

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.34763 of 2011

ORDER:

Heard Mr. Wasim Ahmed Khan, for the petitioners and the learned Government Pleader for Land Acquisition for the respondents.

2. The petitioners pray for the following reliefs:

- “(a) To call for the records in proceeding No.C/294/2010 dt: NIL-11-2011 on the file of the Collector and District Magistrate, R.R. District/Respondent No.2 and other connected records from the Respondent No.2.
- b) To quash the impugned order in proceeding No.C/294/2010 dt: NIL-11-2011, on the file of the Collector and District Magistrate, R.R. District/Respondent No.2 by declaring it as illegal and unconstitutional.
- c) To consequently quash the draft declaration under Section 6 of the Land Acquisition Act in File.No.C/294/2010 issued by the Respondent No.2 which was published in Indian Express English Daily on 19-12-2011.
- d) To set-aside the Form 7 notice no. C/294/2010 dt: 17-12-2010 issued under Section 9 (3) and 10 of Land Acquisition Act.”

3. The counsel for petitioners confines his submissions to the irregularity and illegality, viz., in the enquiry conducted under Section 5-A of the Land Acquisition Act, 1894 (for short, ‘the Act’), and non-consideration of objections raised by the petitioners, accepting the report of Land Acquisition Officer and failure to express independent view by the Collector, while issuing

proceedings No.C/294/2010, dated Nill.11.2011. To bring home this contention, the counsel relies on the following portion of the consideration communicated to the petitioners:

Contention of the objection petitioner	Remarks of the L.A.O.	Orders of the District Collector
They stated that the proposed acquisition is consequent upon the directions of the Hon'ble High Court vide order dt. 13-04-2010, wherein the division bench was pleased to record the statement of the Government to form slip service roads, but not for formation of new roads in order to protect the ancient structure i.e. Kaman. Hence the reasonable area according to 20-25 feet is more adequate for free flow of traffic. The extent of acquisition of 50 feet on both sides particularly on the left side of the Kamaan, the existing mosque and Ashoor Khana would be affected and have an impact of affecting the religious rights to perform Namaz and there will be no Vacant place available on left side, particularly in Namaz hours traffic problem will particularly in Namaz hours traffic problem will arise. Further it is stated that the Kaman is repaired there is no need of road widening and the road widening on right side in the plan showed it is up to Ali Mutton shop, but it was extended. Further the alignment on both sides should be same i.e. up to Vijay Fabrications. Further the applicant Smt. G.	The GHMC, Hyderabad prepared and approved a Road Development Plan for the proposed Road widening at Moula Ali Kaman in view of the direction of the Hon'ble High Court of A.P. in W.P.No. 12054 of 2009 for protection of Heritage and Archeological structure of Moula Ali Kaman and keeping in view of the Public Safety to avoid frequent accidents and for free flow of traffic. The Road Development plan was prepared without any favour to any community or persons and further restricting damage / loss of private properties to the minimum extent. The petitioner may approach the authorities concerned to rectify the correct Survey numbers etc, duly furnishing her title deeds before the authorities.	The land is required for public purpose i.e. for road widening for free flow of traffic.

Kavitha is stated that correct Survey Numbers of the property belonging to her were not notified though correct name was mentioned under the same and requested to drop acquisition proceedings.		
	The Road widening work will be taken up as per alignment as per Road development plan only, the affected parties will be compensated by payment for the loss of property under the Land Acquisition Act. The value of the land will be assessed as per the provisions under L.A. Act and manual of principles and practice by collecting registered sales transaction for proceeding (3) years from the date of Draft Notification. The structural values will be assessed by the concerned Executive Engineer basing on the Price index / Guide lines issued by the Government and the same will be awarded. Hence the request of the Petitioner cannot be considered in the larger interest of the public.	The other claims shall be examined by the LAO during award enquiry.

They stated that in the name of Road widening their shops are targeted, because they have questioned the high handed action of the M.C.H who are trying to take their properties with forcibly possession. It is a counter blast to the Writ Petition 1729/2010 filed by our neighbour in the High Court. The GHMC authorities have targeted one side with wrong measurements towards their side and taking less area from opposite side of their property. The acquisition is not in the public interest, but to appease particular section of their community, by the influential political parties and proposed to lay slip roads around the above Kaman which are lay slip roads around the above Kaman which are not required if the Kaman is renovated. There is also Masjid near Kaman which cannot be demolished and it will not help in easing out traffic or widening of the road and requested to drop the acquisition proceedings.	The GHMC, Hyderabad prepared and approved a Road Development Plan for the proposed Road widening at Moula Ali Kaman in view of the direction of the Hon'ble High Court of A.P. in W.P.No. 12054 of 2009 for protection of Heritage and Archaeological structure of Moula Ali Kaman and keeping in view of the Public Safety to avoid frequent accidents and for free flow of traffic. The Road Development plan was prepared without any favour to any community or persons and further restricting damage / loss of private properties to the minimum extent.	The Road plan is prepared without any favour to any community.
	The Road widening work will be taken up as per alignment as per Road development plan only, the affected parties will be compensated by payment for the loss of property under the Land Acquisition Act. The value of the land will be assessed as per the provisions under L.A. Act and manual of principles and practice by collecting registered sales transaction for proceeding (3) years from the date of Draft Notification. The structural values will be assessed by the concerned Executive Engineer basing on the Price index / Guide lines issued by the Government and the same will be awarded. Hence the request of the Petitioner cannot be considered in the larger interest of the public.	The structural value will be compensated as per LA Act and rules and prevailing guide lines.

4. Counsel for the petitioners places reliance on the following decisions of the Apex Court:

- (i) ***Gurbinder Kaur Brar and another Vs. Union of India and others¹***
- (ii) ***Kamal Trading Private Limited (Now known as Manav Investment and Trading Company Limited) Vs. State of West Bengal and others²***
- (iii) ***Usha Stud and Agricultural Farms Private Limited and others Vs. State of Haryana and others³***
- (iv) ***Surinder Singh Brar and others Vs. Union of India and others⁴***
- (v) ***Hindustan Petroleum Corpn. Ltd. Vs. Darius Shapur Chenai and others⁵***

He prays for setting aside the proceedings impugned in the writ petition.

5. The Government Pleader for Land Acquisition contends that in the case on hand, the consideration of objections, though appear to be brief and precise, keeping in perspective the purpose of acquisition, the confirmation of view of the Land Acquisition Officer by the District Collector amounts to proper consideration and no exception to the proceedings No.C/294/2010, dated Nil.11.2011, can be taken. The counsel further tries to justify the proceeding impugned in the writ petition by relying on the stand taken in the counter affidavit.

6. The scope, the object and the purpose of enquiry under Section 5-A of the Act and considered in a catena of

¹ (2013) 11 Supreme Court Cases 228

² (2012) 2 Supreme Court Cases 25

³ (2013) 4 Supreme Court Cases 210

⁴ (2013) 1 Supreme Court Cases 403

⁵ (2005) 7 Supreme Court Cases 627

decisions, I do not propose to burden the present order by excerpting the well established proposition of law. Further, on the binding precedents relied on by the petitioners, the respondents are not disputing, however, distinguish the applicability of these decisions by contending that the case on hand does not suffer from the infirmity, which was considered in the reported cases.

7. The point for consideration is in a limited sphere. The grievance of the petitioners is that their objections are not either considered or objections are rejected by reasons recorded by the District Collector. This contention is examined from the very proceeding through which the objections are considered and outcome communicated to a party. By way of illustration, a portion of consideration by District Collector is excerpted above and *prima facie*, this Court is satisfied that the District Collector/2nd respondent could have discharged the statutory function in the manner laid down by law and held by decisions reported above, if independent consideration of objections is made and a view expressed. Such approach is absent in the order No.C/294/2010, dated Nil-11-2011.

8. For the above reasons, I am satisfied the proceedings No.C/294/2010, dated Nil.11.2011, set aside. The matter remitted to 2nd respondent for consideration and disposal, in accordance with law. As this Court has set aside the proceeding No.C/294/2010, dated Nil.11.2011, as a corollary, the draft declaration in File No.C/294/20010, dated 19.12.2011, is set aside. The respondents are given liberty to proceed from the stage where it is interdicted by this Court, in accordance with law.

9. The Writ Petition is ordered, as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V. BHATT, J

Date: 7th September, 2017

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HON'BLE SRI JUSTICE S.V. BHATT



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