

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.30383 of 2016

ORDER:

Challenging the notifications, issued under Section 11 and the consequential proceedings under Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (hereinafter referred to "Act 30 of 2013"), dated 11.04.2016 and 11.07.2016, published in Eenadu daily dated 12.04.2016 and in Sakshi Daily dated 22.07.2016 respectively, the present Writ Petition is filed, to declare the same as illegal and improper and contrary to the said Act.

2) The petitioners herein are owners of land admeasuring 38 cents in Sy.No.423; admeasuring Ac.3.07 cents in Sy.No.424; and Ac.7.13 cents in Sy.No.425 of Kammavaripally village, Puttaparthi Mandal, Ananthapuramu District. While things stood thus, a notification under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act was published in Eenadu daily dated 12.04.2016. In the said notification the names of the father and uncles of the petitioners, who are no more, were shown as owners of the property. The said land was sought to be acquired for Handri Niva Sujala Sravanthi Project and to the HNSS main canal. The notification under Section 11(1) of the Act also state that in view of G.O.Ms.No.16, dated 29.01.2015, the

provisions of Chapter II and Chapter III of the Act, 2013 were made applicable. The persons interested in the said land were directed to submit their objections within 15 days from the date of notification. As the names of the petitioners were not mentioned, they did not submit any objections to the notification. Thereafter, the third respondent issued a declaration under Section 19(1) of the Act, which came to be published in Sakshi Daily dated 22.07.2016. Challenging the notification issued under Section 11(1) of the Act and declaration issued under Section 19(1) of the Act, the present Writ Petition came to be filed.

3) By an order dated 08.09.2016 this Court granted interim stay as prayed for.

4) The main ground urged by the learned counsel for the petitioners is that the ordinance brought about certain changes to Chapter II and III of the Act, in respect of acquisition of land relating to 5 categories viz., Defence, Rural Infrastructure, Affordable Housing for poor people, Industrial corridors and infrastructure projects including projects under public private partnership, where the ownership of the land continues to vest with the Government as set out in Section 10(A)(1) (a) to (e) of the said ordinance. Pursuant to the said ordinance, an amendment bill of 2015 was introduced in the House of People and the same was passed in Lok Sabha on 10.03.2015. But the said bill could not be passed in the

Council of States as the same was resisted by its members. Hence, the said ordinance lapsed by virtue of provisions of the Article 123 of the Constitution of India. Thereafter, the President of India, on the advice of Union Cabinet, again promulgated Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance 2015, hereinafter referred to as Ordinance 4 of 2015 on 03.04.2015, bringing about certain amendments to the Act. An amendment bill was introduced in the House of People on 11.05.2015, which was referred to Joint Committee of Parliament. The same also ceased to operate and lapsed as it could not be passed in both the Houses of Parliament. Again Ordinance 5 of 2015, came to be promulgated on 30.05.2015. Though the same was promulgated on 30.05.2015, but could not be passed in both houses of parliament, thereby it got lapsed and by virtue of Article 123 of the Constitution of India, it ceased to operate. Thereafter there was no move by the Parliament till date, to make suitable amendments. Therefore, the rules which were framed by virtue of G.O.Ms.No.16 dated 29.01.2015 and which were referred to in the notification also got lapsed by virtue of lapse of the ordinance. It is the case of the petitioner that having regard to the above, the entire notification is bad and no further steps could have been taken on an invalid notification. He further submits that in the absence of any social impact assessment study as required under Sections 4, 5, 6 and 7 of the Act, the

acquisition proceedings basing on such a notification is illegal, improper and incorrect.

5) The same is opposed by the learned Special Government Pleader stating that by mistake there was a reference to G.O.Ms.No.16 dated 29.01.2015 in the notification and that by itself will not make the entire notification illegal, improper and incorrect. It is his case that no prejudice would be caused since the amount of compensation prevailing as on the said date was allotted to the victims. It is further submitted that since the irrigation project is at the fag end of its execution, it will be put to further delay, if the plea of the petitioners is accepted. It is further stated that as per Section 6(ii) of the Act, social impact assessment study is exempted for the acquisition made towards irrigation projects, in view of the Order No.J/12011/37/2011-SA-1, dated 20.12.2006. Therefore, the plea that there was non-compliance of Sections 4, 5, 6 and 7, is totally incorrect and improper.

6) Though the plea of the petitioners in the affidavit filed in support of the writ petition relates to lapse of the said notification itself, but the counter filed by the respondents is silent on the said aspect.

7) However, the question that falls for consideration is; "Whether 11(1) notification dated 11.04.2016 published in Eenadu daily

news paper dated 12.04.2016 and Section 19(1) notification dated 11.07.2016 published in Sakshi daily news paper dated 22.07.2016 are illegal and improper?"

8) A reading of the said notification dated 11.04.2016 published in Eenadu news paper 12.04.2016 show that the land was sought to be acquired for a public purpose i.e., for H.S.S.S. Main canal under Handri Neeva Sujala Sravanthi Project and as per G.O.No.16 dated 29.01.2015, following of the procedure contemplated under Chapters II and III of the Act is exempted. It is to be noted that G.O.Ms.No.16 dated 29.01.2015 came to be issued on 29.01.2015, pursuant to ordinance 9/14, amending the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013). As per the said notification, the authorities are exempted from following the provisions of Chapter II and III of the Act, in respect of certain projects. Though the irrigation projects are not covered in the said notification, but the same is reflected in the notification dated 11.07.2016. Even assuming that the said notification applies, but the same got lapsed long prior to the date of its publication. As stated earlier, ordinance 9/2014 got lapsed, under Article 123 of the Constitution of India, as it could not be passed by the Council of States though the same was passed by the House of People on 10.03.2015. Even the subsequent ordinances issued in the year 2015, got lapsed for various reasons referred to

above. Therefore, reference to a Government G.O., in the notification basing on an ordinance, which got lapsed makes the notification improper and incorrect, more so when the petitioners herein would be deprived of an opportunity of making an effective representation or raise effective objections as required under the Act.

9) The entire counter filed by the respondents only refers to the manner in which objections raised by the ryots were dealt with by the R.D.O., and other Government representatives. The counter is silent with regard to the reference of G.O.Ms.No.16 in the notification. It may be true that consent might have been given by some of the ryots, for acquisition of their lands, but since the Act contemplates compliance of certain provisions, which are held to be mandatory, this Court feels that merely because neighbouring farmers gave consent for acquisition of their lands, the respondents cannot be permitted to acquire the land of the petitioners without following the procedure contemplated under the new Act.

10) The preamble to Act 30/2013 states that the said Act is intended to help the persons, who would be deprived of their land, on account of land acquisition and also to protect the interest of the effected persons on account of such acquisition. The addition of schemes for rehabilitation and resettlement, should be understood as mandatory and the minimums provided under the scheme may exceed, provided the Government permits such extensions. The new Act

contemplates additional benefits beyond monetary compensation to the families affected adversely by involuntary displacement. The Act contemplates study of social impact assessment, which includes assessment as to whether the proposed acquisition serves public purpose, estimation of affected families and the study of social impact of the project. It was found that rehabilitation process would augment income levels and enroll quality of life of displaced persons. Sections 4 to 8 were incorporated to fulfill the aims and objects of the new Act.

11) As stated earlier, one of the defences taken by the learned Government Pleader is that since the land was acquired for an irrigation project, social impact assessment is not necessary, as there was already an assessment of the environmental impact on the said project. There is no dispute with regard to the proposition of law that the provisions of the Act relating to social impact assessment will not be necessary if there is an environmental impact assessment under the provisions of any other law for the time being in force in respect of the irrigation projects.

12) The counter filed by the Government Pleader shows that proviso to Section 6(ii) of Act 30/2013 was complied with, in view of the circular issued by the Ministry of Environment and Forest, Delhi dated 20.12.2006, exempting the social impact assessment study in respect of lands acquired for irrigation projects for H.N.S.S. Though,

it has been averred in the counter but the proceedings are not filed along with the counter. The contents of the same are not brought to the notice of the court. However, the respondents placed on record, the proceedings dated 08.05.2006, issued by the ministry of Environment and Forest, Delhi in support of his plea. The said circular relates to involvement of Handriniva project in Kurnool District. Even assuming that the circular referred to in the counter, relate to Anantapuram District, where the lands are sought to be acquired, the circular which is dated 08.05.2006 gives exemption from application of Chapter II and III only for a period of 5 years from the date of issuance of the said letter.

13) As stated earlier, the said letter and the letter referred to in the counter were issued in the year 2006. Even if the letter dated 08.05.2006 is taken into consideration, it would be valid only for a period of five years from the date of its issuance, which got expired in the year 2011. The impugned notification, in the instant case, was issued in the month of April 2016. Therefore, the letter, which is pressed into service, to say that social impact assessment is not necessary and that the provisions of Chapters II and III of the new Act are exempted from application, while acquisition is made for irrigation projects, cannot be accepted.

14) Hence, viewed from any angle, this Court is of the view that the impugned notifications in respect of acquisition of the lands

of the petitioners under Sections 11 and 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act are contrary to the provisions of the Act.

15) Accordingly, the Writ Petition is allowed, however the authorities are at liberty to take steps for acquiring of the said land by following the due process of law. No costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

Dt:01.06.2017
GM

JUSTICE C. PRAVEEN KUMAR

