

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.12491 of 2008

ORDER:

Heard learned counsel for the petitioners and learned 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 first respondent in issuing the proceedings Rc.G4.4643/ 2006, dated 25.05.2008, rejecting the objections filed by the petitioners under Section 5A of the Land Acquisition Act as illegal and arbitrary.

3. A perusal of the averments in the affidavit filed in support of the writ petition would show that a notification under Section 4(1) of the Land Acquisition Act (for short, 'the Act of 1894') came to be issued in gazette on 05.10.2006. Pursuant thereto, the petitioners approached this Court vide W.P.No.2745 of 2007, questioning the notice issued by the first respondent-District Collector and the consequent Section 6 Declaration dated 22.01.2007 relating to their lands, on the ground that the same is contrary to Section 3(c) of the Act and also contrary to A.P.Agriculture Land (Conversion for Non-Agricultural Purpose) Act, 2006. The said writ petition was disposed of vide order dated 28.01.2008 setting aside the declaration under Section 6 and further directing the respondents to give an opportunity of personal hearing to all the petitioners before proceeding with the proposed acquisition. Accordingly, the petitioners submitted their objections before the second respondent-RDO who is the competent authority to conduct enquiry under Section 5-A of the Act, who in turn forwarded a report to the first respondent and basing on the enquiry report the first respondent issued the impugned order dated 25.05.2008.

It is stated that enquiry was conducted on 28.03.2008 and the petitioners submitted their objections on the same day itself and the petitioners were informed that a personal hearing would be conducted subsequently. It is the case of the petitioners that without giving any opportunity of hearing the petitioner though personal hearing was given on 03.04.2008 to one S.Lakshman Swamy, who filed his objections on 02.04.2008, the order came to be passed. Aggrieved by the procedure adopted by the respondents in not conducting personal hearing and passing the impugned order without considering the objections raised by the petitioners, the present writ petition came to be filed.

4. By an order, dated 17.06.2008, this Court while issuing notice before admission granted interim stay of dispossession of the petitioners from the lands in question.

5. A counter came to be filed by the Government stating that the Government identified the land of the petitioners and proposed to acquire the same for the purpose of providing houses to weaker sections under 'Indiramma Programme'. The averments in the counter would also show that after conducting survey, the Tahsildar submitted proposals of draft notification under Section 4(1) of the Act of 1894 to the RDO vide letter dated 16.09.2006. After scrutinizing the same, the District Collector approved the Draft Notification issued under Section 4(1) of the Act on 05.10.2006. Thereafter, the said draft notification was published in the District Gazette, newspapers and locality on 13th, 26th and 28.10.2006 respectively. It also refers to the notices published and 5A enquiry to be held on 21.11.2006. Basing on the directions given by the High Court in W.P.No.2745 of 2007, notices were served and the RDO conducted enquiry under Section 5-A of the Act on 28.03.2008 and 03.04.2008. It is stated that the petitioners attended 5A enquiry and availed personal hearing on

28.03.2008. Subsequently, after perusing the objections and the enquiry record, the Collector passed the impugned proceedings dated Rc.G4.4643/ 06, dated 25.05.2008. Subsequently, the District Collector approved the draft declaration under Section 6 of the Act on 22.06.2008 and the same was published in District Gazette, Newspapers and locality on 24th, 29th and 30.06.2008 respectively. Thereafter, notices in form 6 and 7 under Sections 9 (1), 10, 9(3) and 10 were issued for conducting Award enquiry on 31.07.2008. Without attending the award enquiry, the petitioners approached this Court in W.P.No.12491 of 2008 and obtained interim stay, hence the respondents could not proceed further.

6. Before proceeding further, it would be appropriate to refer to Section 11-A of the Act, 1894.

“Section 11-A : A period within which an award shall be made: The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation: In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court, shall be excluded.

7. A perusal of the material placed before the Court would show that the second respondent issued notice under Section 5-A of 1894 Act directing the petitioners to file objections fixing the enquiry date on 21.11.2006. The petitioners submitted their objections, but the same were rejected. On 22.06.2008 declaration under section 6 of the Act came

to be issued. Challenging the same the present writ petition came to be filed and this Court granted interim stay of dispossession. As per the Act, the declaration under Section 6 of the Act, 1894 has to be issued within a period of one year from the said date. However, the period of stay if any has to be excluded for the purpose of calculating the period of one year for publication of declaration. Section 11A of the Act, 1894 prescribes passing of an award within a period of two years from the date of said declaration excluding the period of stay/injunction if any granted by a Court.

8. In the process, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act 30 of 2013") came into force with effect from 01.01.2014. Section 24 (1) (a) of the Act 30 of 2013 prescribes that if the land acquisition proceedings were initiated under the Act and no award under Section 11-A of the Act, 1894 has been made, all the provisions of the Act 30 of 2013 shall apply for determination of compensation.

9. As seen from the record, there is no stay of land acquisition proceedings.

10. In order to determine the compensation and the period within which an award shall be made, the Act 30 of 2013 provides a procedure under Sections 25 and 26 of the Act 30 of 2013, which reads as under:

"Section 25. Period within which an award shall be made: The Collector shall make an award within a period of twelve months from the date of publication of the declaration under Section 19 and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that the appropriate Government shall have the power to extend the period of twelve months if in its opinion, circumstances exist justifying the same.

Provided further that any such decision to extend the period shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

Section 26. Determination of market value of land by Collector:

(1) The Collector shall adopt the following criteria in assessing and determining the market value of the land namely:

(a) the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of Section 2 in case of acquisition of lands for private companies or for public private partnership projects, whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under Section 11.”

11. Under Section 26 of the Act 30 of 2013, the Collector has to determine the market value of the land for the purpose of payment of compensation under Section 24 of the Act 30 of 2013. Methodology to be adopted for arriving at the market value is prescribed under Section 26 of the Act 30 of 2013. Proviso to Section 26 of the Act 30 of 2013 states that the market value shall be as on the date on which the notification under Section 11 of the Act 30 of 2013 has been issued. An argument is advanced stating that Section 11 of the Act 30 of 2013 has to be equated with Section 4 (1) of the Act, 1894. I am afraid, the same cannot be accepted for the reason that if really the intention of the legislature was to equate Section 11 of the Act 30 of 2013 with Section 4 of the Act, 1894, definitely there would have been some indication to that effect in the Act 30 of 2013. On the other hand, though Act 30 of 2013 takes care of many

situations and shortfalls under Act, 1894, it is silent on this aspect. Apart from that, it is to be noted that Section 4 of Act, 1894 does not anywhere indicate fixation of market value. While determining the compensation to be paid in respect of the lands acquired under the Act, 1894, the market value prevailing as on the date of the award is normally taken into consideration. But situation under Act 30 of 2013 appears to be different. Therefore, the argument that the Section 11 of the Act 30 of 2013 has to be equated to Section 4 of the Act, 1894 cannot be accepted. On this score, the proceedings under Old Act should lapse, giving liberty to initiate fresh proceedings under the Act 30 of 2013.

12. Issue identical to the case on hand came up for consideration before a learned Single Judge of this Court in W.P.Nos.22781 of 2008, 18274 and 18619 of 2009. It was a case where declaration under Section 6 of the Act, 1894 was made in the year 2009 and no award was passed by virtue of *status quo* order granted by this Court. Dealing with Section 11-A of the Act, 1894, a learned single Judge of this Court held as under:

“Under Section 11 (A) of the Act, the award has to be passed within a period of two years from the date of publication of the declaration and in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration stayed by the order of Court shall be excluded. Even if that period is excluded and an award is liable to be passed, now it cannot be done under the provisions of the Act, as the action has to be taken as per Section 24 (1) (a) of Act 30 of 2013.

The Interplay of Section 11 (A) of the Act and Section 24 (1) (a) of the New Act was considered by the Apex Court in *Laxmi Devi v. State of Bihar and others*¹, wherein the Apex Court held that the acquisition proceedings initiated under

¹ (2015) 10 SCC 241

the Act are liable to be *set aside* and the respondents were given liberty to issue a fresh notification, if they so choose, under New Act.”

13. In *Mohan v. State of Maharashtra*² the Apex Court observed as under:

“In our opinion under Section 11-A what has to be seen is the date of last publication of the declaration under Section 6, and not any subsequent corrigendum to the said declaration. The only circumstance under which the period between the declaration under Section 6 and the award can be extended is mentioned in the explanation to Section 11-A which states: In computing the period of two years referred to in Section 11-A, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court is excluded. There is no mention in Section 11-A that the period after the publication of the declaration under Section 6 and the publication of any corrigendum to the said declaration has also to be excluded. We will be adding words to the statute if we put such interpretation to section 11A, and it is well settled the Court should not add or delete words in a statute.”

14. In cases where lands are sought to be acquired for housing purpose under Indiramma Housing Scheme, came up for consideration before this Court in W.P.Nos.454 and 14091 of 2009. It was a case where notification under Section 4 (1) of the Act, 1894 was issued for acquiring the land admeasuring Ac.5.85 cents situated in Mudinepalli Village, Krishna District for the purpose of providing house sites to the weaker sections of the society under Indiramma programme. A learned Single Judge of this Court, while dealing with the said issue, held as under:

² AIR 2007 SC 2625

“This Court granted interim stay of all further proceedings, as a result of which the respondents could not complete the acquisition proceedings. In the meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force with effect from 01.01.2014 and seven years have lapsed from the date of publication of Section 4 (1) notification. It is not known whether the earlier scheme of providing house sites to the weaker sections of the society is being pursued by the Government due to changed circumstances.”

15. The Government Pleader for Land Acquisition submits that said order is not challenged and has become final. Further the Government Pleader could not place any material on record to show that the said land is still required for providing house sites to weaker sections. Infact, a doubt is raised with regard to the very existence of the scheme.

16. In the instant case, award could not be passed in view of the interim direction directing the authorities not to dispossess the petitioners from the subject land. In the meanwhile, the Act 30 of 2013 came into force. The interim order granted by this Court is only a direction to the authorities not to dispossess the petitioners from the subject property. Though there was no stay of any proceedings, the authorities failed to pass an award. Section 11-A of the Act, 1894 prescribes that an award has to be passed within a period of two years from the date of declaration. Though there is no interim order staying the proceedings, the authorities failed to proceed further, thereby violating the mandate of Section 11-A of the Act, 1894.

17. For the aforesaid reasons, the writ petition is allowed and the impugned proceedings initiated under the Act, 1894, are set aside, giving liberty to the respondents to initiate fresh proceedings for acquisition of the above mentioned land of the petitioners, if the land is still required, in

accordance with the provisions of the Act 30 of 2013. There shall be no order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

19.01.2017
vhb/ gkv

