

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.13770 OF 2007

ORDER:

This Writ Petition is filed seeking to declare the notification in Ref.(G.3)3002/07 dated 16.05.2007 published on 19.05.2007 issued by the 1st respondent seeking to acquire the petitioner's land by dispensing with enquiry under Section 5-A of the Land Acquisition Act, 1894 (for short 'the Act') by invoking urgency clause, as illegal and arbitrary.

2. As seen from the material on record, it appears that the first respondent issued notification dated 16.05.007 under Section 4 (1) of the Act proposing to acquire the land of the petitioner admeasuring Ac.0.10 cents situated in survey No.196/4 of Draksharamam Village, East Godavari District, apart from other lands, for the purpose of providing house sites to weaker sections by invoking an urgency clause under Section 17 (4) of the Act by dispensing with enquiry under Section 5-A of the Act. Thereafter, notice under Section 10 (1) of the Act was issued to the petitioner and other land owners and an award was passed excluding the petitioner's land in view of the disputes with regard to title of the property over the said land. Possession was taken in respect of the remaining notified lands, house site pattas were also granted and the amounts were also deposited under Section 31 of the Act in the Civil Court in respect of the disputed claims. Further, no award was passed in respect of the petitioner's land and no possession was taken from the petitioner.

3. Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition.

4. Though the writ petition was admitted in the year 2007, no interim order was passed in favour of the petitioner. However, as seen from the counter affidavit, it appears that, no further proceedings were taken place to conclude the land acquisition proceedings in respect of the petitioner's land and possession of the land was not taken by the respondents.

5. Learned Assistant Government Pleader, based on the instructions received from the Tahasildar, Ramachandrapuram, in Ref.(A)558/2012 dated 27.12.2017, submits that the petitioner's land was excluded from acquisition and award was also passed in respect of the remaining lands to an extent of Acs.12.92 cents and at present the land is under the control of the petitioner.

6. During pendency of the writ petitions, the new Act i.e. The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act 30 of 2013') came into force w.e.f.01.01.2014. As per Section 24(1)(a) of Act 30 of 2013, if the land acquisition proceedings were initiated under the Land Acquisition Act, 1894, and no award under Section 11 of the said Act has been made, all the provisions of the new Act relating to the determination of compensation shall apply.

7. 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 Act 30 of 2013 was considered by the Apex Court in ***Laxmi Devi Vs. State of Bihar and Others⁽¹⁾*** and in view of the conflicting situation, it was held that the acquisition proceedings initiated under the Act are liable to be set aside and the respondents-State were given liberty to issue a fresh notification, if they so choose, under Section 24(1)(a) of Act 30 of 2013.

8. In the facts and circumstances of the case and in view of the ratio laid down by the Supreme Court, referred to above, the writ petition is allowed by setting aside the land acquisition proceedings, impugned in this writ petition, in respect of the petitioner's land. It is needless to observe that allowing of the Writ Petition will not preclude the Government from acquiring the aforementioned land of the petitioner, afresh, under the provisions of Act 30 of 2013, in future either for original purpose or for any other purpose.

9. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

2nd February, 2018
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¹ (2015) 10 SCC 241