**HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**<u>WRIT PETITION No.11184 of 2008</u>**

**<u>ORDER</u>:**

The present Writ Petition came to be filed seeking issuance of a Writ of Mandamus declaring the notification under Section 4(1) and declaration under Section 6 of the Land Acquisition Act, 1894 (for short "the 1894 Act") published in two local newspapers on 10.10.2007 and 18.04.2008 as illegal, arbitrary and without jurisdiction.

2. Facts which led to filing of the present Writ Petition are as under:

Petitioner claims himself to be the owner of the land admeasuring Ac.0.23 cents in Sy.No.210 of Chadalavada Revenue village, Naguluppalapadu Mandal, Praksam District. In the said land, there is a steep well which was said to have been dug more than 100 years ago. The father of the petitioner is said to have purchased a joint right from the erstwhile owner on 21.01.1957. The water from the well was being used for agricultural purposes. When the Superintending Engineer, Executive Engineer (RWS) was trying to acquire the well, without following any process of law, petitioner filed O.S.No.2726 of 2005 on the file of the I Additional Junior Civil Judge, Ongole for grant of permanent injunction. By an order dated 05.06.2016 in I.A.No.525 of 2005, the trial Court granted permanent injunction. Aggrieved by the same, the contractor preferred an appeal before the District Court vide C.M.A.No.32 of 2006. It is alleged that though there was an order of injunction in favour of the petitioner, the authorities damaged a portion of the well by constructing a wall. The action of the official respondents in violating the injunction order made the petitioner move an application under Order XXXIX Rule 2-A CPC for appropriate action. While things stood thus, C.M.A.No.32 of 2006 was allowed on 06.02.2007, directing both the parties to maintain status quo till the disposal of the suit, apart from other reliefs. After the disposal of the appeal, the 1st respondent herein issued a notification under Section 4(1) of the 1894 Act, which was published in A.P. Gazette on 10.10.2007, proposing to acquire Ac.0.06 cents of land for the purpose of digging a round well. Thereafter, notice under Section 5-A of the Act came to be issued asking the petitioner to furnish objections within 15 days from the date of service of notice and also informing him that enquiry to the said objections will be conducted on 10.11.2007. On receipt of the said notice, petitioner herein submitted his objections raising various disputes. It is averred that without considering the objections raised by the petitioner, the 2nd respondent forwarded the report to the 1st respondent herein, who issued a declaration under Section 6 of the Act, which was published on 18.04.2008. Questioning the said action, the present Writ Petition came to be filed.

3. By an order dated 22.05.2008, this Court, while admitting the Writ Petition, granted interim stay of all further proceedings, as prayed for.

4. A counter-affidavit came to be filed by the Land Acquisition Officer denying the averments made in the affidavit filed in support of the Writ Petition. It is stated that, after the approval, draft declaration was published in the District Gazette as per the provisions of the 1894

Act. The District Collector approved the preliminary valuation at Rs.80,000/- per acre on 30.04.2008 and thereafter the Revenue Divisional Officer issued notices under Section 9(3) and 10 of the Act, calling upon the interested persons to attend the enquiry to be held on 22.05.2008. The averments in the counter-affidavit show that notices were served on the petitioner on 17.06.2008 and the petitioner attended the award enquiry on the said date. Subsequently, an award came to be passed on 30.05.2008. Thereafter, a notice was issued under Section 12(2) of the Act on 05.06.2008 asking the petitioner to appear before the Land Acquisition Officer to receive compensation, but the petitioner failed to do so. Hence, it is stated that the award amount was deposited in a nationalised bank on 07.11.2008. In view of the above, it is urged that there are no merits in the Writ Petition and the same is liable to be dismissed.

5. Reiterating the averments made in the affidavit filed in support of the Writ Petition and having regard to the judgments of the Apex Court, dealing with the provisions of the new Act, i.e., Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short "the 2013 Act"), learned counsel for the petitioner would submit that the entire proceedings get lapsed. The same is seriously disputed by the learned Government Pleader.

6. As seen from the affidavit and also the averments made in the counter-affidavit, interim order came to be passed by this Court on 22.05.2008, staying all further proceedings. In spite of the interim order,

the authorities proceeded further and passed an award on 30.05.2008 and thereafter issued notice under Section 12(2) of the 1894 Act on 05.06.2008. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, came into force with effect from 01.01.2014. The issue that arises for consideration in this Writ Petition is whether proceedings would get lapsed as possession of the land has not been taken in spite of award being passed and also compensation being not deposited in accordance with the provisions of the 1894 Act. It is to be noted that in spite of interim stay granted by this Court, the award came to be passed on 30.05.2008 and the compensation came to be deposited in a nationalised bank.

7. It is apposite to refer Section 31 of the 1894 Act, which reads as under:

> "31. Payment of compensation or deposit of same in Court. – (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.
> (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted."

8. Section 31(1) of the 1894 Act enjoins upon the Collector, on making an award under Section 11, to tender payment of compensation to persons interested entitled thereto according to award. It further mandates

the Collector to make payment of compensation to them unless prevented by one of the contingencies contemplated in sub-section (2). The contingencies contemplated in Section 31(2) are: (i) the persons interested entitled to compensation do not consent to receive it (ii) there is no person competent to alienate the land and (iii) there is dispute as to the title to receive compensation or as to the apportionment of it. If due to any of the contingencies contemplated in Section 31(2), the Collector is prevented from making payment of compensation to the persons interested who are entitled to compensation, then the Collector is required to deposit the compensation in the court to which reference under Section 18 may be made. The issue as to whether the authorities were right in directing deposit of the amount in a nationalised bank, came up for consideration before the Apex Court in **Pune Municipal Corp.& Anr vs Harakchand Misirimal Solanki**[1], wherein it was held as under:

> "Simply put, Section 31 of the 1894 Act makes provision for payment of compensation or deposit of the same in the court. This provision requires that the Collector should tender payment of compensation as awarded by him to the persons interested who are entitled to compensation. If due to happening of any contingency as contemplated in Section 31(2), the compensation has not been paid, the Collector should deposit the amount of compensation in the court to which reference can be made under Section 18.
> The mandatory nature of the provision in Section 31(2) with regard to deposit of the compensation in the court is further fortified by the provisions contained in Sections 32, 33 and 34. As a matter of fact, Section 33 gives power to the court, on an application by a person interested or claiming an interest in

[1] (2014) 3 SCC 183

> such money, to pass an order to invest the amount so deposited in such government or other approved securities and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be."

9. From the judgment of the Apex Court referred to above, it is clear that payment of compensation can only be in terms of Section 31 of the 1894 Act, but not otherwise. Section 24(2) of the 2013 Act indicates that where land acquisition proceedings are initiated under the 1894 Act and where an award has been passed five years or more prior to the commencement of the 2013 Act and neither of the two contingencies are satisfied, i.e. physical possession of the land is not taken or compensation has not been paid, such proceedings would lapse. Once the proceedings get lapsed, the appropriate Government shall choose to acquire the land which is subject matter of acquisition under the 1894 Act, by initiating fresh proceedings under the 2013 Act. The proviso appended to Section 24(2) of the 2013 Act deals with a situation where in respect of the acquisition initiated under the 1894 Act, an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries then all the beneficiaries specified in Section 4 notification become entitled to compensation under 2013 Act.

10. One of the grounds urged by the learned Government Pleader is that possession was not taken in view of the stay granted by this Court and, therefore, such period needs to be excluded. The said issue also came up for consideration before the Apex Court in *Pune Municipal Corp. & Anr.*, (1 supra) , **Sharma Agro Industries Vs. State of Haryana and others**[2], **Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu**[3] and also a Division Bench judgment of this Court in Writ Appeal No.259 of 2015 and batch, wherein it is held that the period of stay/injunction granted by any Court, staying the land acquisition proceedings cannot be excluded in computing five years period. The declaration of law as referred in *Sree Balaji Nagar* case (3 supra) has not been doubted in **Yogesh Neema v. State of M.P**[4]. Therefore, the argument of the learned Government Pleader that the period of five years as contemplated under Section 24(2) of the 2013 Act needs to be excluded, cannot be accepted. In the instant case, the award came to be passed on 30.05.2008, i.e., more than five years prior to the commencement of the 2013 Act. At this stage, it is submitted by the learned Government Pleader that though compensation was offered to the claimants, they refused to receive it, which made the authorities to deposit the same in a nationalised bank. An identical situation came up for consideration in *Pune Municipal Corp. & Anr.*, (1 supra), wherein, after passing of the award, notices were issued to the landowners to reach the office of the Land Acquisition Officer for receiving the

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[2] **(2015) 3 SCC 341**
[3] **(2014) 10 Scale 388**
[4] **(2016) 6 SCC 387**

compensation, but none of them turned up to receive the amount; hence the amount of Rs.24 crores came to be deposited in Government Treasury. The same was found fault with. In view of the ratio laid down in *Pune Municipal Corp. & Anr.*, and the aforementioned judgments (2 and 3 supra), the amount awarded pursuant to the award passed on 30.05.2008 should have been by way of payment to the claimants or should have been deposited in the Court, but not in a nationalised bank or in a Government Treasury. From the above, it is clear that requirement of law is not complied. When the award pertaining to the subject land has been made by the Land Acquisition Officer more than five years prior to the commencement of the 2013 Act and the compensation so awarded was neither paid to the landowners nor persons interested nor was it deposited to the Court, this Court has no hesitation in holding that the land acquisition proceedings shall deem to have lapsed under Section 24(2) of the 2013 Act.

11. Accordingly, the Writ Petition is allowed, quashing the notification under Section 4(1) of the Act. However, the authorities/officials are at liberty to initiate fresh action under the provisions of the 2013 Act, if the subject land is still required.

As a sequel, miscellaneous petitions pending, if any, in the Writ Petition stand closed. No costs.

C. PRAVEEN KUMAR, J

February 14, 2017
MRR