

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.26492 OF 2010

ORDER:

The petitioners challenges proceedings of the 2nd respondent -District Collector in Rc.No.2168/2006 G-2 dated 05.10.2010, rejecting the objections submitted by the petitioners to the proposed acquisition of various extents of lands totalling to Acs.129-44 Cts in different survey numbers of G.Chintuva Village, Rambilli Mandal, Visakhapatnam, submitted through endorsement of 3rd respondent in Rc.No.205/2-10/RI-IV dated 06.10.2010, without considering the objections submitted by petitioners under Section 5-A of the Act, as illegal and contrary to Section 5-A of the Land Acquisition Act ('the Act' for short).

On 03.07.2006, Section 4(1) notification was published in the State Gazette, in newspaper on 18.07.2006 and in the locality on 21.07.2006. In the said notification, the 2nd respondent by invoking Section 17(4) of the Act had dispensed with Section 5-A enquiry. Challenging the same, the petitioners filed W.P.Nos.16323 & 17188 of 2006. This Court disposed of the said writ petitions and directed the respondents to issue notice to petitioners for submissions of objections before conducting enquiry under Section 5-A. Accordingly, the 3rd respondent had issued notice to the petitioners for submitting objections. The petitioners submitted detailed objections. The 3rd respondent after considering the objections rejected the objections through endorsement dated 03.01.2007. Aggrieved, the petitioners filed W.P.No.654 of 2007 contending that the 3rd respondent is not conferred with the power to conduct

enquiry under Section 5-A of the Act and it is only the 2nd respondent that ought to have dealt with the matter. This Court allowed the writ petition and set aside the endorsement of 3rd respondent dated 03.01.2007. Despite the order in W.P.No.654 of 2007, the 2nd respondent failed to issue notices to petitioners. Hence, the present writ petition.

On 28.10.2010, this Court granted interim stay restraining the respondents from interfering with the petitioners' possession alone. Respondent No.3 filed counter affidavit. It is stated that draft declaration under Section 6 of the Act was approved by the 2nd respondent on 26.10.2010 and published in the Gazette and in the locality. It is further stated that by the time they received the stay orders of this Court on 31.10.2010, the draft declaration was approved.

The grievance of petitioners is that the proceedings do not refer to complying with the requirements of sub-section (2) of Section 5-A of the Act. The opportunity provided under sub-section (2) of Section 5-A of the Act is valuable opportunity and on the acquisition, extent of acquisition etc., if an opportunity is given, the enquiry conducted can be said to be satisfying with the requirements of Section 5-A(2) of the Act.

The petitioners challenge the order rejecting objections as illegal and the enquiry conducted under Section 5-A is unsustainable in law, for the objections were overruled in a routine and monotonous way vide proceedings dated 05.10.2010. With

effect from 01.01.2014, Act No.30 of 2013 has been holding the field in the matter of acquisition of land by State in exercise of its power under eminent domain. Hence, counsel for petitioners made submissions keeping in view the overruling of Land Acquisition Act, 1894, effect of repeal/savings and ultimately if circumstances warrant necessity to follow the mandate of Sections 12 to 18 of Act 30 of 2013.

Counsel for petitioners relies on Sections 6 and 11-A of the Act, which read thus:

“6. Declaration that land is required for a public purpose. -
 (1) Where the appropriate Government or the District Collector is satisfied that any particular land is needed for the purpose of construction, extension or improvement of any dwelling house for the poor, a declaration shall be made to that effect under the signature of a Secretary to such Government or any other officer duly authorised to certify their orders or the District Collector as the case may be, and different declarations may be made, from time to time, in respect of different parcels of land covered by the same notification under Section 4, sub-section (1):

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority.

[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)- (i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1957 (1 of 1957), but before the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of the publication of the notification; or (ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 shall be made after the expiry of one year from the date of the publication of notification:

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.”

“11-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 published before the commencement of the Land Acquisition (Amendment) Act,1984, the award shall be made within a period of two years from such commencement.”

According to learned counsel for petitioners, the draft declaration is published beyond one year period stipulated under proviso to Section 6 and secondly even the dates relating to draft declaration permit argument or construction in favour of respondents, still the land acquisition proceedings questioned in this writ petition are lapsed on account of failure on the part of the respondents to pass an Award within two years from the date of publication of draft declaration. He further contends that as the acquisition, for the present, is governed by Act No.30 of 2013, the petitioners are entitled to benefits of Section 24 of the Act 30 of 2013 and thereby the acquisition proceedings impugned in the writ petition are abated or lapsed.

The Assistant Government Pleader reiterates the stand of respondents stated in counter affidavit and contends that the draft declaration is well within the time stipulated by Section 6 proviso (1)

of the Act and therefore, no exception to Section 4(1) notification and Section 6 declaration can be taken, and for not passing the Award, he refers to the interim order granted by this Court on 28.10.2010. The interim order in the case on hand protected possession of the petitioners. Other proceedings were allowed to be taken up and completed. The Award is not passed till date. Even at this length of time, no material is placed before the Court to discharge the burden. Having regard to these undisputed circumstances, the proceedings initiated for land acquisition, insofar as the petitioners, are declared as lapsed.

The learned Assistant Government Pleader placed on record the instructions dated 24.08.2017. The same is placed on record.

Having regard to the above circumstances and on the ground that the proceedings dated 05.10.2010 are contrary to Section 5-A(2) of the Act, the land acquisition proceedings, as they stand today, are lapsed under Section 11-A of the Act, as no award is passed.

The writ petition is, accordingly, ordered. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V. BHATT, J

07th September, 2017

KL/Lrkm