

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION Nos. 21649 and 26921 of 2008

COMMON ORDER:

These two Writ Petitions are being disposed of by this common order as they relate to the same notification, issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'), dated 05.06.2008, as published vide Prajavani and Eenadu Telugu Daily News paper, and Section 6 declaration made on 09.09.2008 for acquisition of land admeasuring 29737 sq. ft. at Nagarajupalli Village, Kadapa District, for the purpose of road widening from Krishna Theatre to Gokul Lodge.

The petitioner in W.P.No.21649 of 2008 is the owner of building bearing D.No.19/210 to 218 situated in Sy.No.18/1. In W.P.No.26921 of 2008, petitioner No.1 is the owner of premises No.19/159 to 164; petitioner No.2 is the owner of premises Nos.21/390. 392, 393; petitioner No.3 is the owner of premises No.19/207; petitioner No.4 is the owner of premises No.19/208 and 209; and petitioner No.5 is the owner of premises No.19/205. The aforesaid properties were sought to be acquired for road widening purpose.

Draft notification was published in the gazette dated 13.06.2008; and notices, for conducting an enquiry, under Section 5A of the Act, were issued on 10.06.2008, which

were served on 24.06.2008, inviting objections. The petitioners filed their objections dated 26.06.2008. Petitioners submit that, without considering their objections, Section 6-A declaration was issued on 09.09.2008. At that stage, the present Writ Petitions were filed.

In the counter affidavit filed by the second respondent it was stated that draft notification was published in the gazette on 09.06.2008 for acquisition of subject structures; notices in Form-3 under Section 5A of the Land Acquisition Act were issued on 10.06.2008 to all the interested persons, to which the objectors filed their objections, and the Collector Kadapa, after considering the objections, rejected the same on 09.09.2008. In view of the remarks offered by the Executive Engineer, R&B, Kadapa, and also large scale representations received from affected families, the road width was reduced from 80 to 70 feet. The Collector, Kadapa, passed the impugned order dated 09.09.2008 under Section 5-A of the Act.

In W.P.No.26921 of 2008 dated 12.12.2008, this Court stayed the order dated 09.09.2008 issued under Section 5-A of the Act, including dispossession of petitioners from their respective houses. In W.P.No.21649 of 2008 dated 30.09.2008, this Court granted an order of *status quo*.

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

“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.

A perusal of the material placed before the Court would show that the second respondent issued notice under Section 5-A of 1894 Act on 10.06.2008 directing them to file objections fixing the enquiry date on 01.07.2008. The petitioners filed their objections and requested for re-measurement of their structures/vacant sites to reduce road width from 80 feet to 60 feet. After considering the objections raised, respondent No.1 rejected the same. On the same day, declaration under Section 6 of the Act came to be issued. Challenging the same the present writ petitions came to be filed and this Court granted interim stay of all further proceedings. 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 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, 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.

In order to determine the compensation and the period within which an award has to be made, Act 30 of 2013 contemplates 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.”

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 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 Act 30 of 2013. On the other hand, though Act 30 of 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 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 1894 Act, the market value prevailing as on the date of the award is normally taken into consideration but, the situation under Act 30 of 2013 appears to be different. Therefore, the argument that Section 11 of 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 Act 30 of 2013.

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.”

In cases where lands are sought to be 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 1894 Act 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 same, held as under:

“This Court granted interim stay of all further proceedings, as a result of which the respondents could

¹ (2015) 10 SCC 241

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.”

For the aforesaid reasons, the writ petitions are 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 petitioners, if the land is still required, in accordance with the provisions of the Act 30 of 2013.

Miscellaneous Petitions, if any, pending in the Writ Petitions shall stand closed. No order as to costs.

C.PRAVEEN KUMAR,J

Date:14.02.2017
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