

THE HONOURABLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.15170 of 2007

ORDER:

This writ petition is filed seeking the following relief:

“.... To issue a writ, order or a direction more particularly one in the nature of writ of mandamus, declaring the Notification dated 28.5.2006 issued under Section 4 (1) of the L.A. Act and the declaration, dated 30.6.2007 issued under Section 6 of the Act by the District Collector, Krishna District, as being arbitrary, illegal, unreasonable, biased and violative of Articles 14, 21 and 300-A of the Constitution of India, apart from being contrary to the provisions of L.A. Act, 1894 and the provisions of A.P. Agricultural Land (Conversion for Non-Agricultural purposes) Act, 2006 and consequently set-aside the said Notifications, so far as the petitioner’s land in R.S.No.98/4B2 and 98/4D” situated at Allapuram (V), Gannavaram (M) Krishna District.”

The petitioners submit that they are the absolute owners, pattadars and possessors of the land in R.S.No.98/4B2 and 98/4D admeasuring Ac.1.10 cents, situated at Allapuram Village, Gannavaram Mandal, Krishna District. They challenge the notification dated 28.05.2006 issued by the respondents under Section 4 (1) of the Land Acquisition Act, 1894 (for brevity ‘the Act’), seeking to acquire the lands of the petitioners in R.S.Nos. 98/4B2 and 98/4D admeasuring Ac.1.10 cents. Earlier in the

year 1977, an extent of Acs. 5.37 cents of land belonging to the petitioners was acquired by the Government under the provisions of the Act for the purpose of distribution to the weaker sections and now they have left with only Ac.1.10 cents which is now being acquired by the respondents by issuing impugned notification. In pursuance of the notice issued under 5-A enquiry, the petitioners submitted their objections categorically stating that earlier the Government acquired Acs. 5.35 cents of land and left over balance of land owned by them i.e., Ac.1.10 Cents is sought to be acquired, as a result of which, total lands of the petitioners were under acquisition and now they are not having any land to eke out their livelihood. While submitting the objections, they have also stated that alternative government land is available to an extent of Acs.3.18 cents in R.S.No.100 of Allapuram Village, which is suitable for house sites. The petitioners further submits that without considering their objections in proper perspective, with pre-determined and pre-judged mind, the respondents rejected the objections filed in 5-A enquiry and issued the declaration under Section 6 of the Act. Therefore, the petitioners filed this writ petition questioning the notification issued under Section 4 (1) of the Act and to declare the consequential declaration issued under Section 6 of the Act as illegal and arbitrary.

This Court while admitting the writ petition on 17.7.2007 passed interim order in WPMP No.19113 of 2007 directing the respondents not to dispossess the petitioners to the extent of their lands covered under Section 4 (1) Notification, dated 28.5.2006 of the Act.

In view of the said interim orders, the respondent No.2 has not concluded the land acquisition proceedings and they have not passed any award.

The respondent No.2 filed counter *inter alia* stating that the Government has taken a decision to provide house sites to the identified 67 families under Indiramma Housing Programme. As there is non availability of suitable vacant Government lands, the respondents proposed to acquire the lands in R.S.Nos.98/4B2 and 98/4D-which are dry lands, to an extent of Ac.0.75 Cents in RS No.98/4B2 and Ac.0.65 cents in RS No. 98/4D and draft declaration was also published by the Collector, Krishna under the provisions of L.A. Act and after conducting 5-A enquiry. They have also denied the averments of the petitioners that the petitioners' land to an extent of Ac.5.37 cents was acquired in the year 1977 for providing house sites. As per village records, the petitioners are having the lands at Allapuram in R.S.Nos.98/4D and R.S.No.98/4B2 and the lands proposed for acquisition under the impugned notification of the above said R.S. Nos. are Ac.0.65 cents and 0.45 cents respectively and under R.S.Nos. 130/1 and 173/2, the lands under proposed acquisition are Acs. 3.75 cents and Acs.2.08 cents in Buddavaram village. Even if the acquisition proposals are materialized, the petitioners are having lands to an extent of Acs. 5.78 cents at Buddavaram village of Gannavaram Mandal. Hence, the contention of the petitioners that they are left without any lands to eke out their livelihood cannot be accepted. As per the directions of this Court, 5-A enquiry was conducted on 5.3.2007, duly issuing notices to the

land owners and the objections filed by the petitioners are rejected, as there are no merits. The respondents further submit that the land in R.S.No.100 of Allapuram village is classified as Donka Poramboke and the same is under the occupation of three SCs and one BC person, by way of cultivating wet paddy. Hence, the said land was not proposed for assignment. The lands of the petitioners in R.S.No.98/4B2 and 98/4D are nearer to existing harijanwada and also useful to the beneficiaries for occupying the same as house sites. Therefore, the said lands are sought for acquisition. Hence, the writ petition may be dismissed.

Reply affidavit has been filed by the petitioners reiterating the averments stated in the writ petition and also stating that the land to an extent of Acres 5.37 cents belongs to the petitioner No.1 and the same was acquired and he is left with Ac. 1.10 cents and the petitioner No.2 is not having any land in Allapuram village. When admittedly alternate Government land in RS No.100 is available, which is already identified by the Government for the purpose of house sites and Resolution No.98 was passed for distribution of house site pattas to the beneficiaries under Indiramma Programme in RS No.100 to an extent of Acs 3.18 cents, there is no need to acquire the lands of the petitioners.

Heard both counsel.

The learned counsel for the petitioners would contend that the respondent No.2 has not properly considered the objections filed by the petitioners in response to the notice issued under 5-A enquiry. The objections of the petitioners were rejected on mere

surmises and conjectures, on the ground that the land in R.S.No.100 is in occupation of SCs and not suitable to the house sites.

The learned counsel for the petitioners invited the attention of this Court to the order passed in W.P.No.6176 of 2009, dated 1.9.2014 wherein the respondents stated as follows:

“ The total extent of RS.No.100 is Acs. 1.50 cents. The respondents have issued notice under Section 7 of the Land Encroachment Act, 1905 (for short ‘the Act’) and orders under Section 6 of the Act are already passed. The respondents, in principle have decided to set apart the land covered by R.S.No.100 for providing house sites to as many as 59 beneficiaries under a welfare programme. It is stated that pursuant to the orders under Section 6 of the Act, the encroachers of the land in R.S.No.100 have been evicted. The classification of land has been changed from “Donka Poramboke” to “ Assessed Waste Dry” a lay out is approved, 59 house sites each measuring Acs. 0.02 cents have been considered for assignment”.

The learned Government Pleader would contend that as the petitioners are having Ac.5.78 cents of Landed Property at Buddavaram Village of Gannavaram Mandal, and as the lands existing in R.S.No.98/4D and 98/4B2 are nearer to harijanwada which are convenient for house sites, the said lands are proposed for acquisition. He further submits that after issuing notices under Section 5-A, enquiry was conducted, objections of the

petitioners were rejected and they have proceeded to take further steps. Further, no government lands are available in that village.

This Court, while admitting the writ petition, granted interim direction not to dispossess the petitioners to the extent of their lands covered under Section 4 (1) Notification, dated 28.05.2006 of the Act. It appears that no further proceedings have taken place to conclude the land acquisition proceedings, no award was passed and possession of the lands was not taken by the respondents.

In the facts and circumstances of the case, in considered view of this Court, the petitioners are small farmers. The land to an extent of Ac.1.10 cents in Sy.No.98/4B2 and 98/4D of Allapuram village is only the land available to them to eke out their livelihood and the said land is proposed to be acquired. The petitioners' objections submitted in pursuance of the notice under Section 5-A enquiry of the L.A. Act, were rejected, without properly considering their objections and the availability of Government land in an extent of Ac.1.50 cents was in R.S.No.100 of Allapuram village was not taken into consideration. The respondent No.2 has not concluded the land acquisition proceedings and no award is passed. The petitioners are in possession and enjoyment of the land as per the interim orders of this Court. Hence, the impugned land acquisition proceedings lapsed and are liable to be set aside.

For the reasons stated supra, the writ petition is allowed by setting aside the impugned land acquisition proceedings. No order as to costs.

Consequently, miscellaneous petitions pending, if any, in the writ petition shall stand closed.

JUSTICE M.GANGA RAO

DATE: 14.03.2018
slk

