

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.21144 OF 2006

ORDER:

The writ petition is filed questioning the action of the respondents in acquiring the lands admeasuring Ac.4.00 in Sy.No.223/2 of Udayapuram Village, Palasa Mandal, Srikakulam District of the petitioners under the provisions of the Land Acquisition Act, 1894 for the purpose of providing house-sites to weaker sections as illegal and arbitrary.

Brief facts of the case are that the petitioners claiming that they are the descendents of one Konchada Dalaiah and the total extent of the land of the said Konchada Dalaiah is about Ac.10.00 in Sy.No.223/2 of Udayapuram Village, Palasa Mandal, Srikakulam District, which is the subject matter of the land acquisition for the purpose of providing house sites to the weaker sections.

It is the specific contention of the learned counsel for the petitioners that without conducting any enquiry under Section 5A of the Land Acquisition Act, 1894 (for short, "the Act 1894") and earlier invoking the provisions of Section 17(4) of the Act 1894, petitioners approached this Court by filing W.P.No.11617 of 2006 seeking the same relief as sought in the present writ petition and after hearing both sides, this Court disposed of the said writ petition by an order dated 13.06.2006 directing the respondents therein to conduct Section 5A enquiry as the urgency of the nature is not present in the case. While disposing of the said writ petition, petitioners were given liberty to file their objections before the respondent-authorities. Pursuant to the liberty given to the petitioners in W.P.No.11617 of 2006, petitioners had filed their objections specifically bringing to the notice of the Land Acquisition Officer's that the petitioners grand father Konchada Dalaiah

purchased the land of Ac.10.00 and the said Konchada Dalaiah had three sons by name 1) K. Veeranna, 2) K. Byragi and 3) K. Suryanarayana and the legal heirs of the said 1) K. Veeranna, 2) K. Byragi and 3) K. Suryanarayana are all numbering eleven persons and that they are the only dependents on the agricultural property. If Ac.10.00 of land is apportioned among all the legal heirs of the said Dalaiah, each of them would get only an extent of about Ac.0.50 cents to Ac.1.65 cents and in that view of the matter, they are small farmers and in terms of the policy decision of the Government, the acquisition of the land of the small farmers for the purpose of providing of house sites shall not be requisitioned. Inasmuch as the legal heirs of the said Dalaiah do not have any further land, their land shall be exempted from the acquisition. Apart from that, the petitioners also specifically averred in the objections that the land is urbanisable land fetching about Rs.360/- per sq. yard and such valuable land shall not be acquired as there are other lands of the Government available for the purpose of providing the house sites to the weaker sections. It is also specifically averred that a huge extent of land in neighbouring villages at Palasa and Kasibugga Municipalities are available which would cost the exchequer less. With those objections, petitioners participated in Section 5A enquiry.

The Land Acquisition Officer vide the impugned endorsement dated 25.08.2006, rejected the submissions made on behalf of the petitioners stating that on making local enquiry they find that Konchada Venkata Ramana, the 1st petitioner owns about Ac.3-29 cents of wet land under a Pattadar Pass Book No.22972, Account No.134 in Sy.No.223 (Portion), Konchada Balaram S/o Suraynarayana Murthy is having Ac.3-30 cents under Pattedar Passbook No.29721, Account No.154, Konchada Varaprasad S/o Dharma Raju is having Ac.1-65 cents under Pattedar pass Book No.229723, Account No.116 in Sy.No.223 part and Smt.

Konchada Hemalatha is having an extent of Ac.1-65 cents in Sy.No.223 part. It was further stated in the report that the house sites are required to be provided for weaker sections under the scheme of 'Rajiv Gruhakalpa', as it is essential for acquisition of land of Ac.4-00 cents, the prayer of the land owners seeking the exemption cannot be considered.

It is the contention of Sri M.V. Suresh, learned counsel for the petitioners that the Land Acquisition Officer failed to consider the specific contention of the petitioners that they are small farmers and while advertent to the contentions of the petitioners they had ignored the specific submissions about each of the legal heirs of Konchada Balaiah getting only a small extent of Ac.1-65 acres, which would qualify for the benefit given to the small farmers. Learned counsel for the petitioners also places reliance on the judgment of this Court reported in **Malireddy Rajasekhara Reddy and others vs. District Collector, Krishna District and another**¹, wherein this Court had noticed the fact that the lands of the small farmers shall not be acquired as it would be depriving the livelihood of the small farmers who are solely depending on the agriculture. He would also further submit that now on account of the repeal of the Act, 1894 and there being no possibility of making an Award under the Act, 1894 the proceedings under Section 5-A enquiry being vitiated shall be quashed.

On the other hand learned Government Pleader submits that after conducting Section 5-A enquiry, Section 6 declaration has also been made and all further proceedings have been stayed only on account of the fact that stay granted by this court. He would also submit that in the light of Section 24(1)(a) of the Act, 2013 the petitioners shall be entitled to compensation.

¹ 2006 (2) ALD 564

Having considered the respective submissions and a perusal of the report submitted by the Land Acquisition Officer does not indicate the consideration of the specific contention of the petitioners that they are entitled for the benefit of small farmers. It is also not being disputed by the learned Government Pleader with regard to the law declared by this Court in **Malireddy Rajasekhara Reddy** (1 supra) to the effect that the small farmers' land would not be acquired and that there are Government Memos/Instructions exempting the acquisition of lands of the small farmers. It may also be noted that the Supreme Court many a times has categorically held the importance of objective consideration of the objections that are raised before the Land Acquisition Officer in enquiry under Section 5-A of the Act, 2013. The objections that may be raised by a land owner under Section 5-A of the Act, 2013 are two fold. One is in relation to the individual grievance and why the property which is sought to be acquired either is not suitable or why the same shall not be acquired considering the hardship and other problems that may be put forward before the Land Acquisition Officer; the second objection is in relation to why the particular land which is sought to be acquired is not suitable for the purpose for which, it is sought to be acquired and how the acquisition of such property does not serve the public purpose which is notified. In the present case on hand the Land Acquisition Officer has failed to consider the first part of the objections raised by the petitioners, thereby the report submitted by the enquiry officer under Section 5-A enquiry is vitiated the same is liable to be stuck down. Once the Section 5-A enquiry is invalidated, the consequential Section 6 declaration which has made also is required to be invalidated. In normal circumstances, if Section 5-A enquiry is invalidated and Section 6 declaration has become invalidated, yet an opportunity may be provided to the Land Acquisition Officer in a given case subject to the limitations

that are laid in Section 5-A and Section 6 to conduct Section 5A enquiry afresh so as to complete the acquisition process. However, on account of the statutory changes and repeal of the Act, 1894, at this point of time, there is no possibility of completing the acquisition proceedings by following the procedure prescribed under the Act, 1894. Though Section 24 (1)(a) of the Act, 2013, saves certain acquisitions initiated under the Act, 1894, a careful consideration of Section 24(1)(a) of the Act, 2013, so far as this case is concerned, it is not possible to apply Section 24(1)(a) of the Act, 2013. The language used in Section 24(1)(a) of the Act, 2013 leaves no manner of doubt that Section 24(1)(a) of the Act, 2013 limits its applicability for determination of the compensation in the cases where Award has not been made and that pre supposes that what all remained to be done in a particular case where the land acquisition proceedings have been initiated under the Act, 1894. In all the proceedings up to the stage of determination of compensation has already been completed and only the determination of the compensation is left. If one examines the provisions of the Act 30 of 2013, the determination of compensation is required to be done in terms of Sections 26 to 30 of the Act 2013. The prior sections falling within Sections 11 to 25 under Chapter-IV deal with the procedure in relation to notification, enquiry and other formalities that are required to be carried out. It may be noted that Sections 11 to 25 of the Act, 2013 are the provisions akin to Sections 4 to 9 of the Act, 1894. In that view of the matter, Section 24(1)(a) of the Act, 2013 has a limited scope and the same would be applicable only to the cases where the determination of compensation is remaining and in all respects the land acquisition proceedings have already been completed. In the case on hand, inasmuch as this Court has declared Section 5-A enquiry has been vitiated and is not in conformity with the law declared by the Supreme Court in **Darshan Lal nagpal (Dead) by LRs vs. Government**

of NCT of Delhi and others², Radhy Shyam (Dead) through LRs and others vs. State of Uttar Pradesh and others³ and other cases wherein the importance of Section 5-A enquiry has been repeated and the same was followed by this Court in **Tadikonda Narmada vs. District Collector, East Godavari District, Kakinada⁴**.

In that view of the matter, the land acquisition proceedings under Section 5-A are liable to be set aside and considering the impossibility of continuing the proceedings under the Act, 1894, the proceedings are declared as invalid. However, it is made clear that the respondents are at liberty to initiate fresh land acquisition proceedings in the event the land is required for public purpose including that of house sites.

It may be noted that the Supreme Court in the case of **Soorajmull Nagarmull vs. State of Bihar⁵** had an occasion to notice the vacuum arising on account of different situations under the Act, 2013, in which the observations made as follows:

“11. At first perusal, there seems to be an unexplained inconsistency between [Section 24\(1\)\(a\)](#), which allows an acquisition to stand despite a failure to pass an award while only requiring the compensation to be determined under the 2013 Act, and [Section 24\(2\)](#), which deems the acquisition to have lapsed for a failure to pay compensation or take physical possession of the land where an award has been passed over five years prior to the commencement of the 2013 Act. It appears that the State is in a better position in situations where it has been remiss in taking any action, towards publication of an award than in situations where it has taken partial steps towards the completion of the acquisition proceedings. However, it is possible that the reason behind this differentiation is that [Section 24\(2\)](#) gives the State the option to initiate fresh proceedings, as opposed to placing an obligation upon it to do so. To give the State the discretion to set aside an acquisition for its own error in not passing an award would be in the face of the decision in *Satendra Prasad Jain*. The Parliament has therefore sought to give the erstwhile landowner the benefit of enhanced compensation under the 2013 Act, while restraining the State from taking advantage of its own wrong. [Section 24\(2\)](#), on the

² (2012) 2 SCC 327

³ (2011) 5 SCC 553

⁴ 2014(4) ALT 479

⁵ (2015) 10 SCC 270

other hand, seeks to allow the land to be returned to the landowner party in situations where there is genuinely no need for it, thus benefiting both the dispossessed landowner and the State. There still remains an incongruity, but which presently we are not burdened to unravel. Which provision in the 2013 Act governs a situation where the State has not progressed beyond making a Declaration under [Section 6](#); where possession of the land has not assumed by the State; where neither part nor whole of the compensation has been paid or tendered! However, since in this Appeal we do not have to traverse this legal labyrinth, we shall refrain from indulging in a more detailed discussion of it.”

Accordingly, the writ petition is allowed setting aside the Endorsement in Rc.No.1749/2005 L dated 25.08.2006, issued by the respondent authorities. Miscellaneous petitions, if any pending, shall also stand dismissed. No order as to costs.

Date:11.07.2017
Gk



CHALLA KODANDA RAM,J

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM



WRIT PETITION No.21144 OF 2006

Date:11.07.2017

Gk