

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.15532 of 2005

ORDER :

Heard the counsel for petitioner, and the learned Government Pleader for Land Acquisition, for respondents.

2. The petitioner herein is the owner of an extent of Ac.0.35 guntas of land situate in Survey No.139/C of Thummana Pally Village, Huzurabad Mandal, Karimnagar District.

3. Initially, a notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') was issued acquiring petitioner's land for the purpose of house-sites for members of weaker sections and it was published in the District Gazette on 02.06.1988.

4. Declaration under Section 6 of the 1894 Act was published on 21.12.1988, and possession of the land was also taken on 28.04.1990.

5. The petitioner contends that no award has been passed by the respondents thereafter and no compensation has been paid to the petitioner, though petitioner was deprived of his land by the respondents. The petitioner contends that persons similarly situated like him, i.e., by name B. Venkat Reddy filed WP.No.3490 of 2000 before this Court, and this Court disposed of the said Writ Petition directing the respondents to pass award and pay compensation with regard to his land pursuant to notification published on 02.06.1988 within four months.

6. Counter-affidavit has been filed by respondents admitting that the land of the petitioner was acquired and possession of the land was taken on 28.04.1990; patta certificates were distributed to forty-one beneficiaries to whom Ac.0.5 cents each was given as per layout prepared by the Mandal Surveyor; the draft notification and draft declaration issued in 1988 had lapsed, and fresh proposals were called for from the Mandal Revenue Officer, Huzurabad for taking further action; pursuant to the instructions of the Revenue Divisional Officer, the Mandal Revenue Officer, Huzurabad conducted spot inspection and local enquiry on 09.11.1993 and recorded sworn statements of the beneficiaries in the presence of the local people; one of the beneficiaries stated that the petitioner had gifted the land to beneficiaries in 1991 and that the Mandal Revenue Officer, Huzurabad then submitted a report to the Land Acquisition Officer and Revenue Divisional Officer, Karimnagar stating that petitioner had already gifted the land to beneficiaries; this was informed to the District Collector, Karimnagar vide letter dt.13.12.1993, and thereafter, the District Collector, Karimnagar closed the file; and when petitioner had already gifted the land to others, there is no necessity to acquire the land and to pay compensation by the Government.

7. The learned Government Pleader for Land Acquisition reiterated the above contentions.

8. It is now not disputed that notification was issued under Section 4(1) of the 1894 Act on 02.06.1988 followed by a declaration under

the said Act on 21.12.1988, and petitioner was dispossessed from the land on 28.04.1990 by the respondents. It is also clear that no proceedings for award enquiry were conducted and no compensation was paid to the petitioner.

9. The plea of the respondents that petitioner has allegedly gifted the land to some third-parties is not borne-out by any material in the form of any registered Gift Deed transferring title to property in favour of such third parties.

10. Under Section 11-A of the 1894 Act, it is necessary to pass award within two years from the date of issuance of Section 6 declaration. If not, the entire proceedings of the acquisition would stand lapsed.

11. The Supreme Court applied the said provision in **Laxmi Devi v. State of Bihar and others**¹ in a similar case where the acquisition proceedings lapsed because of not passing of an award within the period stipulated in Section 11-A, and directed issuance of a fresh notification for acquisition of land.

12. This principle would apply to the present case also.

13. Admittedly, in the present case, no award has been passed under Section 11 of the 1894 Act, though the land has been utilized for the purpose of providing house-sites to weaker sections. So the acquisition proceedings lapse.

¹ 2015 (10) SCC 241

14. No doubt, the Land Acquisition Act, 1894 has since been repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (**for short, ‘the 2013 Act’**).

15. Section 24 of the 2013 Act states as under :

“24. Land acquisition process under Act No.1 of 1894 shall be deemed to have lapsed in certain cases :

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894 :

(a) where no award under Section 11 of the said Land Acquisition Act has been made then, all provisions of this Act relating to the determination of compensation shall apply; or

(b) where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the Act :

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

16. In this view of the matter, as per Clause (a) of sub-Section (1) of Section 24 of the 2013 Act, the petitioner is entitled to compensation for his land under the said Act.

17. Accordingly, the Writ Petition is allowed, and the action of the respondents in not paying compensation to petitioner for his land of Ac.0.35 gts in Survey No.139/C of Thummana Pally Village, Huzurabad Mandal, Karimnagar District is declared as illegal, unconstitutional and violative of Articles 14 and 300-A of the Constitution of India.

18. Therefore, the respondents are directed to issue notification for acquisition of the petitioner's land under the 2013 Act within a period of six (06) months from the date of receipt of a copy of the order; pay compensation within a period of six (06) months from the date of receipt of a copy of the order to the petitioner under the 2013 Act.

19. The State of Telangana, represented by its Principal Secretary, Social Welfare, is *suo moto* impleaded as party-respondent in the Writ Petition.

20. Accordingly, the Writ Petition is allowed as above. No order as to costs.

21. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-10-2017

Ndr/*