

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.12213 of 2008

ORDER:

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

The petitioners challenge Section 4(1) notification in Ref. No.G3/3839/2007, dated 27.06.2007 and draft declaration under Section under Section 6 of the Land Acquisition Act, 1894 (for short 'the Act') in Ref.No.G3/3839/2007, dated 27.06.2008, proposing to acquire an extent of Ac.5.00 cents in Sy.Nos.199/30, 199/31 and 231/1 at Rangapuram Village, Biccavolu Mandal, East Godavari 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 petitioners in the instant writ petition, which reads thus:

“..... to grant stay of all further proceedings pursuant to the Notification issued under Section 4(1) of the Land Acquisition Act, bearing Ref. G3/ 3839/ 2007, dated: 27.06.2007 and also the draft declaration Under Section 6 of the L.A. Act, in Ref. G3/ 3839/ 2007, dated: 27.05.2008 for acquisition of the land of an extent Ac.5.00 cents situated in Sy.Nos. 199/ 30, 199/ 31 and 231/ 1, situated in Rangapuram Village, Biccavolu Mandal, East Godavari District, pending disposal of the Writ petition.....”

On 13.06.2008, this Court granted stay of dispossession.

The respondents filed petition to vacate the interim order. The respondents filed counter affidavit stating that impugned notifications are issued proposing to acquire the subject matter of writ petition for providing houses to weaker section under a welfare

scheme implemented by the State Government. On 27.06.2007, draft notification under Section 4(1) was issued. On 29.06.2007 notice under Section 5-A was issued calling objections from the land owners. On 10.02.2008, pursuant to the order of this Court in W.P.No.25943 of 2007, dated 21.01.2008, again notices were issued and the petitioners filed objections and also attended enquiry on 12.03.2008. The Collector, Kakinada, after perusing the remarks and the objections filed by the petitioners passed orders under Section 5-A(2) of the Act. Thereafter, Draft Declaration under Section 6 of the Act was issued and notices under Sections 9(1) & 10 and 9(3) & 10 were published and served on the petitioners. The award enquiry was conducted on 13.06.2008. The petitioners did not attend the award enquiry but filed the instant writ petition.

Learned Assistant Government places on record the instructions received from the 2nd respondent. The operative portion is excerpted hereunder :-

“I submit that the following land in Rangapuram village of Biccavolu Mandal was proposed for acquisition under SWLA for providing house sites to the weaker sections.

Survey No.	Classification	Extent Ac.cts	Name of the land owner
199/ 30	G.D	0.67	Kanati Nalamaharaju S/o.Appalaswamy
199/ 31	G.D	0.65	
231/ 1	G.D	3.68	
	Total	5.00	

The draft Notification was approved on 27.06.2007 and also the draft declaration was approved on 17.11.2007. The land owner has filed W.P.No.25943 of 2007 against the said land acquisition.

The Hon'ble High Court disposed the W.P.No.25943/ 2007 and passed the order that “set aside the impugned declaration

issued under Section 6 of the Act and direct the respondents to conduct enquiry under Section 5A afresh and afford an opportunity of personal hearing to the petitioners.”

As per the orders of the Hon'ble High Court the 5A enquiry was conducted on 12.03.2008 and passed an order that the objections of the land owners are not valid grounds vide E.G. Collector's Kakinada Proceedings Ref.G3/ 3839/ 2007, dt.27.04.2008. The District Collector, E.G.District, Kakinada has approved the Draft Declaration on 23.05.2008. At this stage the legal heirs of land owner have filed W.P.No.12213/ 2008 in the Hon'ble High Court of A.P., Hyderabad against the said land acquisition and the Hon'ble High Court granted interim stay of dispossession of the petitioners from the land in question on 13.06.2008. The LAO, Rajamundry has filed counter on 04.08.2008.

I submit that in the ref 2nd cited, the Tahsildar, Biccavolu has reported that now the land is under the possession of Sri Kanati Nalamaharaju S o.Appalaswamy and also reported that the land is required for providing house sites to the beneficiaries.

I, therefore request that the above facts may kindly be appraised to the Hon'ble High Court and see that the writ petition is disposed without costs.”

The Assistant Government Pleader submits that on 13.06.2008 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.

Counsel for petitioners 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 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 petitioners 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 petitioners, 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 petitioners 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 4(1) Notification dated 27.06.2007 and draft declaration dated 27.05.2008 issued by 1st respondent, are 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
Prv

S.V.BHATT, J



