

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.21596 OF 2006

Date 20.07.2017

Between:

Boddepalli Sreeramamurthy and others.

... Petitioners

AND

The District Collector, Srikakulam and others

.....Respondents



HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.21596 of 2006

ORDER:

Notification dated 31.07.2006, under Section 4(1) of the Land Acquisition Act, 1894 (for short 'Old Act'), seeking acquisition of the lands of the petitioners for the purpose of house sites, is challenged before this Court as being illegal and arbitrary.

Petitioners state that they are small farmers owning an extent of Ac.0.21 cents; Ac.0.20 cents and Ac.0.21 cents in Sy.Nos.251-2A, 251-2B and 251-2C situate at Srinivasacharyulapeta, Amadalavalasa Mandal, Srikakulam District respectively, and have no other source of livelihood. They state that their father, late Mukunda Rao, had given away Ac.2.50 cents pursuant to the requisition by the government for allotment of house sites to weaker sections, at Srinivasacharyulapeta, Amadalavalasa Mandal, Srikakulam; after acquisition of said lands, government granted title deeds in respect of the subject lands admeasuring Ac.0.21 cents; Ac.0.20 cents and Ac.0.21 cents in Sy.Nos.251-2A, 251-2B and 251-2C respectively. Respondents had issued notification dated 31.07.2006 to acquire the same for the purpose of house sites to weaker sections. Hence the writ petition.

This Court admitted the writ petition on 12.02.2008. No counter affidavit is filed till date. However, instructions dated 13.02.2008, of Revenue Divisional Officer – second respondent, are placed before this Court.

In the instructions placed before this Court, it is stated that, notification dated 31.07.2006 was issued and published in gazette on 31.07.2006; Section 6 declaration was made on 05.08.2006; award was passed on 31.01.2007; and advance possession was taken on 19.08.2006 i.e. prior to passing of award.

In other words, in the case on hand, urgency clause was invoked. This Court had repeatedly cautioned, invocation of emergency acquisition, for the purpose of house sites, is not warranted as it cannot be considered as an emergency requirement dispensing with 5-A enquiry. In view of the law declared by the Supreme Court, acquisition is vitiated. Though it is asserted that compensation amount was sent to the awardees by demand drafts through Tahsildar, Amadalavalasa, it cannot be said that compensation amount has been paid to the petitioners.

In **Laxmi Devi v. State of Bihar**¹, the Supreme Court held that invocation of urgency clause mandates payment of compensation which has not been complied with and, therefore, the acquisition proceedings are vitiated. Even,

¹ 2015(10) SCC 241

Section 24(2) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short '2013 Act') stipulates that, where compensation is not paid or deposited before the Civil Court, acquisition proceedings gets vitiated.

The specific assertion of the petitioners that they are small farmers is not disputed before this Court. This Court, in **Malireddy Rajasekhara Reddy v. District Collector, Krishna District**², categorically held that the Government issued orders and memos from time to time discouraging or prohibiting acquisition of lands belonging to the small farmers, for the purpose of providing house sites to the weaker sections and the object underlying such a policy was to ensure that the small farmers are not uprooted from their livelihood in the process of providing house sites to the needy persons.

As stated supra, there being no counter denying the averments in the affidavit though the writ petition is of the year 2006, the averments, in the writ petition taken to be true, being uncontroverted both on account of failure to comply with the provisions of Land Acquisition Act, 1894 and repeal Act, 2013 Act, land acquisition proceedings are quashed.

² 2006(2) ALD 564

The Writ Petition is, accordingly, allowed. However, liberty is given to the respondents to initiate proceedings under 2013 Act if the land is required for any public purpose. Miscellaneous petitions pending, if any, in the writ petition shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

Date: 19.07.2017
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