

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.25620 of 2009

ORDER:

Heard learned counsel for petitioner and the Assistant Government Pleader (Land Acquisition) for respondents.

The petitioner challenges the action of the respondents in not considering objections filed on 11.06.2009 pursuant to Notice in Rc.No.B.1735/2008 dated 19.05.2009, proposing to acquire an extent of Ac.3-00 cents in Sy.No.90(P) at Alienekhipalem H/o.Choragudi, Pamidimukkala Mandal, Krishna District, as illegal, arbitrary and violative of principles of natural justice.

To complete narration, this court finds it convenient to refer to the interim prayer sought by petitioner in the instant writ petition, which reads thus:

“..to direct the respondent authorities not to dispossess the petitioner herein from the land admeasuring Ac.3.00 cents in R.S.No.90 of Lankapalli village, Pamidimukkala Mandal, Krishna District, pending disposal of the main writ petition....”

On 01.12.2009, this Court granted status-quo for a period of two weeks. The said status-quo order was extended on 14.12.2009 and 24.02.2010. Thereafter, on 28.04.2010, while admitting the writ petition, the following interim order was passed :-

“Interim order granted earlier by this Court shall be treated as the one in this WPMP and shall remain in force, until further orders.”

The respondents filed petition to vacate the interim order. The 2nd respondent filed counter affidavit stating that notice impugned in the writ petition proposing to acquire the subject matter of the writ petition was issued for providing houses to weaker section under a welfare scheme

implemented by the State Government. On 15.12.2008, draft notification was published. On 19.05.2009, Form-III notice was issued to the petitioner to file objections and to participate in the enquiry under Section 5-A to be held on 11.06.2009. Having received notice, the petitioner has neither filed objections nor participated in the enquiry under Section 5-A. Therefore, the District Collector, after going through the report and remarks of the Land Acquisition Officer, passed orders under Section 5A(2) on 13.07.2009. In view of the interim order passed by this Court on 01.12.2009, the draft declaration under Section 6 of the Act could not be published. With effect from 01.01.2014, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013) has come into force.

Counsel for petitioner contends that the writ petition was filed apprehending dispossession of petitioner from the subject land and also not providing opportunity in the enquiry conducted by the 2nd respondent for the experience of petitioner is such that without completing procedure contemplated by the Land Acquisition Act, 1894 (for short 'the Act'), small and marginal farmers are dispossessed from lands under acquisition. Hence, the writ petition was filed. The possession was protected and however the authorities were not precluded from proceeding with other stages of enquiry, viz., draft declaration and passing of award. Since other steps are not taken up, he raises two legal objections against continuation of impugned land acquisition proceedings, viz., firstly that the respondents are under obligation to publish draft declaration under Section 6 of the Act, within one year from the date of 4(1) notification, the same has not been done and even assuming that enquiry was completed, no order on the objections filed by petitioner is passed and therefore, further steps under the Act cannot be taken. He contends that

under Section 11-A even if any order on objections is passed behind back of petitioner, the order goes against continuation of land acquisition proceedings by operation of Section 11-A of the Act. Therefore, prays for allowing the writ petition.

Learned Assistant Government Pleader, opposes the writ prayer by contending that the writ petition is filed on mere apprehension and that the petitioner cannot take advantage of the interim order obtained in the writ petition. According to him, the authorities are under *bona fide* impression that the interim order shall have to be respected by not proceeding in any manner with the subject acquisition. He fairly submits that having regard to categorical stand taken in the counter-affidavit that the land acquisition proceedings are held back at the stage of enquiry.

I have perused the material on record, taken note of submission of counsel for parties and having regard to the embargo under Section 6 of the Act and also limited interim order granted by this court, the respondents, if have understood the order in a different way are not authorised by Court for continuation of land acquisition proceedings impugned in the writ petition.

The writ petition is ordered and impugned notice dated 19.05.2009 issued by the 2nd respondent, is set aside. No order as to costs.

Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

S.V.BHATT, J

Date: 22.08.2017
Prv

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Prv