

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.2941, 3152, 2335, 2935, 3079, 2939
and 2936 of 2008

COMMON ORDER:

Heard Mr. K. Govind Reddy holding for Mr. M. Vishnuvardhana Reddy for petitioners, learned Assistant Government Pleader (Land Acquisition), Mr. Jagadish Chandra Prasad for VUDA and Sri C. Ravindranth Reddy for A.P. Bhoodan Yagna Board (for short 'the Board').

2. With the consent of learned counsel, W.P.Nos.3152, 2335, 2935, 3079, 2939 and 2936 of 2008 are also taken up for hearing and disposal along with W.P.No.2941 of 2008.

3. The prayer in all the writ petitions, which is similar as in W.P.No.2941 of 2008, reads as follows:-

“.... to issue a Writ or order or orders more particularly one in the nature of Writ of Mandamus for declaring the action of respondents in proposing to toner society's land in an extent of Ac.50.56 cents in R.S.No.132 of Paradesipalem Village, Chinnagdali Visakhapatnam (Rural) Mandal, Visakhapatnam District, as arbitrary, illegal and violative of fundamental rights guaranteed to the petitioner under Articles 14 and 21 of the Constitution of India.”

4. The counsel appearing for parties submit that the averments in W.P.No.2941 of 2008 can be referred to for disposing of the instant writ petitions.

5. The petitioners allege that the Board allotted the land to petitioners, out of Ac.50.56 cents, situated in RS No.132 of Paradesipalem Village, Chinnagadali Mandal, Visakhapatnam, under Section 14 of A.P.Bhoodan and Gramdan Act, 1965 (for short 'the Act') read with Rule 9 of A.P.Bhoodan and Gramdan Rules, 1965 (for short 'the Rules'), as detailed hereunder:

S. No.	Name of the Allottee	Extent allotted Ac. Cts	Allotment Procs. & date
1	K. Jayaprasad Chowdary (Petitioner in WP 2941/ 08)	3.50	15609 dated 19.03.2006
2	Pola Ajay (Petitioner in WP 3152/ 08)	1.00	19792 dated 15.11.2005
3	Baptist Education Service (petitioner in WP 2335/ 08)	2.50	16136 dated 21.01.2001
4	Pola Radha Rani (petitioner in WP 2935/ 08)	1.00	19794 dated 15.11.2005
5	Pola Bhargavaram (Petitioner in WP 3079/ 08)	1.00	18789 dated 15.11.2005
6	Vakada Aravind (Petitioner in WP 2939/ 08)	1.00	19793 dated 15.11.2005
7	Vinobha Bhawe Rural Development Society (Petitioner in WP 2936/ 08)	24.50	15620 dated 19.04.1999

6. According to petitioners, they are in possession and enjoyment of the land allotted through proceedings as stated supra and the names of petitioners were recorded in the revenue records and, therefore, petitioners are the persons having subsisting interest in the subject matter of writ petition. The petitioners to stay clear from any shroud on the allotment of land by the Board and also to state all relevant facts relating to the subject matter of writ petition has further stated that the Board issued show-cause notice Ref. No.D/ 188/ 07, dated 25.10.2007, proposing to cancel the allotment made through relevant proceedings. On 15.11.2007, the petitioners allege to have submitted

reply to the show-cause notice dated 25.10.2007 and thereafter, through communication Ref.No.D/ 188/ 07, dated 24.11.2007, the Board forwarded explanation of petitioners etc., for remarks by the Revenue Department. While matter stood thus, the 2nd respondent issued Section 4(1) Notification vide Gazette No.7/ 08 dated 28.01.2008 proposing to acquire an extent of Ac.50-56 cents in Sy.No.132 of Paradesipalem Village, Chinagadali Mandal, Visakhapatnam District for the purpose of developing integrated Satellite Township by the Visakhapatnam Urban Development Authority-3rd respondent. It is matter of record that by dispensing with the enquiry under Section 5-A of the Land Acquisition Act, the 2nd respondent approved draft declaration under Section 6 through proceedings R.Dis.No.112/ 2008, dated 28.01.2008. In this background, the challenge of petitioners against the impugned land acquisition is two fold. Firstly, the 4(1) Notification proposing to acquire land for Integrated Satellite Town Ship at the instance of VUDA is not a public purpose and non-disclosure of names of all the allottees of land by Boodan Yagna Board in Section 4(1) Notification cannot and could not be treated as conforming to the procedure stipulated by the Land Acquisition Act. Secondly, dispensing with 5-A enquiry firstly is not supported by valid and tenable reasons and amounts to denying a fair and reasonable opportunity to petitioners to place all the details relating to the land claimed by petitioners and therefore, the very invocation of urgency clause is arbitrary.

7. In support of his contention, Sri K. Govinda Reddy placed reliance on the judgments of the Hon'ble Supreme Court in '*Radhy*

*Syam vs State of U.P.*¹, *Anand Singh vs. State of U.P.*² and *Laxmi Devi State of Bihar*³ and contends that dispensing with 5A enquiry is illegal and unconstitutional and therefore, the impugned proceedings are liable to be set aside.

8. Sri K. Govinda Reddy, after taking note of the stand taken by the respondents in the counter affidavit, has confined his challenge to the draft declaration issued through proceedings R.Dis.No.112/ 2008/ G, dated 28.01.2008 and prayed for setting aside the same and affording fair and reasonable opportunity to petitioners in the proposed acquisition.

9. The Government Pleader for Revenue referring to the stand taken in the counter-affidavit contends that the petitioners in these writ petitions cannot be treated as either allottees or assignees under Section 14 of the Act, for according to him, Section 14 of the Act deals with power of the Board to grant land at the disposal of the Board to eligible allottees and according to Rule 9(i) of the Rules, unless and until the allotment results in assignment, the allotment by itself cannot be treated as creating a right in favour of petitioners. In other words, what remains today is tentative allotment, without consignment, hence the petitioners have no subsisting interest. According to him, as per revenue records, Boodhan Yagna Board is shown as pattadar and by showing the name of person, who has subsisting interest, Section 4(1) Notification is issued and therefore no exception to 4(1) Notification by referring to

¹ (2011)5 SCC 553

² (2010) 11 SCC 242

³ (2015) 10 SCC 241

non-disclosure of petitioners names can be raised. He draws the attention to the averments in the counter affidavit and contends that the entire extent is not sub-divided, the possession pleaded by the petitioners is untenable and further keeping in view the urgency in the matter, enquiry under Section 5-A is dispensed with through proceedings dated 28.01.2008.

10. Sri Jagadish Chandra Prasad opposes the writ prayers by relying upon the stand taken by the 3rd respondent in paragraph '2', which reads thus:-

“In reply to paras 3 and 4 of the affidavit, it is respectfully submitted that the Bhoodan Yagna Board has issued proceedings allotting land to the petitioner in the proceedings of the Board, and as per Sections 9 to 12 of the Bhoodan and Gramdan Act, 1965 the concerned M.R.O./ Tahsildar has to issue Patta in Form IV imposing conditions in one part and the second part is that the land has to be subdivided and to be handover physical possession since S.No.132 is a full field with a total extent of Ac.50-56 cts. But the M.R.O./ Tahsildar has not issued any Patta and he neither subdivided the land nor handed over physical possession. The contentions of the petitioners that the land was handed over to them are false. The Tahsildar in a report to the Collector and also to Bhoodan Yagna Board, Hyderabad informed that the land is vacant and there is no such individual by names (petitioners) in the revenue records related to the Paradesipalem Village. Hence, the petitioner's contentions that they were granted land in S.No.132 of Paradesipalem Village, Chinagadili Mandal, Visakhapatnam District are false.”

11. According to him, the names of petitioners are not reflected in the revenue records and there are no such individual names i.e. petitioners. On this aspect of the matter, Sri K. Govinda Reddy by referring to various affidavits filed by petitioners contends that the identity, allotment, etc., are matters that can be gone into if enquiry under Section 5-A is conducted.

12. Examining the case on hand, having regard to several disputed questions of fact and also the correspondence on the subject taken up by the Board with District Collector, Visakhapatnam, the relevant circumstances refined are that the substance of Section 4(1) Notification was published in the local newspaper on 29.01.2008. The 2nd respondent dispensed with 5-A enquiry and issued draft declaration vide Proceedings R.Dis.No.112/ 2008/ G1 dated 02.02.2008 and the same was gazetted on even date. Section 4(1) Notification was issued for constructing an integrated Satellite Township by the 3rd respondent. The Integrated Town Ship ought not to be taken as one of the projects where urgency clause can be invoked and enquiry under Section 5-A can be dispensed with in a monotonous fashion. The burden is on the 2nd respondent to discharge that even to the limited extent the law permits the discretion has been objectively and judiciously exercised. The affidavit filed by 2nd respondent except referring to approving the proceedings for issuing draft declaration, no other reason which can be related to invoking the urgency clause is stated. This Court has granted stay of dispossession of petitioners and the same is continuing as on date.

13. Having regard to the position of law and the proximity of dates namely Section 4(1) notification, Draft Declaration, I am satisfied the writ petitions can be ordered to the limited extent of setting aside the proceedings Rc.No.112/ 2008/ G, dated 28.01.2008. The 2nd respondent is given liberty to issue notices to all the interested persons and proceed in the matter in accordance with law.

14. Having regard to the objections raised by the contesting respondents, the 2nd respondent conducts enquiry into all aspects including identity of individuals and takes note of the letter of the Board dated 15.05.2007 and passes orders in accordance with law. The petitioners as and when receive notices in the proposed enquiry under Section 5-A, are entitled to take all objections and also place documents in support of allotment, assignment or identity of individuals.

15. The 2nd respondent is also given liberty to decide whether to proceed with the acquisition or pass an order on the letter communicated by the Board in this behalf and communicate such decision to the petitioners. In other words, if the assignment is treated as incomplete or cancelled, the respondents can proceed with the acquisition with the details already reflected in Section 4(1) notification. On the other hand, if the case of petitioners is accepted by 2nd respondent, the petitioners are afforded opportunity in Section 5-A enquiry.

16. *Status-quo* in all aspects is directed to be maintained, till a comprehensive decision is taken in this behalf.

17. The writ petitions are ordered to the extent indicated above.

No order as to costs. Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Date: 10.08.2017
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