

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.38301 of 2016

ORDER :

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue an order, direction or writ, more particularly one in the nature of Writ of Mandamus declaring the Section 11(1) notification vide Ref.No.C1/186/2016 dated 22.7.2016 (23.7.2016) and consequential notification under Section 19(1), dated 30.9.2016 issued by the respondent authorities as arbitrary, illegal, null and void and against norms of public policy and principles of natural justice and to set aside the same, as the same is contrary to the provisions of Sections 11, 15 and 19 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and to pass such other order or orders as this Hon’ble Court may deem fit and proper in the interest of justice.”

Heard learned counsel for the petitioner and also learned Government Pleader for Land Acquisition appearing for the respondents and perused the prayer in the writ petition with supporting affidavit and other material on record including counter-affidavit with enclosures and propositions placed reliance by both sides.

It is stated in the affidavit filed in support of the writ petition that out of the land under acquisition covered by Section 11(1) notification of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short ‘the Act 30 of 2013’) dated 22.07.2016 admeasuring an extent of Ac.13.64 cents for the

purpose of Chinthalapudi Lift Irrigation Scheme of Polovaram Irrigation Project, an extent of Ac.5.12 cents in Sy.No.320/ 31B belongs to the petitioner also there and for Section 15(2) notice for enquiry issued to him on 29.07.2016 for his objections before the 3rd respondent-Land Acquisition Officer-cum-Special Deputy Collector (LA) within 90 days and he submitted his explanation on 09.09.2016 by registered post and subsequent to submission of his objections, there is no enquiry conducted, much less, by personal hearing and he made later a representation dated 19.10.2016 referring to the earlier objections given by him on 09.09.2016 that was received by the 3rd respondent on 19.10.2016 itself and later even there is no personal hearing and there is no order passed under Section 15 of the Act 30 of 2013 nor there is any final report forwarded to the Government contemplated under Section 15 of the Act and questioning the same, present writ petition is filed. It is further averred that the 3rd respondent issued notice dated 29.10.2016 to appear before the Authorities on 01.11.2016 and on 01.11.2016 he appeared and submitted that no personal hearing or no order has been passed on his objections and without even passing any order and communicating to him, the question of commencement of award enquiry would not arise, that 3rd respondent stated that

no order is required to be passed on his objections and hence, the award enquiry is being completed and do whatever he likes. It is in saying the impugned action without personal hearing is illegal. It is also averred that he got educated children for jobs and under rehabilitation scheme, he is entitled to the relief under Section 16 of the Act and there is no Social Impact Assessment report pursuant to Section 11(1) notification and thereby, the report is liable to be quashed. It is also the submission that Section 19(1) declaration dated 30.09.2016 without even completion of enquiry under Section 15 of the Act is also liable to be set side. It is the say that under Section 15 of the Act, the notice issued on 29.07.2016 with 60 days time that expired by 29.09.2016, whereas, the order passed was on the next day under Section 19 of the Act on 30.09.2016 and it shows there is no enquiry conducted as contemplated by Section 15(2) of the Act and thereby for no other alternative, he maintains writ petition.

Counter-affidavit filed by the 3rd respondent is while denying the said averments no enquiry conducted at any stage, that report proposals under Section 11 of the Act duly approved by the 3rd respondent-Land Acquisition Officer vide reference dated 22.07.2016 published in the Gazette and also in two newspapers on 23.07.2016 and Section 15(2) Rule 21 of

the Act in Form-VI(B) notice issued calling for objections for the proposed acquisition and enquiry also conducted on 23.09.2016, and there were only three objections received from the interested persons in response to the notices issued under Section 15(2) Rule 21 of the Act 30 of 2013 and a report was submitted to the Special Collector on the Form-VI(B) enquiry and the 2nd respondent-Special Collector (LA) issued orders dated 26.09.2016 permitting the 3rd respondent-Land Acquisition Officer-cum-Special Deputy Collector(LA), Tadipudi Lift Irrigation Scheme, Unit-II, Nallajerla, West Godavari District, to take further action for acquisition of the lands in Bhimolu Village for the Chintalapudi Lift Irrigation Scheme of Polovaram Irrigation Project and directed to submit declaration proposals for the extent under acquisition of Ac.13.64 cents under Section 19(1) sub-rule (1) of Rule-25 of the Act. The counter-affidavit further speaks it is pursuant to the directions issued by the 2nd respondent-Special Collector (L.A.), Polavaram Irrigation Scheme, declaration under Section 19(1) sub-rule (1) of Rule-25 of the Act was submitted for the said extent and approved by the 2nd respondent for public purpose for Chintalapudi Irrigation Channel vide reference dated 30.09.2016 and the same was published on that day in the Gazette publication and also covered by next

day two newspapers on 01.10.2016 and the proposed market value of Rs.5,00,000/- per acre is quite reasonable and the 2nd respondent has approved preliminary value of Rs.5,00,000/-, vide proceedings dated 29.10.2016 and the award enquiry was conducted on 01.11.2016 at Panchayat Office, Bhimole and seven members of land losers attended enquiry including writ petitioner. The Draft Award (Form-IX) proposals for the said extent submitted to the 2nd respondent that was also approved on 11.11.2016. It is further averment in the counter-affidavit that the writ petitioner appeared before the 3rd respondent and informed that only the left over extent is taken up for acquisition at his request for an extent of Ac.0.29 cents already acquired for Chintalapudi Lift Irrigation Scheme and he also informed that R&R package is not applicable in the instant case as neither project affected nor displaced families involved. It is also the submission that the Social Impact Assessment does not apply to Chintalapudi Lift Irrigation Scheme, which was started in the year, 2005, as the same is covered for Irrigation Projects under Section 6(2) of the Act and thereby sought for dismissal of the Writ Petition.

Now from the writ petition averments and the counter-affidavit averments supra in deciding the issue, the provisions prescribed a procedure and opportunity. It does not mean

despite opportunity for appearance, if not appeared, the proceedings have to be stalled or the Authorities to go to the person, whose land is under acquisition. In this regard, the Apex Court in *Talson Real Estate (P) Ltd. V. State of Maharashtra*¹ in relation to the land acquisition proceedings under the Land Acquisition Act, 1894, for non-availment of Section 5-A enquiry observed that the appellant, being a person interested, ought to have been given 30 days time to file objections envisaged by Section 5-A of the Act and objections not filed for Section 5-A enquiry notice, in principle, it must be accepted that he has no objection to Section 4 notification operating in respect of his property. The claimant owners of the lands who have not filed objections to the notice could not be allowed to contend that Section 5-A enquiry is bad and thereby they cannot even challenge Section 6 declaration much less to struck out the same.

Now, so far as writ petition averments concerned to say that there is a reply or objections on 09.09.2016 sent by him to the Form-VI(A) for Section 15 notice dated 29.07.2016 in the copy filed along with writ petition as an enclosure, there is nothing to show it was sent. Though in the writ petition, it

¹ (2007) 13 SCC 186

is mentioned that it is sent by registered post even to draw any presumption of service, any registered receipt, much less, any acknowledgment filed and registration receipt number even not mentioned. The contention that there is no specific denial in this regard concerned, once there is a denial so specifically saying no objections filed it need not be specific denial on 09.09.2017 no such objection allegedly filed.

Coming to the objections dated 19.10.2016, even it refers that alleged objections filed on 09.09.2016 the above answer is sufficient. Coming to the objections dated 09.10.2016, those were considered as the counter-affidavit speaks that by considering of the same, the amount of Rs.5,00,000/- as compensation is arrived. It is also the submission that draft award is in process and if at all the petitioner wants to make any objection, he can submit the same before passing the final award.

The contention of the learned counsel for the petitioner by relying upon the expression of the two Judges Bench of the Apex Court which is a case under Land Acquisition Act, 1894, particularly, from para-68 in relation to non-objective consideration to the objections under 5-A enquiry, what the principle laid down is there must be an objective consideration of the objections which is essential. There is no

dispute on the proposition. In fact, what he raised in the objections dated 19.10.2016 is that his land costs about Rs.35,00,000/- per acre and if at all land to be acquired because otherwise it effects his source of livelihood. It is not a bargain between two persons of voluntary alienation for the willingness or unwillingness, as the case may be, but for, the objective consideration required even from the examination they have stated that it is considered and it is with reference to sales prevailing the amount is arrived any objection of him is left open even under the New Act, particularly, after post award enquiry and compliance of Section 38 of the Act, under Section 77 of the Act.

Coming to the Social Impact Assessment concerned, learned counsel for the petitioner placed reliance on the expressions of the Apex Court in *Surinder Singh Brar and others v. Union of India and others*² and *Kedar Nath Yadav v. State of West Bengal*³, which no way laid down any new principle and regarding the Social Impact Assessment New Act 30 of 2013, counter-affidavit says for this Irrigation Project that provision has no application by virtue of the exemption.

² (2013) 1 SCC 403

³ 2017(1) ALD 96(SC)

Once such is the case, this Court feels that in view of the above factual matrix with reference to the law to avoid any dissatisfaction of the petitioner of no opportunity afforded and from the very petition affidavit filed he is willing to part his land for fair compensation, it must be submitted within one week from the date of disposal of the writ petition any further representation in detail, from which the respondent-Authorities shall pass a detailed order and consider the same in the award to be passed.

Accordingly, the Writ Petition is disposed of.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed. No order as to costs.

Dr. B.SIVA SANKARA RAO J,

Date:06.07.2017

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THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO



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