

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.15197 of 2008

ORDER:

This Writ Petition has been filed by the petitioner assailing the Notification under Section 4(1) of the Land Acquisition Act, 1894(for short 'the Act') issued vide proceedings Rc.No.3307/2007 dt.14.11.2007 by the 2nd respondent for acquiring petitioner's land admeasuring Ac.1-84 cents in survey No.334/8 in Metturu Village of Kothuru Mandal, Srikakulam District.

2. Petitioner contends that he is the owner of the said land having purchased the same under registered sale deed and he is in possession and enjoyment of the same by raising crops; that the said land was proposed to be acquired under the above Notification for Vamsadara Project Phase-II by invoking urgency clause for the purpose of rehabilitation of the persons affected by the said project; that due procedure prescribed under the Act was not followed; and that there was no necessity or urgency to invoke Section 17(4) and dispense with the enquiry under Section 5A of the Act. It is contended that there is no publication of the said Notification under Section 4(1) in two leading newspapers in the local area and that the publication in 'Vennela' Newspaper is not a valid publication, since it has no circulation in the locality. It is also contended

that the land of the petitioner is not suitable for construction and alternative lands were available, and the petitioner being a small farmer, his land ought not to have been acquired.

3. On 16.07.2008, this Court issued notice to the respondents and directed that pending further orders, *status quo* obtaining as on date, as to the nature and possession of the land in question, shall be maintained.

4. Later the Writ Petition was admitted on 23.07.2008 and the interim order was extended until further orders.

5. WV.MP.No.939 of 2009 was filed by the respondents in the Writ Petition to vacate the said order.

6. In the vacate stay petition it is stated that the Notification under Section 4(1) of the Act was published in two daily newspapers of 'Udaya Bharatam' and 'Andhra Bhoomi' on 28.11.2007; the Draft Declaration under Section 6 of the Act was published in 'Krishna Patrika' and 'New Indian Express' daily newspapers on 05.12.2007, and there was no publication done in 'Vennela' Newspaper. It is stated that as there is urgency to provide house sites to the project displaced people, urgency clause under Section 17(4) of the Act was invoked. It is stated that all the ryots gave their consent for acquisition and have also taken compensation, except the petitioner. It is

stated that Award Enquiry notice in Form-7 was published on 20.02.2008, that the Award Enquiry was completed between 25.02.2008 and 10.03.2008, that the Award was passed by the Collector, Srikakulam on 23.06.2008, and that the notice under Section 12(2) of the Act was hung on the land of the petitioner, since he was not residing in the village. No mention is made in the vacate stay petition that possession of the land of the petitioner was taken either before or after this Court granted interim order on 16.07.2008.

7. Reply affidavit is filed by the petitioner enclosing copy of an Endorsement dt.28.02.2017 stating that petitioner was not paid compensation for the acquisition of his land. Petitioner specifically denied that notice could not be served on him for want of his correct address and he reiterated that he was very much in possession of the land and the order dt.05.10.2012 rejecting WV.MP.No.939 of 2009 also would support his contention.

8. Counsel for petitioner contended that the Land Acquisition Act, 1894 has been repealed by the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013(Act 30/2013); since the petitioner has not been dispossessed from the land and he also has not been paid any compensation, the proceedings are

deemed to have been lapsed under Section 24 of the said Act. He also placed reliance on the judgments of the Supreme Court ***Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others***¹ and ***Delhi Development Authority vs Sukhbir Singh & Ors***² and contended that for the purpose of Section 24(2), the compensation should be regarded as “paid” if the compensation has been offered to the person interested and such compensation has been deposited in the Court, where reference under Section 18 can be made on happening of any of the contingencies contemplated under Section 31(2) of the Land Acquisition Act, 1894, and that deposit of compensation in the Government Treasury is not equivalent to amount of compensation paid to the land owners, as held in the above decisions.

9. No decision taking a contrary view has been cited by the Government Pleader for Land Acquisition.

10. Though he sought to contend that possession of the land has already been taken before passing of the *status quo* order by this Court, in the absence of any averments in the counter affidavit/vacate stay petition to that effect, the said contention cannot be accepted.

¹ 2014(3) SCC 183

² AIR 2016 Supreme Court 4275

11. Thus it is clear that though award was passed, petitioner was not only not paid compensation but he was also not dispossessed from the land as can be seen from the order dt.05.10.2012 in WV.MP.No.939 of 2009.

12. So, in my view, under Section 24(2), the entire land acquisition proceedings initiated by respondents would lapse.

13. Therefore, the Writ Petition is allowed; the Notification under Section 4(1) of the Act issued vide proceedings Rc.No.3307/2007 dt.14.11.2007 of the 2nd respondent in respect of the extent of Ac.1-84 cents in survey No.334/8 in Metturu Village of Kothuru Mandal, Srikakulam District, is set aside. The respondents are directed to initiate fresh proceedings under the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 in respect of the petitioner's land and complete the process of acquisition as well as payment of compensation within a period of four (04) months from the date of receipt of a copy of this order. There shall be no order as to costs.

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

M.S.RAMACHANDRA RAO, J

24th October, 2017.
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