

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.3193 OF 2006

ORDER:

This Writ Petition under Article 226 of the Constitution of India is filed to issue a Writ of Mandamus declaring the Memo letter No.C/171/2005 dated 03.02.2006 and Award No.C/171/2005 dated 04.02.2006 passed by the third respondent, as illegal, arbitrary, null and void, unconstitutional, against the principles of natural justice and contrary to the provisions of the Land Acquisition Act, 1894 and Urban Development Authority Act.

Brief facts of the case are that the petitioners inherited the lands, from their father Swamy, to an extent of Acs.18.14 guntas in survey Nos.131/1, 136, 137, 156 and 159 apart from other lands in survey Nos.61, 81 and 89 to an extent of Ac.0.37 guntas of Khajaguda (V) of Serlingampally Mandal. The petitioners state that they are small farmers, as per their shares they are in possession and enjoyment of the lands @ Acs.4-00 guntas each and they are eking out their livelihood by doing agricultural operations and maintain their big families from the proceeds received from the small extents of lands. Petitioners further state that their father Swamy was declared as non-surplus holder vide proceedings dated 26.04.1996 in C.C.No.751 of 75 under the provisions of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holding) Act (for short '1973 Act'). Subsequently, the 5th respondent passed orders under Sections 4 and 5 of Andhra Pradesh Rights in Law and Pattedar Passbooks Act, 1971 (for short '1971 Act') and the rules made thereunder, vide proceedings No.B/455/2002 dated 13.03.2003 and their names were

incorporated in revenue records as owners and possessors of the lands.

While things stood thus, the third respondent issued notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') proposing to acquire the petitioners' lands along with other lands to an extent of Acs.3.09 guntas for formation of approach road to IT Part by APIIC Limited, the same was approved by the District Collector, Ranga Reddy District on 24.10.2005, the draft notification was published on 31.10.2005 and substance of the notification in local area was published on 31.10.2005. Notices under Section 5A of the Act were issued on 29.10.2005 to all the interested persons duly fixing the date of enquiry on 01.12.2005. The objections received were enquired and concluded on 02.12.2005. On some discrepancy with regard to area and survey number notified between requisition proposals and SD record, an errata to draft notification under Section 4 (1) and draft declaration under Section 6 of the Act along with 5A enquiry report in respect of the lands to an extent of Acs.3.09 guntas i.e. Ac.0.28 guntas in survey No.131, Ac.0.10 guntas in survey No.134, Ac.0.16 guntas in survey No.135, Ac.0.06 guntas in survey No.137, Ac.0.14 guntas in survey No.138, Ac.0.01 gunta in survey No.139, Ac.0.01 gunta in survey No.155, Ac.0.31 guntas in survey No.156, Ac.0.06 guntas in survey No.157 and Ac.0.16 guntas in survey No.159, were submitted to District Collector on 06.12.2005 for approval. The District Collector approved the errata draft notification and draft declaration on 12.02.2005 and got published the same as required under the provisions of the Act on 13.12.2005, published in newspapers on 23.12.2005 and substance of the notification in

local area newspaper on 24.12.2005. The notices under Section 9 (1), 9 (3) and 10 of the Act were issued on 19.12.2005 duly fixing the date of hearing on 11.01.2006. The notices were served on the persons interested including the writ petitioners. In reply thereto, the petitioners filed representation on 27.12.2005 stating that they are having title to the lands to an extent of Acs.2.01 guntas in survey Nos.131, 137, 156 and 159 of Khajaguda (V) and requested to conduct fresh 5-A enquiry and to give opportunity by issuing fresh notices to establish their rights. In response to the said representation, a Memo dated 29.12.2005 was issued to the petitioners to appear before the SDC (LA) on 06.01.2006 to produce relevant documents pertaining to the lands under acquisition, but they failed to attend on 06.01.2006 and again filed a representation on 12.01.2006 to issue a fresh notice to file objections, which was not considered. Aggrieved by the same, petitioners filed W.P.No.946 of 2006 along with WPMP No.1100 of 2006 to consider representation dated 12.01.2006 and till then not to dispossess the petitioners from the lands. On 17.01.2006, this Court passed interim order in WPMP No.1100 of 2006 directing the respondents to consider the representation of the petitioners dated 12.01.2006 and also directed the petitioners to furnish necessary documents along with their objections, if any, within one week from 17.01.2006 and on filing such objections and documents, the third respondent was directed to consider the representation dated 12.01.2006 filed by the petitioners and pass appropriate orders within one week thereafter, in accordance with law, and till such time the petitioners should not be dispossessed from the lands in question.

In pursuance to the orders of this Court, the petitioners filed representation on 27.01.2006. The respondents issued Memo dated 03.02.2006 rejecting the request of the petitioners to give further opportunity for filing objections for acquisition of the lands. However, their title over the lands under acquisition was considered basing on the documents and proceedings issued by the Mandal Revenue Officer. After completion of due process of law under the provisions of the Act, an award was passed on 04.02.2006 in respect of the land to an extent of Acs.3.09 guntas situated in survey Nos.131, 134, 135, 137, 138, 139, 155, 156 and 159 of Khajaguda (V). Thereafter, notices under Section 12 (2) of the Act were served on interested persons including the petitioners on 04.02.2006, possession of the land was handed over to APIIC on 06.02.2006. The matter was referred under Section 30 of the Act to District Court for adjudication, as the lands are situated in Hyderabad Urban Agglomeration, making the Special Officer and competent authority under the Urban Land Ceiling, Hyderabad, as an interested party by depositing the compensation under Section 30 of the Act.

Sri G.Krishna Murthy, learned counsel for the petitioners, would contend that the Land Acquisition Officer issued notification under Section 4(1) of the Act, published in news papers, and substance of the notification in local area on 31.10.2005 and form III under Section 5A of the Act was issued on 29.10.2005 and Errata notification was published on 23.12.2005 and substance of notification in local area was published on 24.12.2005. Publication of Errata of 4(1) notification, 6 Declaration in news paper was on 25.12.2005, the substance of notification in local

was published on 25.12.2005 without showing the names of the petitioners, in spite of petitioners being the owners and possessors of the land.

Per contra, learned Government Pleader would contend that the names of the petitioners could not be notified as the pahanies of the year 2003-2004 were not ready. The notifications were published based on the entries made in the year 2002-2003. However, the petitioners were given an opportunity to file documents pertaining to the lands under acquisition on 01.06.2006, however, the petitioners having received the notice, failed to attend the enquiry on 06.01.2006 and produce the documentary evidence in support of their claim of ownership. Even the petitioners, as per the orders of this Court dated 17.01.2006 passed in WPMP No.1100/2006 in WP No.946/2006, ought to have submitted documents on or before 21.01.2006, but they have submitted representation only on 27.01.2006 i.e. after expiry of the time granted by this Court. This clearly shows that the petitioners are not interested in participation of the acquisition proceedings. The petitioners instead of submitting the documents in support of their ownership and possession, they went on requesting for giving opportunity for filing objections under Section 5A of the Act, which was already concluded. The petitioners in response to the notice under Section 9 (3) of the Act have filed a representation on 27.12.2005 when they were given opportunity to file claim along with documents when a date was fixed for hearing i.e. 06.01.2006 exclusively only for the petitioners before passing of the award. Hence, as contended by the petitioners the non-consideration of the petitioners' representation

for conducting 5-A enquiry could not vitiate the land acquisition proceedings.

Learned counsel for the petitioners would further contend that the simultaneous issuance of errata notification and draft declaration on 13.12.2005, publication of the same in daily news paper on 23.12.2005 and 24.12.2005 and publication of substance of notification in local area on 24.12.2005 would vitiate the land acquisition proceedings and as such the notification under Section 4(1) and draft declaration under Section 6 of the Act and passing of the award under Section 11A of the Act are liable to be set aside. He placed reliance on ***Union of India vs. Mukesh Hans¹*** to buttress his contention that simultaneous publication of notification under Section 4(1) and declaration under Section 6 of the Act in dispensing with 5A enquiry invoking urgency clause under Section 17 (4) of the Act would vitiate the land acquisition proceedings.

Per contra, the learned Government Pleader would submit that originally, the 4(1) notification was published on 25.10.2005 and paper publication was given on 31.10.2005 and substance of notification in local area was published on 31.10.2005 and notices in Form III under Section 5A of the Act were issued on 29.10.2005 to all the interested persons to submit their objections duly fixing the date of enquiry on 01.12.2005 and the enquiry was concluded on 02.12.2005. On some discrepancy with regard to area and survey numbers of the lands proposed for acquisition, an errata of 4(1) notification and 6 declaration were issued and approved by the District Collector on 12.012.2005. Thereafter, errata to draft

¹ (2004) 8 SCC 14

notification and declaration were issued on 13.12.2005, published in news paper on 24.12.2005 and substance of the notification in local area was published on 24.12.2005. Hence, the contention of the petitioners' counsel that the notifications were published simultaneously could not be accepted and holds no water and the same could not be countenanced to declare the notifications as illegal.

This Court finds that the plea urged by the petitioners as regards the simultaneous publication of notifications on 24.12.2005 is not accepted as the same are errata of notifications issued on 24.10.2005. Further, in the facts of the present case, the decision relied by the learned counsel for the petitioner in ***Mukesh Hans (1 supra)*** is of no help to the petitioners.

The further contention of the learned counsel for the petitioners is that the government have delegated the powers conferred under Section 3A of the Act to the District Collector through G.O.Ms.No.235 Revenue (K) Department dated 10.03.1987 to acquire the lands for APIIC Limited. When the lands are required for establishment of industries by APIIC Limited, the approach road is required to cater the needs of the industries. Hence, the District Collector is not competent to acquire the lands for formation of approach road to IT Park as per the powers vested on him, according to G.O.Ms.No.235 dated 10.03.1987, for acquisition of the lands only for APIIC Limited.

The learned Government Pleader would contend that the government have delegated the powers under Section 3A of the Act to the District Collector under G.O.Ms.No.235 Revenue dated

10.03.1987, but acquired the lands for APIIC Limited, the same empowers the District Collector to issue notification to acquire the lands on request of APIIC Limited for formation of approach road to IT Park. There is no irregularity or illegality in acquiring the lands under the provisions of the Act.

In considered view of this Court, the contention urged by the learned counsel for the petitioners is untenable and liable to be rejected as the land is acquired for formation of approach road to IT Park, for which the District Collector was given powers. Accordingly, the same is rejected.

The learned counsel for the petitioners would further contend that no opportunity was given to the petitioners to participate in the award enquiry by giving statutory notice under Sections 9 (3) and 10 of the Act and non-compliance of the said statutory provision would vitiate passing of the award on 04.02.2006 and issuance of notices under Section 12 (2) of the Act on 04.02.2006. In support of the same, learned counsel relied on ***M/s.Kamal Trading Private Ltd., vs. State of W.B.***² wherein it is held that Section 5A (1) of the Act gives a right to any person interested in any land which has been notified under Section 4 (1) as being needed or likely to be needed for a public purpose to raise objections to the acquisition of the said land. Sub-section (2) of Section 5A requires the Collector to give the objector an opportunity of being heard in person or by any person authorized by him in this behalf. After hearing the objections, can, if he thinks it necessary, make further inquiry. Thereafter, he has to make a report to the appropriate Government containing his

² AIR 2012 Supreme Court 823

recommendations on the objections together with the record of the proceedings held by him for the decision of the appropriate government and the decision of the appropriate government on the objections shall be final. It must be borne in mind that the proceedings under the Act are based on the principle of eminent domain and Section 5A is the only protection available to a person whose lands are sought to be acquired.

Learned counsel further relied on ***Gubbala Chinna Ganga Rao vs. Land Acquisition Officer and Rural Development Officer, Narsapur, West Godavari District***³ and ***Secretary to Government, Social Welfare Department vs. Eedara Krishna***⁴ to contend that acquisition proceedings are liable to be held vitiated by the conduct of the authorities in committing blatant and manifest violation of statutory procedures prescribed under Section 9 (1) and (3) and Section 10 of the Act.

However, the learned Government Pleader would contend that the notice dated 19.12.2005 intended to be served on the petitioners' predecessor in title has been received by the petitioners on 26.12.2005. In response to the said notice, the petitioners submitted representation on 27.12.2005 stating that they are the owners and possessors of the land to an extent of Acs.2.01 guntas in survey Nos.131, 137, 156 and 159 of Khajaguda (V), they requested for issuing fresh notice under Section 5-A of the Act for filing objections to establish their rights. In response to the said representation dated 27.12.2005, a memo dated 29.12.2005 has been issued to the petitioners to appear before the Land

³ 2009 (1) ALD 438

⁴ 2008 (6) ALT 617 (D.B.)

Acquisition Officer on 06.01.2006 and produce claim along with relevant documents pertaining to the lands under acquisition, but the petitioners failed to attend the enquiry on 06.01.2006 and filed another representation on 12.01.2006 requesting to issue fresh notice to file objections on the ground that they received notice on 06.01.2006. Even the petitioners could not avail the opportunity given to substantiate their claim in pursuance of the orders of this Court dated 17.01.2006 passed in WPMP No.1100/2006 in W.P. No.946 of 2006. The petitioners on one pretext or the other are avoiding to participate in the acquisition proceedings and they tried to stall the acquisition proceedings. They were issued memo on 03.02.2006 to attend on 12.01.2006. The petitioners having attended the enquiry on that day, sought time for filing objections which was not considered as the award enquiry is meant for filing claims, thereafter award was passed on 04.02.2006 and notices under Section 12 (2) of the Act were served on the interested persons including the petitioners. Hence, it could not be said that no notice under Sections 9 (3) and 10 of the Act were issued and served on the petitioners to participate in the award enquiry and passing of the award under Section 11 of the Act could not be countenanced and thereby the proceedings are not vitiated.

In support of his contention, the learned Government Pleader relied on ***May George vs. Special Tahasildar***⁵ to contend that non-service of notice under Sections 9 (3) and 10 of the Act would cause no prejudicial consequences, as under scheme of Act person interested still has a right to make an application for making reference under Section 18 of the Act. Even failure to

⁵ 2010 (5) ALD 34 (SC)

issue notice does not adversely affect subsequent proceedings including award and title of Government in land acquired and provisions are not mandatory. He would further contend that the writ petition is hit by the principle of laches as the Award is passed on 04.02.2006 and after following due process of law, possession was handed over to the beneficiary department/requisition department on 06.02.2006 and petitioners failed to avail the every opportunity given to them to putforth their case.

This Court is unable to come to a different conclusion to that of the contention of the learned Government Pleader based on the record and it can be held that the petitioners were given an opportunity by issuing notice under Sections 9 (3) and 10 of the Act before passing the award. The judgments relied by the petitioners' counsel have no application to the facts of the case for the reason that the respondents acquired the land in strict adherence to the provisions of the Land Acquisition Act and due opportunity was given to the petitioners.

In the facts and circumstances of the case stated supra, I see no merit in the contentions of the petitioners' counsel in the writ petition. Therefore, the writ petition is liable to be dismissed and is accordingly dismissed.

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

(M.GANGA RAO, J)

6th April, 2018
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