

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 19359 of 2008

ORDER:

1) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the notification No.G2/ 1011/ 2008, dated 28.02.2008 and declaration G2/ 1011/ 2008 dated 30.06.2008 issued by the first respondent in respect of land admeasuring 1298 square yards in Sy.No.79/ 24 of Nadakuduru Village, Karapa Mandal, East Godavari District, as illegal, arbitrary and violative of the provisions Land Acquisition Act; and to set aside the same.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner had purchased the site referred to above from one Pamarthi Krishnaveni and her son Kalyan Chakravarthi. Originally Pamarthi Krishnaveni and her son purchased land admeasuring Ac.1.30 cents in Sy.No.s79/ 24 and 76/ 1 through sale deed No.154 69/ 2005, dated 27.12.2005 from one Chokkakula Kanakamma and divided the same into house plots and sold away the same. From the date of purchase, the petitioner is in possession of the same. On 28.02.2008 the first respondent issued notification under Section 4 of the Land Acquisition Act, 1894 (for short "the Act, 1894") proposing to acquire land admeasuring Ac.11.09 cents including the land purchased by me at Nadakuduru village, for the purpose of providing house sites to weaker sections under Phase-II Indiramma

programme. The vendors' vendor by name Chokkakula Kanakamma and others filed objections to the said acquisition, but the first respondent rejected the said objections on 17.06.2008 and subsequently declaration under Section 6 of the 1894 Act came to be issued on 30.06.2008. Challenging the same, Chokkakula Kanakamma and two others filed W.P.No.14737 of 2008. By an order dated 10.07.2008 this Court granted interim stay of dispossession. Neither petitioner nor his vendor is shown as owner and occupier in notification and declaration. After coming to know the said acquisition proceedings, the petitioner made a representation, dated 21.07.2008 to the respondents requesting to drop the said acquisition in respect of land admeasuring 1298 square yards, which was purchased by the petitioner for the purpose of constructing a house. The respondents expressed their helplessness on the ground that declaration under Section 6 of the Act, 1894 was issued and at that stage they cannot do anything in the manner. Hence, the present writ petition came to be filed.

3) A counter came to be filed by the respondents stating that Nandakuduru village of Karapa Mandal was selected under Phase-II Indiramma programme for providing house sites to 350 beneficiaries. Land to an extent of Ac.11.09 cents in Sy.No.78/ 1 and 79 of Nandakuduru Village, belonging to various landowners was proposed for acquisition. Draft notification for the land referred to above was approved by the Collector, East Godavari and it was published on 28.02.2008. Notices were issued to the

land owners requesting to attend the enquiry on 15.04.2008. The same were served on the land owners on 10.03.2008. Some of the land owners submitted their objections. The Land Acquisition Officer & Revenue Divisional Officer, Kakinada examined the objections and submitted his remarks to the District Collector, East Godavari, Kakinada, for passing orders. The Collector issued orders overruling the objections of the land owners on 17.06.2008. The District Collector approved the draft declaration under Section 6 of the Act, on 30.06.2008, which was published in the gazette on 02.07.2008 and in the local newspapers on 03.07.2008. Thereafter, the Land Acquisition Officer issued award enquiry notices on 03.07.2008, posting the award enquiry on 21.07.2008. The land owners have not attended the award enquiry. On 04.09.2008 the petitioner preferred the present writ petition. By an order dated 06.09.2008 this Court, while admitting the writ petition granted interim stay of dispossession to the extent of the land held by the petitioner. Therefore, the authorities failed to proceed with the matter.

4) By an order, dated 06.09.2008, this Court while admitting the writ petition, passed the following order:

“There shall be interim stay of dispossession to the extent of the land held by the petitioner.”

5) Learned counsel for the petitioner submits that though other 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 purchased by him for construction of the house.

6) 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.

7) A perusal of the material placed before the Court would show that the award enquiry came to be posted on 21.07.2008. On the said date no body attended the enquiry. On 06.09.2008 this Court passed an order granting interim stay of dispossession. Though there was no stay of any proceedings, the authorities failed to proceed further under the Act, 1894.

8) 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.

9) 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

¹ (2015) 10 SCC 241

set aside and the respondents were given liberty to issue a fresh notification, if they so choose, under New Act.”

10) 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 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.”

11) 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:

² AIR 2007 SC 2625

“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.”

12) 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.

13) 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.”

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

15) In the instant case, award could not be issued in view of the interim direction directing the authorities not to dispossess the petitioner 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 petitioner 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.

16) 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 30 of 2013. There shall be no order as to costs.

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

JUSTICE C. PRAVEEN KUMAR

23.02.2017
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