

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 28079 of 2008

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in resorting to illegal methods in acquiring the land of the petitioner admeasuring Ac.4.00 in Sy.No.450/ 2E situated at Kanchikacherla Village and Mandal, Krishna District, without considering and disposing of the objections submitted by the petitioner dated 16.12.2008 in the enquiry contemplated under section 5-A of the Land Acquisition Act, 1894 (for short "1894 Act") as illegal, arbitrary and unconstitutional; and consequently direct the respondents not to interfere with the peaceful possession and enjoyment of the lands held by the petitioner, except by due process of law.

2) The facts which lead to filing of the present writ petition are that the petitioner is owner and possessor of the land admeasuring Ac.4.00 in Sy.No.450/ 2E. It is stated that the petitioner received notice in Form No.III under Section 5-A of the 1894 Act, directing him to submit his objections, if any, in regard to proposed acquisition of the land. The petitioner submitted his detailed objections on 16.12.2008. It is stated that the land sought to be acquired under the proposed acquisition, is a subject matter of partition suit vide O.S.No.215 of 2008, pending before the Junior Civil Judge, Nandigama, filed by his mother against him

and his brother, claiming a share in the said property. Thereafter, Form-II and III notices were served on the petitioner. It is also stated that while the objections submitted by him are pending consideration, and when the respondents resorted to acquire the property by unlawful methods, by forcibly trespassing into the land on 20.12.2008, the present writ petition came to be filed.

3) A counter came to be filed stating that draft notification for the land referred to above was approved by the Collector, Krishna and it was published on 25.11.2008. Notices in Form-III under section 5-A of 1894 Act have been issued to the petitioner requesting him to attend the enquiry on 16.12.2008. The same was served on the owner on 29.11.2008. The petitioner attended the enquiry and filed his objections. The Tahsildar, Kanchikacharla submitted his findings on the objection. Pursuant thereto, the Land Acquisition Officer submitted 5-A enquiry report along with the draft declaration proposals to the Collector, Krishna, requesting to over rule the objections filed by the petitioner, and approve the draft declaration proposals to continue the L.A. proceedings. The Collector issued orders overruling the objections of the petitioner on 30.05.2009. It is also stated that there is no suitable government land available for the present purpose and as such the land belonging to the petitioner was proposed to be acquired as the same is suitable for construction of houses and situated close to the village site so that it would be flexible to extend the basic amenities from the

main village. It is also stated that in total 800 beneficiaries were identified under Indiramma programme Phase-III. Out of which, plots are allotted to 250 beneficiaries and land is required for remaining 550 beneficiaries.

4) By an order, dated 24.12.2008, this Court while issuing notice before admission, passed the following order:

“Pending further orders, there shall be interim directions not to interfere with the possession of the petitioner in respect of the land in question without following due process of law.”

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

“Section 11-A of the Act, 1894: 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, 1894, 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.

6) A perusal of the record would show that a notification under Section 4 (1) of the Act, 1894 was published in District Gazettee on 21.04.2008 and also in the local news papers. 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. In the instant case there is no stay of further proceedings by any Court, as this Court only directed the respondents not to dispossess the petitioners from the land in question.

7) In the process, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the Act, 2013") came into force with effect from 01.01.2014. Section 24 (1) (a) of the Act, 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, 2013 shall apply for determination of compensation.

8) 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 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.”

9) 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

¹ (2015) 10 SCC 241

² AIR 2007 SC 2625

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.”

10) In order to determine the compensation and the period within which an award shall be made, the Act, 2013 provides a procedure under Sections 25 and 26 of the Act, 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, 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, 2013. Methodology to be adopted for arriving at the market value is prescribed under Section 26 of the Act, 2013. Proviso to Section 26 of the Act, 2013 states that the market value shall be as on the date on which the notification under Section 11 of the Act, 2013 has been issued. An argument is advanced saying that Section 11 of the Act, 2013 has to be equated to 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, 2013 with Section 4 of the 1894 Act, definitely there would have been some indication to that effect in the Act, 2013. On the other hand, though the Act, 2013 takes care of many situations and shortfalls under the Act, 1894 but it is silent on this aspect. Apart from that it is to be noted that Section 4 of the 1894 Act 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 the Act, 2013 appears to be different. Therefore, the argument that the Section 11 of the Act, 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, 2013.

12) In cases where lands are acquired for the purpose of housing 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:

“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.”

13) The Government Pleader for Land Acquisition submits that said orders are not challenged and have become final.

14) In the instant case, declaration under Section 6 of 1894 Act could not be issued in view of the interim direction directing the authorities not to dispossess the petitioners from the subject land. In the meanwhile, the Act, 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 land. Though there was no stay of any proceedings, the authorities failed to pass an award. Section 11-A of the Act, 1894 which 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. 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 as to the very existence of the said scheme.

15) For the aforesaid reasons, the writ petition is disposed of 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 petitioner, if the land is still required, in accordance with the provisions of the Act, 2013. There shall be no order as to costs.

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

23.02.2017
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JUSTICE C. PRAVEEN KUMAR