

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.19017 of 2008

ORDER:

Heard learned counsel for the petitioner 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 respondents in dispossessing the petitioner from the land admeasuring Ac.0.87 cents in Survey No.31/ 2, Acs.0.75 cents in Survey No.32/ 3 and Acs.2.92 ½ cents in Survey No.33/ 2 cents situated in East Laxmipuram Village, Yeleswaram Mandal, East Godavari District, without passing and communicating any order on the objections dated 09.06.2008, submitted by the petitioner, and the consequential Declaration under Section 6 of the Land Acquisition Act issued by the first respondent in Ref.G2/ 2451/ 2008, dated 16.08.2008, 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 dated 12.09.2007 under Section 4(1) of the Land Acquisition Act (for short, 'the Act of 1894') was published in Prajashakti and Deccan Chronicle newspapers proposing to acquire the above said land, for the purpose of allotting house sites under Indiramma Programme. It is stated that the first respondent authorized the second respondent and his staff to exercise the powers conferred under Section 4(2) of the Act. In the same notification, the first respondent dispensed with 5A enquiry, while invoking provisions under Section 17(4) of the Act. It is stated that in respect of the same land, a notification under Section 4(1) of the Act came to be issued by the first respondent earlier on 23.05.2006, but further proceedings were dropped

after submission of objections by the petitioner. It is further stated that the land admeasuring Acs.4.65 cents in Survey No.7/ 1 situated in East Laxmipuram was acquired for house sites by passing an award No.19/ 82, dated 27.01.1982. The notification dated 12.09.2007 is said to have been challenged by the petitioner vide W.P.No.21581 of 2007 wherein the respondents were directed to conduct enquiry under Section 5A of the Act by considering the objections. Pursuant thereto, the second respondent issued a notice to the petitioner in Form-3 to submit his objections on or before 25.10.2007 and further directed to appear before him on 27.10.2007. Thereafter, the petitioner sought for extension of time for submission of objections and after granting time, he submitted objections on 05.11.2007 stating that the said land is an agricultural land and hence not fit for house sites. The petitioner objected stating that there are alternative Government lands available in the village in Survey No.96. It is also submitted that the first respondent rejected the objections raised by the petitioner vide order 22.02.2008 directing the second respondent to submit draft declaration under Section 6 of the Act vide proceedings Ref.No.G2/ 2451/ 2006, dated 27.02.2008. Aggrieved by the same, W.P.No.5080 of 2008 came to be filed before this Court wherein the proceedings dated 22.02.2008 and 27.02.2008 were set aside and the respondents were directed to hold fresh enquiry under Section 5A of the Act after giving a notice in Form-3 and informing the petitioner the date with regard to the enquiry. After affording an opportunity of personal hearing, the authorities were directed to pass appropriate orders. Subsequently, the second respondent is said to have issued noticed in Form-3 dated 16.05.2008 and on 09.06.2008 objections were submitted by the petitioner. In spite of the same, the first respondent issued a declaration under Section 6 of the Act in Ref.G2/ 2451/ 2008, dated 16.08.2008, pursuant to which, respondent Nos.2 and 3 came to the land

of the petitioner on 25.08.2008 and conducted the survey. It is stated that the respondents are intending to forcibly dispossess the petitioner from the land in dispute and hence the present writ petition was filed.

4. By an order, dated 05.09.2008, this Court while admitting the writ petition granted interim stay of further proceedings.

5. A counter came to be filed by the respondents contending that the Government proposed to acquire the land of the petitioner for the purpose of giving house sites to 129 eligible persons under Indiramma Housing Scheme. The draft notification under Section 4(1) of the Act of 1894 came to be approved by the Collector-first respondent vide proceedings G2/ 2451/ 07, dated 12.09.2007 dispensing with enquiry under Section 5-A of the Act, invoking urgency clause under Section 17(4) of the Act. The said draft notification was published in the District Gazette, newspapers and locality on 12th, 15th, 17th and 26.09.2007 respectively. Thereafter, basing on the directions given by the High Court in W.P.No.21581 of 2007 filed by the petitioner, the respondents were directed to hold enquiry under Section 5-A of the Act by considering the objections raised by the petitioner and pass appropriate orders. Accordingly, 5-A enquiry was conducted on 27.10.2007 after issuing notices to the petitioner and after considering the objections raised on 23.10.2007. Further the petitioner made an application requesting time for filing further objections, for a period of 15 days from 27.10.2007 and the time was granted till 05.11.2007. Subsequently, the objections were enquired into and the remarks were submitted to the Collector, who in turn issued the proceedings dated 22.02.2008. Thereafter, draft declaration proposals under Section 6 of the Act was approved vide proceedings dated 27.02.2008 and the same was published in District Gazette, Newspapers and locality on 27.02.2008, 04.03.2008 and 18.03.2008 respectively. While

things stood thus, the petitioner filed W.P.No.5080 of 2008 dated 11.03.2008 which was disposed of setting aside the proceedings dated 22.02.2008 and the respondents were directed to hold enquiry afresh under Section 5A of the Act after giving notice in Form-3, after affording personal hearing to the petitioner. Accordingly, 5A enquiry was conducted afresh on 09.06.2008 by following the directions issued by this Court and the District Collector rejected the objections raised by the petitioner as the same were devoid of merits and directed the Land Acquisition Officer and RDO to submit fresh DD proposals. The fresh DD proposals were approved on 16.08.2008 and the same was published in Newspapers, Gazette and locality on 22nd, 23rd, 19.08.2008 and 10.09.2008 respectively. Thereafter, notices in form 6 and 7 under Sections 9 (1), 10, 9(3) and 10 were issued for conducting Award enquiry on 03.09.2008 and the land owner attended the award enquiry and submitted his objections. At this stage the petitioner approached this Court in W.P.No.19017 of 2008 and obtained interim stay of all further proceedings and hence the respondents could not proceed further. It is averred in the counter that the petitioner also owns ancestral property besides the present land and there is no crop raised in the land in dispute except few newly planted plants.

6. Learned counsel for the petitioner submits that though other government lands are available for the purpose of acquisition, so as to provide house sites to weaker sections under Indiramma Housing Scheme, the authorities are intentionally taking the land of the petitioner, which was cultivated by the petitioner for his livelihood.

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

“Section 11-A of the Act of 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.

8. A perusal of the material placed before the Court would show that award enquiry was conducted on 16.09.2008. After attending the award enquiry, the petitioner approached this Court and on 05.09.2008 this Court passed an order granting interim stay of further proceedings. In view of the interim order, the authorities failed to proceed further under the Act of 1894. Meanwhile, 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 of 1894 has been made, all the provisions of the Act 30 of 2013 shall apply for determination of compensation.

9. 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.”

10. 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 saying that Section 11 of the Act 30 of 2013 has to be equated to

Section 4 (1) of the Act of 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 of 1894, definitely there would have been some indication to that effect in the Act 30 of 2013. On the other hand, though the Act 30 of 2013 takes care of many situations and shortfalls under the Act of 1894 but it is silent on this aspect. Apart from that it is to be noted that Section 4 of the Act of 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 of 1894, the market value prevailing as on the date of the award is normally taken into consideration. But situation under the 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 of 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.

11. In W.P.Nos.22781 of 2008, 18274 and 18619 of 2009, this Hon'ble Court while dealing with a case where declaration under Section 6 of the Act of 1894 was made in the year 2009 and no award was passed by virtue of *status quo* order granted by 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.”

12. 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 of 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 30 of 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. 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.

¹ (2015) 10 SCC 241

14. For the aforesaid reasons, the writ petition is allowed and the impugned proceedings initiated under the Act of 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 30 of 2013. There shall be no order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

19.01.2017
vhb/ gkv



