

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.26823 OF 2008

ORDER:

The petitioners pray for Mandamus declaring Section 4(1) notification issued by 2nd respondent in Rc.2409/07/G2 dated 20.11.2007 and draft declaration under Section 6 in Rc.2409/07/G2 dated 17.11.2008 under the Land Acquisition Act, 1894 (for short 'the Act'), as illegal, arbitrary and unconstitutional.

The subject matter of impugned notification/declaration is agricultural land of an extent of Acs.1-60 Cts in Sy.Nos.235/4 and 235/5A of Maruproluvaripalem Village, Bapatla Mandal, Guntur District.

The petitioners allege to be owners of subject land acquired through the impugned declaration. On 20.11.2007, the 2nd respondent issued notification under Section 4(1) of the Act proposing to acquire subject land for providing house sites to weaker sections. On 07.12.2007, the 3rd respondent issued notice of enquiry under Section 5-A of the Act. On 24.12.2007, the petitioners submitted objections against the acquisition of subject land pursuant to notification dated 20.11.2007. The 2nd respondent through proceedings dated 17.11.2008 overruled the objections raised by petitioners. On 24.11.2008, the proceedings dated 17.11.2008 were sought to be served on petitioners, but, however, the covers were returned without service. Later on, the draft declaration dated 17.11.2008 was approved and also published on 17.11.2008.

On 11.12.2008, this Court granted interim stay of dispossession and on 22.01.2009, the interim order was extended until further orders.

The petitioners challenge Section 4(1) notification and proceedings dated 17.11.2008 as illegal and the enquiry under Section 5-A is unsustainable in law, for the objection was overruled in a routine and monotonous way vide proceedings dated 17.11.2008. 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, effecting of repeal/ savings and ultimately if circumstances warrant necessity to follow the mandate of Sections 12 to 18 of Act 30 of 2013. The first limb of submissions against Section 4(1) notification/Section 6 declaration is that the public purpose of providing house sites by acquiring the subject land, while vast extent of Government land is available, is illegal, arbitrary and objectionable. Though the counter affidavit refers to communicating proceedings dated 17.11.2008 to petitioners, no material is placed on record either on the alleged despatch of proceedings dated 17.11.2008 or that the proceedings dated 17.11.2008 satisfy the requirements of Section 5-A of the Act and the binding precedents of Apex Court in RADHY SHYAM v. STATE OF U.P.¹, ANAND SINGH v. STATE OF U.P.² & LAXMI DEVI v. STATE OF BIHAR³. Therefore, the petitioners pray for setting aside the draft declaration

¹ (2011)5 SCC 553

² (2010)11 SCC 242

³ (2015)10 SCC 241

dated 17.11.2008. The petitioners further contend that under Section 11-A of the Act, the Award is required to be passed within two years from the date of publication of declaration i.e., 17.11.2008, in default, the acquisition gets lapsed. In the case on hand, admittedly Award is not passed within two years. Therefore, petitioners pray for setting the notification under Section 4(1) as well.

Mr. Bodduluri Srinivas Rao for petitioners contends that without prejudice to the legal contentions adverted to above, the respondents are under obligation to follow Chapter IV of Act 30 of 2013 to continue the proceedings already initiated. According to him, once the proceedings dated 17.11.2008 are set aside as not conforming to the binding precedents referred to above, then what remains is Section 4(1) notification dated 20.11.2007. Either for continuation or completion of acquisition of land under Section 4(1), the respondents are required to follow the entire scheme in Chapter IV of Act 30 of 2013. Slightest deviation in this behalf, according to him, would result in acquisition of property, otherwise than in accordance with law. Therefore, he prays for allowing the writ petition.

The Assistant Government Pleader for Land Acquisition relies on the stand taken in the counter affidavit and contends that the grounds raised by petitioners are untenable and the petitioners are not small farmers and having sufficient landed property. On the applicability of Section 11-A of the Act, he fairly submits that award, as a matter of fact, is not passed as on date though the interim

order granted by this Court was to the limited extent of stay of dispossession. According to him, land is required for public purpose of providing house sites to weaker sections. For any reason, if this Court accepts the contention of petitioners under Section 11-A of the Act, he seeks liberty to proceed under Act 30 of 2013.

Section 11-A of the Act reads thus:

“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.”

In the case on hand, the relevant dates for consideration are as follows:

Section 4(1) notification is dated 20.11.2007

Section 6 declaration is dated 17.11.2008

Interim order of dispossession granted by this Court is dated 11.12.2008.

Coming into force of Act No.30 of 2013 is dated 01.01.2014

From the above dates, it is clear that the Award is not passed as on date and further the respondents are not in a position to satisfy this Court that they followed the requirements of Section 5-A of the Act, both in letter and spirit and issued draft declaration.

Without much deliberation, keeping in view the above circumstances, this Court is satisfied that the acquisition of land impugned through notification dated 20.11.2007 and declaration

dated 17.11.2008 issued under the Land Acquisition Act are illegal and, accordingly, set aside.

The writ petition is ordered. The respondents, however, are given liberty to proceed, if circumstances warrant, for acquisition of subject land by following the procedure prescribed under Act 30 of 2013. There shall be no order as to costs.

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

11th August 2017

Lrkm



S.V.BHATT,J