Ac.3.17 cents in Sy. No.180/1, Rachapalli Village, Prathipadu Mandal, East Godavari District, under notification dated 26.11.2007, contending that though revenue authorities issued pattadar passbooks and title deeds in his favour, his name, however, does not find place in 4(1) notification; and no notice was issued in regard to enquiry under section 5A of the Act thereby denying him opportunity to file objections and participate in the enquiry under section 5A of the Act.

This Court, while ordering notice before admission on 11.03.2008, granted stay of dispossession.

Learned counsel for the petitioner submits that no declaration, under Section 6 of the Old Act, was made; the proceedings dated 19.02.2008, made by respondent No.1 (District Collector, West Godavari), do not indicate any notice having been issued to the petitioner; and, therefore, impugned proceedings suffers from irregularities violating the valuable rights of the petitioner as held by the Supreme Court in **Laxmi Devi vs. State of Bihar**¹.

A perusal of the record does not indicate any counter having been filed by the Government denying the averments made by the petitioner. It may be noted that, in terms of Rule

¹ (2015) 10 SCC 241

12A of the A.P. High Court Writ Proceedings Rules, 1977, respondents have an opportunity to file counter affidavit within six months and, further, opportunity is provided to file counter with the leave of the Court even thereafter. Even, as on date, no counter is filed denying the allegations in the writ petition. The averments in the writ petition, therefore, are taken to be true.

Section 5A contemplates an enquiry to be conducted by the Collector into the objections that may be made against the proposal to acquire the lands. In the case on hand, the petitioner has been deprived of the said benefit, notwithstanding his name having been recorded in the revenue records, which is the basis for issuance of 4(1) notification. In normal circumstances, if 5-A enquiry is vitiated, opportunity could have been given to conduct fresh 5A enquiry but, on account of repeal to Land Acquisition Act, 1894, there is no possibility of land acquisition proceedings being continued. The Division Bench of this Court, in W.A.No.327 of 2017, held that stay of dispossession is restricted only to stay of dispossession which does not prevent the authorities to have proceeded to pass award within the provisions of Old Act which mandate an award being passed within two years from the date of declaration. In the present writ petition, there is no averment that Section 6 declaration was issued.

Accordingly, the writ petition is allowed, quashing Section 4(1) Notification dated 26.11.2007. There shall be no order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

CHALLA KODANDA RAM,J

Dated:26.07.2017
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