

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27187 of 2008

ORDER:

1) Heard learned counsel for the petitioner, Government Pleader for Land Acquisition.

2) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in acquiring land to an extent of Ac.2.50 cents viz., Ac.0.07 cents of wet land in Sy.No.355/6 and Ac.2.43 cents of wet land in Sy.No.495/6 in pursuance of the notification in R.C.No.495/08-G2, dated 21.02.2008 under Section 4(1) of the Land Acquisition Act, which was published in Eenadu Telugu daily news paper on 28.02.2008, as arbitrary, illegal and consequently to set-aside the said notification.

3) The averments in the affidavit filed in support of the writ petition would show that the petitioner has got the property viz., an extent of Ac.3.55 cents in Sy.Nos.495/6, 355/6 and 497/1 situated at Allaparru village, Nagaram Mandal, Guntur District under the gift deed dated 05.07.2007 from his father. Out of the above extent, land admeasuring Ac.2.59 cents in Sy.No.495/6 was an ancestral property and the remaining property was purchased under valid consideration. It is stated that from the date of purchase and the date of gift, the father of the petitioner was in possession and

enjoyment, thereafter the petitioner has been in possession and enjoyment of the same. The petitioner further stated that he had obtained a loan of Rs.27,000/- from the Bank by mortgaging the above property as he had no other land. After seeing the paper publication, he gave a representation to the respondents objecting to their action in installing flags in his land. Challenging the said action, the petitioner along with others filed Writ Petition No.4270 of 2008, which was disposed of on 29.02.2008 directing the respondents therein not to dispossess the petitioners without following due process of law. It is stated that the notification in R.C.No.495/08-G2 dated 21.02.2008 u/s.4(1) of the Land Acquisition Act, which was published in Eenadu telugu daily news paper on 28.02.2008, itself is a defective one as the lands proposed to be acquired thereunder are shown as situated in Allaprru village limits, whereas the lands are situated in Ullipalem grampanchayat limits. It is said that, if the proposed lands are distributed as house-sites to weaker sections in Allaparru gram panchayat, the beneficiaries have to migrate to the other gram pancyayats and their names have to be deleted from the Gram Panchayat. It is further stated that there is available endowment land, to an extent of Ac.12.00, in the Ullipalem gram panchayat itself, which can be acquired for distribution of house sites. The notification in R.C.No.495/08-G2, dated 21.02.2008 issued u/s.4(1) of the Land Acquisition Act and published in Eenadu news paper is defective one, as the correct names of the owners are not

mentioned in it. Further, the petitioner stated that himself along with another filed W.P.No.5338 of 2008 as the respondents are not passing any orders to the objections submitted by him. In which this Court directed the Government Pleader to get instructions and posted the matter to 03.04.2008. As the writ petition is pending, the respondents did not take any action. Hence, he filed the present writ petition.

4) By an order, dated 15.12.2008, this Court directed the respondents not to dispossess the petitioner from his land, but gave liberty to the respondents to proceed further with the proceedings.

5) A counter came to be filed by the respondents denying the allegations made in the petition affidavit except to the extent that are specifically admitted. It is submitted that an extent of Ac.1.68 cents in S.No.495-6 of Allaparru village of Nagaram Mandal was proposed for acquisition along with other lands for providing house sites to weaker sections under Indiramma programme, in the month of June 2007. Thereafter, the Tahasildar, Nagaram submitted DN proposals in his Rc.No.261/06/Dy.T, dt:19.06.2007 to the R.D.O., Tenali. At that time, the proposed land was under possession and enjoyment of the father of the petitioner and after initiating the land acquisition proposals, the proposed land was transferred in favour of the petitioner by way of gift deed dt:05.07.2007 with a view to avoid the land acquisition process. Further, the petitioner is

non-resident of Allaparru village of Nagaram Mandal and is not dependent on agriculture. The Land Acquisition Officer issued 5-A notice to the interested persons after publication of the draft notification as per law, but did not take any steps to dispossess the petitioner from the land in question. The contents of the counter affidavit further show that at the time of issuing notification under Section 4(1) of the Land Acquisition Act, the father of the petitioner was in possession and enjoyment, but at the time of enquiry under Section 5-A, the petitioner claimed title over the land and filed a copy of the gift deed. Thereby, the name of the petitioner was treated as pattadar and enjoyer and the name of the petitioner was published under draft declaration made under Section 6 of the L.A. Act. It is also stated that the objections filed by the petitioner were got enquired and the Collector, Guntur examined the record of enquiry and issued an endorsement to the petitioners informing that as the objections are not genuine, they have decided to continue with the land acquisition proposal. It is stated that the enquiry revealed that an extent of Ac.4.11 cents was in possession of the father of the petitioner and out of that, an extent of Ac.2.59 cents was gifted to the petitioner and in addition to that there was also an extent of Ac.4.87 cents of agricultural land under possession and enjoyment of the petitioner and his wife. As such the petitioner did not come under the category of small and marginal farmer. It is stated that

there is no other suitable government vacant land for the purpose of providing house-sites. Hence, he prays to dismiss the petition.

6) The point that arises for consideration is whether the proceedings initiated under the provisions of the Land Acquisition act, 1894 gets lapsed since no award is passed till date.

7) A perusal of the material placed before the Court would show that the notification under Section 4 (1) of the L.A.Act came to be issued on 21.02.2008 and the writ petition is filed on 12.12.2008. On 15.12.2008, this Court directed the respondents not to dispossess the petitioner from the subject land, but however directed other proceedings to go on. Since Section 5-A enquiry was directed to be continued, declaration under Section 6 (1) of the Act shall be made within a period of one year from the date of declaration of Section 4 (1) notification. Though there is a specific direction to proceed further, the authorities failed to do so. As the authorities failed to comply with the requirement of law, the writ petition is disposed of, quashing the notification dated 21.02.2008 issued under Section 4 (1) of the Act as declaration under section 6 (1) of the Act is not made within one year, but giving a liberty to the respondents to initiate fresh action in accordance with the provisions of the New Act, if they still intend to acquire the land. There shall be no order as to costs.

8) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.02.2017

GM/gkv



