

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.733 of 2007

ORDER:

This writ petition is filed questioning the Section 4(1) notification issued by the 1st respondent under the Land Acquisition Act, 1894 (for short 'the Act'), which was published in Andhra Jyothi daily news paper on 12.08.2006 for acquisition of land belonging to the petitioner in Sy. No.104/ 1 & 2 in an extent of Ac.1.93 cents and Ac.2.09 cents, situated at Krishnapuram Village, Pamidimukkala Mandal, Krishna District, for the purpose of house sites to the weaker section.

2. The brief facts of the case, according to the petitioner, are that he is a small farmer, that the land acquisition proceedings were initiated for acquiring his lands covered by Sy.No.104/ 1 & 2 in an extent of Ac.1.93 cents and Ac.2.09 cents, for providing house sites to the weaker sections. Section 4(1) notification was published in the news papers on 12.08.2006. Notice under Section 5-A of the Act was served on the petitioner proposing to conduct enquiry on 12.09.2006 and the petitioner participated in the enquiry. But without passing any order on 5-A enquiry and without disposing of the objections, the 1st respondent informed him that they will take possession of land. The respondents are trying to take possession of the property, without issuing Section 6 declaration. Hence, the present writ petition.

3. The 2nd respondent filed counter-affidavit on behalf of the respondents, *inter-alia* contending that Section 4(1) Notification of the Act was published on 12.08.2006 and Section 5-A of enquiry was also conducted. But Section 6 declaration and award enquiry are yet to be completed.

4. Heard the learned counsel for the petitioner and the learned Assistant Government Pleader (LA) for respondents.

5. Admittedly, Section 4(1) Notification was issued by the 1st respondent on 12.08.2006 for acquiring the lands of the petitioner admeasuring Ac.1.93 cents and Ac.2.09 cents in Sy.No.104/ 1 & 2 situated at Krishnapuram Village, Pamidimukkala Mandal, Krishna District, for the purpose of providing house sites to the weaker sections.

6. As seen from the counter-affidavit, Section 6 declaration is not yet issued and the award is also not passed. On 11.01.2007, this court while admitting the writ petition granted stay of all further proceedings pursuant to the 4(1) notification, for a period of three weeks. Admittedly, the said stay was not extended further.

7. Second proviso to Section 6(1) of the Act reads as follows:

“Provided that no declaration in respect of any particular land covered by a notification under Section 4, sub-section (1):-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1957 (1 of 1957), but before the commencement of the Land

Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification;

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification]

Provided further that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a company or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

The Explanation I to Section 6(1) of the Act reads as follows:

“Explanation I:- In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4, sub-section (1), is stayed by an order of a court shall be excluded.”

8. The Explanation I to sub-section 2 deals with the cases where stay order has been granted by the court. According to the said explanation, for computing any periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under Section 4 of the Act, is stayed by an order of the court, the same shall be excluded. In this case, admittedly, the interim stay granted on 11.01.2007 was not extended further. Therefore, the respondents cannot take shelter under the said provision.

9. Admittedly, the respondents have not issued declaration in accordance with the provisions of Section 6(1) (ii) of the Act

within one year from the date of publication of Section 4(1) Notification. Hence, the said notification is liable to be set aside.

10. Having regard to the facts and circumstances of the case, the writ petition is allowed setting aside the impugned 4(1) notification dated 12.08.2006 for acquiring the lands admeasuring Ac.1.93 cents and Ac.2.09 cents in Sy.No.104/ 1 & 2 situated at Krishnapuram Village, Pamidimukkala Mandal, Krishna District. However, if the respondents still require the subject land for public purpose, they are at liberty to proceed with the acquisition of the land of the petitioner, in accordance with Act 30 of 2013. No order as to costs. Pending miscellaneous petitions, if any, in this writ petition, shall stand dismissed in consequence.

Date: 20.11.2017
BSS

KONGARA VIJAYA LAKSHMI, J

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

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