

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 29000 of 2008

ORDER:

- 1) Heard learned counsel for the petitioners, Government Pleader for Land Acquisition and Government Pleader for Roads and Buildings.
- 2) The present writ petition came to be filed seeking issuance of writ of mandamus directing the respondents 1 and 2 to consider the objections of petitioners afresh after giving opportunity as contemplated under Section 5-A (2) of Land Acquisition Act, 1894 (for short "the Act, 1894), by declaring the proceedings No.G1/ 2598/ 2008 dated 09.09.2008 and the declaration under Section 6 of the Act, 1894 as null and void.
- 3) The averments in the affidavit filed in support of the writ petition would show that the petitioners are having shops in Madras Road, Kadapa. The first respondent has initiated land acquisition proceedings in Reference G 1/ 2598/ 2008, dated 05.06.2008 and issued notification under Section 4 (1) of the Act, 1894 to acquire buildings and land for widening and development of road in Kadapa from Krishna Theatre to Gokul Lodge. The Revenue Divisional Officer was directed to conduct enquiry under Section 5-A of the Act, 1894. The petitioners and others have submitted written objections stating that 80 feet width of the road is not sanctioned by the Government, the acquisition of

structures of site is unilateral and one sided, the measurements were not taken from the centre point of the road, the widening of the road is not part of the master plan sanctioned in Kadapa Town. Basing on the report of the Revenue Divisional Officer, the objections were rejected on 09.09.2008. On the very same day declaration under Section 6 of the Land Acquisition Act is sent for publication and declaration was published on 11.09.2008, thereafter, the R.D.O. had not conducted the award proceedings till date. Vide urgent notice No.G/ 746/ 2008 dated 19.11.2008 the Revenue Divisional Officer had informed that the District Collector fixed the compensation for the land at Rs.6,200/- per square yards though the basic value as per the Sub-Registrar is at Rs.14,700/- per acre. Without determining the compensation and payment, respondents 2 and 3 are threatening to demolish the buildings in which the petitioners are conducting business. Hence, they filed the present writ petition.

4) A counter came to be filed stating that the Executive Engineer, R & B, Kadapa, sent a requisition for acquisition of structures and vacant site in Sy.No.453/ 1 for road widening from Krishna Theatre to Gokul Lodge in Kadapa city. A joint inspection was conducted and draft notification was approved by the Collector, Kadapa and it was published on 09.06.2008. Notices in Form-III under section 5-A of the Act, 1894 have been issued to the petitioner requesting him to attend the enquiry on 01.07.2008. Twenty five persons including the petitioners were attended the enquiry and filed their objections. The said

objections were rejected by the District Collector, Kadapa on 09.09.2008. It is also stated that draft declaration was published in district gazettee on 11.09.2008 and in the local news papers on 21.09.2008 and notices under Sections 9 (3) and 10 have been issued asking them to appear before the Land Acquisition Officer but none of them appeared. When the award enquiry is under progress, the petitioners filed the present writ petition.

5) By an order, dated 31.12.2008, this Court granted interim stay of dispossession.

6) 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.

7) A perusal of the record would show that a notification under Section 4 (1) of the Act, 1894 was published in District Gazettee on 09.06.2008 and also in the local news papers on 13.06.2008. 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 only directed the respondents not to dispossess the petitioners from the property in question.

8) In the process, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act, 2013") came into force with effect from 01.01.2014. Section 24 (1) (a) of the Act, 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, 2013 shall apply for determination of compensation.

9) 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.”

10) 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

¹ (2015) 10 SCC 241

² AIR 2007 SC 2625

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.”

11) In order to determine the compensation and the period within which an award shall be made, the Act, 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.

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.”

12) Under Section 26 of the Act, 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, 2013 states that the market value shall be as on the date on which the notification under Section 11 of the Act, 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, 2013 with Section 4 of the 1894 Act, definitely there would have been some indication to that effect in the Act, 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, 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, 2013.

13) 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, 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.

14) 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.

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

JUSTICE C. PRAVEEN KUMAR

25.01.2017
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