

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.1034 of 2009

ORDER:

Heard Mr. K.S. Murthy for petitioners and the learned Assistant Government Pleader (Land Acquisition) for respondents.

2. The petitioners challenge Section 4(1) notification in Roc No.312/ 2007(G2) dated 09.02.2007 (published on 14.02.2007), proposing to acquire an extent of Ac.1.50 cents in Sy.No.16/2 at Taderu Village, Bheemavaram Mandal, West Godavari District and that the petitioners incidentally challenge the procedure followed by 2nd respondent pursuant to enquiry notice dated 15.02.2007, as illegal, arbitrary, violative of principles of natural justice.

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

“..to restrain the respondents from dispossessing petitioners from their lands in Sy.No.16/2, Taderu Village, Bhimavaram Mandal, West Godavari District, pending disposal of the writ petition.”

4. The respondents issued notice impugned in the writ petition proposing to acquire the subject matter of the writ petition for providing houses to weaker sections under a welfare scheme implemented by the State Government. On 09.02.2007, 4(1) notification was issued. On 15.02.2007, Section 5-A Notice of enquiry was issued and the petitioners filed objections 03.03.2007. On 28.01.2009, this court granted stay of dispossession of petitioners from the subject matter of the writ petition. 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.

5. Mr. K.S. Murthy contends that the writ petition was filed apprehending dispossession of petitioners from the subject land and also not providing opportunity in the enquiry conducted by 2nd respondent, for the experience of petitioners is that without following the procedure under the Land Acquisition Act, 1894 (for short 'the Act'), small and marginal farmers are dispossessed from the lands under acquisition. Hence, the writ petition was filed. The possession of petitioners was protected and the authorities were allowed to proceed with enquiry, viz., draft declaration and passing of award. Therefore, he raises two legal objections against continuation of the instant land acquisition proceedings, 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, in the case on hand the draft declaration was not published and even assuming that enquiry is completed, however, no order is passed on the objections filed by petitioners and therefore, no other step under the Act could be taken. He also places reliance on Section 11-A and contends that even if any order is passed behind the back of petitioners, the order goes against Section 11-A of the Act. Therefore, prays for allowing the writ petition.

6. Learned Assistant Government Pleader, opposes the writ prayer by contending that the writ petition is filed on mere apprehension and that the petitioners cannot take advantage of the interim order they have obtained in the writ petition and the authorities are under *bona fide* impression that the interim order prevents the authorities from proceeding in any manner in the subject acquisition and therefore further steps were not taken. He fairly submits that according to the stand taken in the counter-affidavit the land acquisition proceedings are held back at the stage of enquiry and no further steps were taken.

7. I have perused the material on record, taken note of submission of counsel for parties and having regard to the language of Section 6 of the Act and also limited interim direction granted by this court, the respondents cannot now seek for continuation of land acquisition proceedings. The land acquisition proceedings are lapsed.

8. The writ petition is ordered and impugned 4(1) Notification dated 09.02.2007 issued by 1st respondent (published on 14.02.2007), is set aside. No order as to costs. Pending miscellaneous petitions if any in this writ petition shall stand dismissed in consequence.

Date: 22.08.2017
BSS

S.V.BHATT, J



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17

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