

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**WRIT PETITION No.26659 OF 2007**

**ORDER:**

This writ petition is filed questioning the action of the respondents in entering into the petitioners lands and disturbing the peaceful possession and enjoyment of their property for an extent of Acs.2.00 cents situated at Sy.No.402/2 and for an extent of Acs.2.45 cents situated at Sy.No.406/1 of Tallarevu Village and Mandal, East Godavari District and issuing the impugned proceedings dated 16.11.2007 by the 2<sup>nd</sup> respondent without properly disposing of their objections under Section 5(a) of the Land Acquisition Act, 1894 (for short, "the Act"), by providing them an opportunity of personal hearing and without following the due process of law, as arbitrary and illegal.

It is the case of the petitioners that a notification was issued by the 3<sup>rd</sup> respondent on 05.07.2007 proposing to acquire the land over an extent of Acs.6.36 cents for the purpose of providing house sites under the scheme of "Indiramma Programme" to the weaker sections. So far as the 1<sup>st</sup> petitioner is concerned, he is the owner of the land over an extent of Acs.2.45 cents and the 2<sup>nd</sup> petitioner is concerned, she is the owner of the land over an extent of Acs.2.00 cents. Both the petitioners claimed that they are the small farmers and on earlier occasions, petitioners' lands were also acquired for the purpose of laying bypass road. Repeated acquisition of the land of the petitioners deprives them of their right to have livelihood and further they are small farmers. As per the instructions of the Government from time to time, the lands of the small farmers should not be acquired for the purpose of providing house sites to the weaker sections. Notices calling for objections were issued under Section 5(a) of the Act on 05.07.2007 and the petitioners had submitted their objections on 08.08.2007. Petitioners had also sought an opportunity of personal hearing to be given. However, no opportunity of

personal hearing was given to the petitioners and ultimately the petitioners were informed that their objections have been rejected on 16.11.2007. It was also further stated that Section 6 declaration said to have been made on 22.11.2007. However, no copy of the Gazette publication dated 22.11.2007 was made available to the petitioners.

Sri V. V. Narayana Rao, learned counsel appearing for the petitioners specifically asserts that the petitioners are sought to be deprived of the valuable property that too agricultural land and they do not have any other source of livelihood. Learned counsel for the petitioners had also placed reliance on the judgments of this Court in **Malireddy Rajasekhara Reddy and others v. District Collector, Krishna District and another**<sup>1</sup> and **M. Chandra Sekhar Rao and another vs. Government of Andhra Pradesh and others**<sup>2</sup> to support his contentions. Learned counsel also placed reliance on the judgment in **Laxmi Devi vs. State of Bihar and others**<sup>3</sup> to emphasis on the importance of Section 5(a) enquiry and consideration of the objections raised by a land owner. Learned counsel for the petitioners also points out that the recommendations to **make** a Section 6 declaration was made by the L.A.O as far back as on 25.10.2007, which was countersigned by the Joint Collector on 17.11.2007 and approved by the District Collector on 17.11.2007. Thereafter, Section 6 declaration was made on 22.11.2007. Learned counsel for the petitioners would also emphasis that as far back as on 25.10.2007 that is even before consideration of the objections submitted by the petitioners on 8.8.2007 and rejection of the objections were made on 16.11.2007. The Revenue Divisional Officer-cum-L.A.O had predetermined to reject the objections and proceed with the acquisition. Though the Revenue Divisional Officer-cum-L.A.O considered and rejected the objections on 16.11.2007, the approval of the

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<sup>1</sup> 2006(2) ALD 564

<sup>2</sup> 2010(5) ALD 611

<sup>3</sup> (2015) 10 SCC 241

District Collector was based on the recommendations of the Revenue Divisional Officer-cum-L.A.O to issue the draft declaration on 25.10.2007. In those circumstances, learned counsel for the petitioners submits that the ratio laid down by the Supreme Court in **Laxmi Devi case** (3 supra) reviewing another case in the importance of Section 5(a) of the Act squarely gets attracted and he prays for allowing the writ petition as prayed for.

On the other hand, learned Government Pleader for Land Acquisition submits that though the recommendations of the Revenue Divisional Officer-cum-L.A.O, is dated 25.10.2007, it cannot be presumed that the District Collector did not consider the objections made by the Revenue Divisional Officer-cum-L.A.O on 16.11.2007. The petitioners had filed only the format of approval of the draft which was counter-signed by the District Collector that by itself cannot be presumed the District Collector did not consider the objections made by the petitioners. Learned Government Pleader would also submit that the judgments cited by the learned counsel for the petitioners have no application to the facts of the case. Hence, he prays for dismissal of the writ petition.

Having considered the respective submissions, this Court is satisfied with the material placed on record that there is no consideration of the objections by the District Collector though the objections were considered by the Revenue Divisional Officer-cum-L.A.O. It may be noted that the District Collector is authorized and competent authority to make Section 6 declaration based on the report of the L.A.O who is authorized to consider the objections that may be raised in the enquiry under Section 5(a) of the Act. Though the learned counsel for the petitioners submits that no opportunity was given, the copy of the report dated 16.11.2007 that has been filed by the petitioners does indicate that

the District Collector had the benefit of going through the objections and their considerations. However, the fact remains that the L.A.O had prepared Section 6 declaration in Form 5(a) as far back as on 25.10.2007 and thereby predetermining that it is a case for issuance of Section 6 declaration. Further, the District Collector had also put a rubber stamp stating approved after seeing the counter signature of the Joint Collector. The proceedings dated 25.10.2007 of the Revenue Divisional Officer itself bears a signature originally of 10.02.2007 which was later stuck of and altered to as 22.11.2007. All these indicate that there was no consideration of the objections raised by the petitioners. In those circumstances, Section 6 declaration which was made liable to be stuck down and accordingly the same is declared as illegal.

Inasmuch as the land acquisition proceedings initiating under the repeal Act 1 of 1894 are saved only to a limited extent under the Act 30 of 2013 and thereafter no possibility of proceeding further by issuance of Section 6 declaration once again, no useful purpose would be served by sustaining the notification under Section 4(1) of the Act. In those circumstances, notification issued under Section 4(1) of the Act is also liable to be stuck down. However, it is made clear that in the event the respondents desired to acquire the land for any public purpose, they may do so by following due process of law.

Accordingly, the writ petition is allowed setting aside the proceedings dated 16.11.2007, issued by the 2<sup>nd</sup> respondent. Miscellaneous Petitions, if any, pending in this writ petition shall also stand dismissed. No order as to costs.

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**CHALLA KODANDA RAM,J**

Date:25.07.2017  
Gk

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