

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.35113 of 2015

ORDER:

In the present writ petition, challenge is to the acquisition of the property bearing H.No.1-11-252 of Begumpet, Hyderabad. Apart from assailing the said proceedings, petitioner herein is also praying for restoration of the said property and for payment of Rs.20 crores towards the alleged loss, compensation and damage and for a further direction to the 6th respondent not to put up a Metro Station in front of the Heritage Monument.

2. Heard the party-in-person and the learned Advocate General for the respondents.

3. The District Collector, Ranga Reddy District, vide proceedings No.G2/2023/2007 dated 24.05.2007, issued a notification under Section 4 (1) of the Land Acquisition Act, 1894 (hereinafter called 'Act 1894'), proposing to acquire the subject property apart from other properties for the purpose of widening Sardar Patel Road. By virtue of the said notification, the authorities also dispensed with the enquiry under Section 5-A of Act 1894. On 26.06.2007, the respondents also issued declaration under Section 6 of the Act. Challenging the said proceedings, petitioner herein filed W.P.No.12429 of 2007.

4. On 02.01.2014, the said writ petition was allowed, setting aside the declaration issued under Section 6 of the Act with a further direction to the respondents to hold enquiry under Section 5-A of the Act 1894. Thereafter, the petitioner filed W.P.No.27982 of 2014, questioning the notification under

Section 4 (1) of Act 1894 and the said writ petition ended in dismissal on 19.09.2014 and the said order was confirmed by the Division Bench on 19.01.2014 in W.A.No.1413 of 2014. Subsequently, the respondents held enquiry under Section 5-A of the Act and passed an order under Section 5-A of the Act and the petitioner herein filed W.P.No.31998 of 2014. The respondent authority issued a declaration under Section 6 of the Act afresh on 17.10.2014 and subsequently passed an award on 05.02.2015.

5. In the present writ petition, the challenge is to the entire proceedings including the award passed by the 4th respondent vide File No.A/94/2007 dated 05.02.2015. According to the petitioner, the entire proceedings, starting from notification under Section 4 (1) of 1894 Act which culminated in the award dated 05.02.2015 are void and have lapsed.

6. In elaboration, it is contended by the party-in-person that since the authorities did not pass award within two years from the notification dated 24.05.2017 issued under Section 4 (1) of the Act, the impugned award cannot be sustained. It is further submitted that in view of the provisions of Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter called 'Act 30 of 2013') entire proceedings have lapsed. It is further submitted that in fact no fresh assessment as per Sections 4 to 8 of Act 30 of 2013 was carried out and the provisions of Sections 11 to 15, 19 and 20 of Act 30 of 2013 were not followed and no revision of market rate was undertaken as envisaged under Section 26 of Act 30 of 2013. It is further submitted that the respondents did not correctly fix the compensation amount as per Act 30 of 2013. It is further submitted that he is entitled for Rs.20 crores towards compensation and damages.

7. On the contrary, it is submitted by the learned Advocate General that there is absolutely no illegality nor there exists any procedural infirmity in the impugned proceedings and as the respondents herein meticulously and scrupulously adhered to and followed all the mandatory requirements of law, the issues raised in the writ petition are not amenable for any judicial review under Article 226 of the Constitution of India. It is further contended by the learned Advocate General that the contention of the party-in-person that the entire proceedings have lapsed in view of the advent of Act 30 of 2013, is not sustainable in the eye of law. It is further submitted that while fixing the compensation amount, the respondent authorities strictly adhered to Section 24 of Act 30 of 2013 and if the petitioner herein has any grievance with regard to the quantum of compensation, it is open for him to approach appropriate authority under the provisions of Act 30 of 2013.

In support of his submissions and contentions, learned Advocate General Places reliance on the judgments of the Apex Court in the case of *SWAIKA PROPERTIES (P) LIMITED v. STATE OF RAJASTHAN*¹ and *NORTHERN INDIAN GLASS INDUSTRIES v. JASWANT SINGH*²

8. In the above background, now the questions that boil down for consideration of this Court in the present writ petition are as under:

1. Whether the subject proceedings have lapsed?
2. Whether the petitioner herein is entitled for any damages as claimed?

9. ISSUE No.1:

Admittedly, in the present case, the District Collector issued notification under Section 4 (1) of the Act on 24.05.2007, proposing to

¹ (2008) 4 SCC 695

² (2003) 1 SCC 335

acquire certain properties including the subject property while dispensing with the enquiry under Section 5-A of the Act and the same was followed by a declaration on 26.06.2007 under Section 6 of the Act. Questioning the same, petitioner filed W.P.No.12429 of 2007. The said writ petition was allowed, setting aside Section 6 declaration while directing to hold enquiry under Section 5-A of the Act. It is also required to be noted that thereafter the petitioner filed W.P.No.27982 of 2014, challenging Section 4 (1) notification and the same was dismissed on 19.09.2014 and the said order was confirmed by a Division Bench of this Court in W.A.No.1413 of 2014 on 19.11.2014. The authorities later issued declaration under Section 6 of the Act afresh on 17.10.2014 and in between petitioner herein filed W.P.No.31998 of 2014, questioning the order passed by the authorities under Section 5-A of the Act. It is not the case of the petitioner herein that this Court granted stay of all further proceedings in the said writ petition. Thereafter, the fourth respondent herein passed the impugned award dated 05.02.2015. According to the party-in-person, the impugned proceedings have lapsed because of efflux of time i.e., due to expiry of two years from the date of 4 (1) notification. In this context, it may be appropriate to refer to Sections 4 and 6 of Act 1894:

“4. Publication of preliminary notification and power of officers thereupon. -

(1) Whenever it appears to the [appropriate Government] the land in any locality [is needed or] is likely to be needed for any public purpose [or for a company], a notification to that effect shall be published in the Official Gazette [and in two daily newspapers circulating in that locality of which at least one shall be in the regional language], and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality [(the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the notification)].

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such Government in this behalf, and for his servants and workman, -

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches;

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

6. Declaration that land is required for a public purpose. -
 (1) Subject to the provision of Part VII of this Act, [appropriate Government] is satisfied, after considering the report, if any, made under section 5A, sub-section (2)], that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders [and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2)];

[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1)-

(i) published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 (1 of 1967), but before the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of three years from the date of the publication of the notification;

or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984 (68 of 1984), shall be made after the expiry of one year from the date of the publication of the notification:]

Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority.

[Explanation 1. - In computing any of the periods referred to in the first proviso, the period during which any action or proceeding to be taken in pursuance of the notification issued under section 4, sub-section (1), is stayed by an order of a Court shall be excluded.

Explanation 2. - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues.]

(2) [Every declaration] shall be published in the Official Gazette [and in two daily newspapers circulating in the locality in which the land is situated of which at least one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and the giving of such public notice, being hereinafter referred to as the date of the publication of the declaration), and such declaration shall state] the district or other territorial division in which the land is situate, the purpose for which It is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be; and, after making such declaration, the [appropriate Government] may acquire the land in manner hereinafter appearing. “

10. Section 11 of the Act deals with passing of an award and the said provision of law reads as under:

“11. Enquiry and award by Collector. - [(1)] On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him :

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.”

11. Section 11-A of Act 1894 mandates passing of award within two years from the date of Section 6 declaration. In the instant case, Section 6 declaration was issued on 17.10.2014 afresh pursuant to the orders of this Court in W.P.No.12429 of 2007, dated 02.01.2014. Thereafter, on 05.02.2015, the 4th respondent passed the impugned award. Therefore, it can be safely concluded that the proceedings in the instant case are not vitiated.

12. In this context, it may appropriate to refer to Section 24 of Act 30 of 2013, which came into force with effect from 01.04.2014. Section 24 of Act 30 of 2013 reads as under:

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.

1. Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

a. where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation, rehabilitation and resettlement shall apply; or

b. where an award under said section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.

2. Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so

chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been accepted, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

13. According to sub-Section (1) of Section 25 of Act 30 of 2013, the provisions of the said enactment are made applicable only for the purpose of determination of the quantum of compensation and not for any other purpose. The case of the petitioner does not fall under sub-section (2) of Section 24 of the Act.

14. The other provisions of law as stipulated under Act 30 of 2013, in the considered opinion of this Court, cannot be made applicable to frustrate the impugned award. In the instant case, admittedly the respondents have taken possession of the property and completed the construction for Metro Rail Project.

15. The Hon'ble Apex Court in *SWAIKA PROPERTIES (P) LIMITED (supra 1)* and *NORTHERN INDIAN GLASS INDUSTRIES (supra2)* refused to consider the request of the land owners on the ground that the possession was already taken and award was passed.

16. In the counter affidavit, it is stated that the objection of the petitioner regarding historical monument was considered and it is further stated that only the compound wall and open space are getting effected, but not the heritage structure and the distance between the compound wall and the heritage structure is 75 feet. It is further clear from the counter affidavit that the compensation is determined as per Section 24 read with Section 27 of Act 30 of 2013 and in view of the rival claims the amount is deposited in the Civil

Court. The other contention as regards the quantum of compensation fixed by the respondents, in the considered opinion of this Court, can be agitated by the petitioner herein in an appropriate forum available under Act 30 of 2013 for enhancement of compensation i.e., for re-determination of the quantum of compensation and the petitioner is given two months time from the date of receipt of this order to avail the said remedy before the appropriate authority. Hence, point No.1 is answered in favour of the respondents and against the petitioner herein.

17. ISSUE No.2:

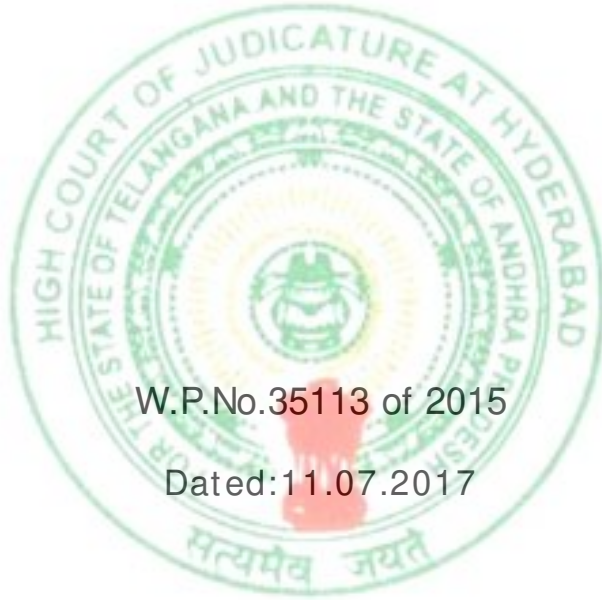
Since this Court does not find any procedural infirmity and illegality in the impugned action, the petitioner herein is not entitled for any relief under this head under Article 226 of the Constitution of India. Accordingly, Issue No.2 is also answered in favour of respondents and against the petitioner herein.

18. For the aforesaid reasons, the writ petition is dismissed. As a sequel, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:11.07.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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Dated:11.07.2017

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