

HON'BLE SRI JUSTICE S.V. BHATT

Writ Petition No.15893 of 2009

ORDER:

The petitioners challenge proceedings in G3/5251/2008 dated 05.07.2009 of respondent No.2 rejecting the objections raised by petitioners against the acquisition of land of petitioners through 4(1) notification dated 22.11.2008, as illegal, arbitrary and unconstitutional.

Through 4(1) notification dated 22.11.2008, respondents proposed to acquire the land to an extent of Ac.16-89 cents in Sy.No.65, 66, 69 and 70 of Chennur Village and Mandal for providing house sites to weaker sections under a scheme implemented by the State Government.

Mr.Rathangapani Reddy, appearing for petitioners challenges proceedings dated 05.07.2009, as not conforming to the requirement of Section 5-A (2) of the Land Acquisition Act, 1894 (for short 'the Act') which reads as under:

“Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, either make report in respect of the land which has been notified under Section , sub-section (1) or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of proceedings held by him for the decision of the Government. The decisions of the (appropriate Government) on the objection shall be final.”

According to him, the respondents failed to issue notice of enquiry, much less conducted enquiry and afforded opportunity of personal hearing to petitioners. But still issued the proceedings dated 05.07.2009, overruling the objections raised by the petitioners. Therefore, he prays for setting aside the proceedings dated 05.07.2009.

Counsel for the petitioners having regard to rigour of Section 11-A of the Act and also taking note of the fact that Award is not passed within two years from the date of draft declaration, contends that the land acquisition proceedings initiated through 4(1) notification dated 22.11.2008 are deemed to have been lapsed on account of not passing the Award.

Admittedly, in the case on hand, interim order was granted on 05.08.2009 and through order dated 15.12.2009, the same was extended by eight (08) weeks and the matter was directed to be listed after vacation. Thereafter, neither the writ petition is listed nor is the interim order extended. According to counsel for petitioners, after 15.02.2010, there was no order restraining the respondents from proceeding with the land acquisition and passing the Award within 2 years from the date of draft declaration. Since Award is not passed, he takes advantage of inaction of respondents and prays for declaring the land acquisition proceedings as lapsed.

Section 11-A of the Act reads as follows:

“11-A. Period within which an award shall be made:-

(1) The Collector shall make an award under Section 11 within a period of two years from the date of publication of 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.”

Learned Assistant Government Pleader replying to the contention raised under Section 5-A(2) of the Act draws attention of the Court to the stand taken in the counter affidavit and submits that notice of enquiry, except to a few of the petitioners, in fact, was issued. The petitioners who received notices, filed their objections and these objections are considered and finally rejected through order dated 05.07.2009.

This Court proposes to examine the reply of the respondents from the material on record and the dates referred to in the counter affidavit. In the case on hand, Section 4(1) notification was issued on 22.11.2008. The 3rd respondent alleges to have issued notices in Form-III calling upon the land owners to attend enquiry under Section 5-A of

the Act scheduled to be held on 17.01.2009. Except the allegation of issuing notices, the manner and mode of complying with the requirement is not substantiated by filing copies of notices said to have been dispatched proposing to conduct enquiry on 17.01.2009, much less acknowledgements of these notices by these petitioners. If at all enquiry was conducted as per Section 5-A (2) of the Act, this Court is of the view that the dates on which enquiry was conducted ought to have been stated in the very same proceedings through which the objections are considered and rejected. The effect of not conducting enquiry as per Section 5-A(2) of the Act after appreciating the details referred to above, this Court is of the view that the respondents failed to discharge the onus cast on them and the proceedings are vitiated. Therefore, the reply of respondents is rejected.

The next submission of counsel for the petitioners is that under Section 11-A of the Act, the acquisition proceedings are lapsed for Award is not passed within two years from draft declaration. As already noticed, the respondents on account of status-quo granted by this Court could not have proceeded with the subject acquisition till 15.02.2010. As stay was granted for a limited period and the interim order was not extended from February, 2010, nothing prevented the respondents from passing the Award. Having regard to the implication of Section 11(A) of the Act, this

Court declares the proceedings initiated through 4(1) notification dated 22.11.2008 as lapsed.

The writ petition is ordered as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Date: 21.08.2017
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S.V.BHATT, J

