

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27272 OF 2008

ORDER:

The present writ petition is filed to declare the notification, dated 17.10.2008, published in Sakshi daily Telugu Newspaper on 24.10.2008 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the 1894 Act") and the notice, dated ---.10.2008, of the 3rd respondent relating to the lands of the petitioner admeasuring Ac.5.04 cents in Sy.No.25, Ac.6.2 cents in Sy.No.26 of Rampathadu Village, Pendlimarri Mandal, Kadapa District, as illegal and arbitrary.

Petitioner is a society represented by its General Power of Attorney, Sri Gaddam Ravi Kumar Reddy. He submits that one Gaddam Balachandra Reddy, Member of the petitioner society, purchased land to an extent of Ac.2.00 in Sy.No.25 of Rampathadu Village, Pedlimarri Mandal, Kadapa District under a registered sale deed, dated 13.09.2007, for a valuable consideration from the original owner. He further submits that the said Balachandra Reddy purchased certain extent of lands for the purpose of establishment of Educational Institution/Engineering College to cater the needs of the people and therefore a society was formed under the name and style of Gaddam Rami Reddy Memorial Educational and Rural Development Society, Kadapa, registered under the Andhra Pradesh Societies Registration Act on 19.12.2007 and the said land was adjacent to Yogi Vemana University.

While things stood thus, the 2nd respondent issued notification under Section 4(1) of 1894 Act for the purpose of formation of Mega Industrial Development Park by the 4th respondent and under the said notification, the

2nd respondent appointed the 3rd respondent under Section 3(c) to exercise the powers of District Collector under Section 5(a) of 189 Act. Thereafter, the Revenue Divisional Officer-cum-Land Acquisition Officer, Kadapa, the 3rd respondent, issued notice under Section 5A of 1894 Act, wherein the petitioner and others were asked to file objections with regard to acquisition of their lands before the Land Acquisition Officer, within 15 days from the date of service of notice. At that time, the petitioner came to know that a notification under Section 4(1) of 1894 Act was issued for acquisition of his land and immediately thereafter he filed his objections on 22.11.2008 before the 3rd respondent. On 29.11.2008, the objection statement was also submitted to the respondents. The 3rd respondent vide his notice, dated 25.11.2008, instructed the petitioner to appear before him for conducting enquiry. Pursuant to the said notice, the petitioner went to the office of the 3rd respondent on 25.11.2008, but the 3rd respondent was not available. It was informed to him that he will be intimated in due course and took his signature. Challenging the manner in which the enquiry under Section 5A of 1894 Act was completed and also the purpose for which the notification under Section 4(1) has been issued, the present writ petition came to be filed.

On 18.12.2008, this Court, while issuing notice before admission, directed the learned Government Pleader to produce the record to show as to whether the petitioner has participated in the enquiry held under Section 5A of 1894 Act and whether he had given the statement agreeing to forego the land, in case he was allotted land elsewhere. Thereafter, on 23.01.2009, this Court granted interim direction as prayed for. The interim direction

sought for in the writ petition is only stay of dispossession, but, however, the authorities did not proceed further with the award proceedings.

A counter affidavit came to be filed by Revenue Divisional Officer, respondent No.3, on behalf of respondent Nos.1 to 3, disputing the averments made in the affidavit filed in support of the writ petition. In the said counter affidavit it is stated that notice in respect of the petitioner's land was issued to the petitioner in the name of Sri Gaddam Balachandra Reddy served on G. Ravi Kumar Reddy, writ petitioner, on 24.10.2008, who in turn, has filed his objections and attended the meeting convened by the Land Acquisition Officer and the Revenue Divisional Officer, on 25.11.2008 and also appeared before the Tahsildar on 01.12.2008 and gave No Objection for acquisition of the land in Sy.Nos.25 and 26, if alternate land is allotted to him in lieu of compensation. Accordingly, a report on the objections and the statement of the petitioner for allotment of alternate land was submitted to the District Collector on 15.12.2008 for decision and the District Collector rejected the same which was communicated to all the objectors including the petitioner. It is further stated that the APIIC is a Corporation owned by the A.P. State Government and that all the Government lands available around the proposed land in question are covered by the requisition of APIIC and alienation of those lands are under process. Hence, the contention of the petitioner that except his land no other lands are proposed for acquisition is not correct. It is further stated that the petitioner is not dispossessed from his land so far and after following the procedure laid down under the Act, the proposed lands will be acquired. Hence, prays to vacate the interim order.

Before proceeding further, it would be appropriate to refer to Section 11-A of the Act, 1894.

“Section 11-A of the Act, 1894: **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 been published before the commencement of the Land Acquisition (Amendment) Act, 1894, the award shall be made within a period of two years from such commencement.

Explanation: In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court, shall be excluded.

A perusal of the record would show that a notification under Section 4 (1) of the Act, 1894 was published in District Gazettee on 21.10.2008 and also in the local news papers on 24.10.2008. As per the Act, the declaration under Section 6 of the Act, 1894 has to be issued within a period of one year from the said date. However, the period of stay if any has to be excluded for the purpose of calculating the period of one year for publication of declaration. Section 11A of the Act, 1894 prescribes passing of an award within a period of two years from the date of said declaration excluding the period of stay/injunction if any granted by a Court. In the instant case there is no stay of further proceedings by any Court, as this Court granted stay of dispossession only.

In the process, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the

Act 30 of 2013”) came into force with effect from 01.01.2014. Section 24 (1) (a) of the Act 30 of 2013 prescribes that if the land acquisition proceedings were initiated under the Act and no award under Section 11-A of the Act, 1894 has been made, all the provisions of the Act 30 of 2013 shall apply for determination of compensation.

Issue identical to the case on hand came up for consideration before a learned Single Judge of this Court in W.P.Nos.22781 of 2008, 18274 and 18619 of 2009. It was a case where declaration under Section 6 of the Act, 1894 was made in the year 2009 and no award was passed by virtue of *status quo* order granted by this Court. Dealing with Section 11-A of the Act, 1894, a learned single Judge of this Court held as under:

“Under Section 11 (A) of the Act, the award has to be passed within a period of two years from the date of publication of the declaration and in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration stayed by the order of Court shall be excluded. Even if that period is excluded and an award is liable to be passed, now it cannot be done under the provisions of the Act, as the action has to be taken as per Section 24 (1) (a) of Act 30 of 2013.

The Interplay of Section 11 (A) of the Act and Section 24 (1) (a) of the New Act was considered by the Apex Court in ***Laxmi Devi v. State of Bihar and others***¹, wherein the Apex Court held that the acquisition proceedings initiated under the Act are liable to be *set aside* and the respondents were given liberty to issue a fresh notification, if they so choose, under New Act.”

¹ (2015) 10 SCC 241

In *Mohan v. State of Maharashtra*² the Apex Court observed as under:

“In our opinion under Section 11-A what has to be seen is the date of last publication of the declaration under Section 6, and not any subsequent corrigendum to the said declaration. The only circumstance under which the period between the declaration under Section 6 and the award can be extended is mentioned in the explanation to Section 11-A which states: In computing the period of two years referred to in Section 11-A, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court is excluded. There is no mention in Section 11-A that the period after the publication of the declaration under Section 6 and the publication of any corrigendum to the said declaration has also to be excluded. We will be adding words to the statute if we put such interpretation to section 11A, and it is well settled the Court should not add or delete words in a statute.”

In order to determine the compensation and the period within which an award shall be made, the Act 30 of 2013 provides a procedure under Sections 25 and 26 of the Act, 2013, which reads as under:

“Section 25. **Period within which an award shall be made:** The Collector shall make an award within a period of twelve months from the date of publication of the declaration under Section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same.

² AIR 2007 SC 2625

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

Section 26. Determination of market value of land by Collector:

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land namely:

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.”

Under Section 26 of the Act 30 of 2013, the Collector has to determine the market value of the land for the purpose of payment of compensation under Section 24 of the Act 30 of 2013. Methodology to be adopted for arriving at the market value is prescribed under Section 26 of the Act 30 of 2013. Proviso to Section 26 of the Act 30 of 2013 states that the market value shall be as on the date on which the notification under Section 11 of the Act 30 of 2013 has been issued. An argument is advanced saying that Section 11 of the Act 30 of 2013 has to be equated to Section 4 (1) of the Act, 1894. I am afraid, the same cannot be accepted for the reason that if really the intention of the legislature was to equate Section 11 of the Act 30 of 2013 with Section 4 of the 1894 Act, definitely

there would have been some indication to that effect in the Act 30 of 2013. On the other hand, though the Act 30 of 2013 takes care of many situations and shortfalls under the Act, 1894 but it is silent on this aspect. Apart from that it is to be noted that Section 4 of the 1894 Act does not anywhere indicate fixation of market value. While determining the compensation to be paid in respect of the lands acquired under the Act, 1894, the market value prevailing as on the date of the award is normally taken into consideration. But situation under the Act 30 of 2013 appears to be different. Therefore, the argument that the Section 11 of the Act 30 of 2013 has to be equated to Section 4 of the Act, 1894 cannot be accepted. On this score, the proceedings under Old Act should lapse, giving liberty to initiate fresh proceedings under the Act 30 of 2013.

In the instant case, award could not be passed in view of the interim direction directing the authorities not to dispossess the petitioners from the subject land. In the meanwhile, the Act 30 of 2013 came into force. The interim order granted by this Court is only a direction to the authorities not to dispossess the petitioners from the subject property. Though there was no stay of any proceedings, the authorities failed to pass an award. Section 11-A of the Act, 1894 which prescribes that an award has to be passed within a period of two years from the date of declaration. Though there is no interim order staying the proceedings, the authorities failed to proceed further, thereby violating the mandate of Section 11-A of the Act, 1894.

For the aforesaid reasons, the writ petition is allowed and the impugned proceedings initiated under the Act, 1894, are set aside, giving liberty to the respondents to initiate fresh proceedings for acquisition of the above mentioned property of the petitioners, if the same is still required, in

accordance with the provisions of the Act 30 of 2013. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

14.02.2017
ES/gkv



