

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.2678 OF 2018

&

WRIT APPEAL No.274 OF 2018

COMMON JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

Heard Sri K.S. Murthy, learned counsel for the appellant-writ petitioner, learned Government Pleader for Land Acquisition and Sri D. Ramesh, learned Standing Counsel for the Capital Regional Development Authority (CRDA) and, at their request, the writ petition is also disposed of along with the writ appeal.

The appellant herein invoked the jurisdiction of this Court seeking a *Mandamus* to declare the action of the respondents in wrongly listing her lands in different survey numbers in the Section 19(1) declaration dated 2.12.2017, in issuing an award enquiry notice on 26.12.2017 without even publishing her name in the Section 11(1) notification, and in proceeding further to conduct an award enquiry for the subject lands, as illegal, arbitrary, unconstitutional and violative of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the 2013 Act"). A consequential direction is sought to the respondents to delete the petitioner's lands, in the subject survey numbers, from the notification issued under Section 11(1) of the 2013 Act dated 2.12.2017 and the Section 19(1) declaration dated 2.12.2017, and withdraw the award enquiry notice dated 26.12.2017.

Facts, to the limited extent necessary, are that the petitioner was gifted different extent of lands admeasuring a total extent of 687 square yards, in different survey numbers, by way of two registered sale deeds both dated 23.6.2016, and the third registered sale deed dated 17.9.2016. A preliminary notification was issued, under Section 11(1) of the 2013 Act, on 16.5.2017 proposing to acquire the lands notified in the schedule thereto. Serial numbers 284 and 285, in the said schedule, related to the lands in survey number 421 of an extent of 0.365 cents and 0.1800 cents, and the interested persons' names were shown therein as Sri V. Srinivasa Rao and Sri V. Basavadu. While the total extent of land in Sy.No.421 is Ac.2.29 cents, the land proposed to be acquired therein was of a total extent of Ac.0.545 cents. The schedule also details, among the lands to be acquired, the land in Sy.No.427 wherein an extent of Ac.0.1300 cents standing in the name of Sri K. Narayana Swamy, and Ac.0.0500 cents standing in the name of Sri V. Srinivasa Rao. The total extent sought to be acquired in Sy.No.427 is Ac.0.18 cents as against the total extent of land, in the said survey number, of Ac.1.52 cents. Thereafter a declaration was issued, under Section 19(1) of the 2013 Act, on 2.12.2017, wherein the name of Sri Karneti Srinivasa Rao is shown as the interested person with respect to an extent of Ac.0.06 cents of land in Sy.No.427. Sri Karneti Srinivasa Rao is the father of the petitioner.

It is the petitioner's case that her father does not own these lands, as they were sold to her earlier in June and September, 2016 itself. The fact remains that, even the name of Sri Karneti

Srinivasa Rao (father of the appellant-writ petitioner) is not reflected in the Section 11(1) notification. Thereafter a notice, under Section 21(4) of the 2013 Act (an award enquiry notice), was issued to Sri Karneti Srinivasa Rao for acquisition of Ac.0.1 cents in Sy.No.421 and Ac.0.06 cents in Sy.No.427. Aggrieved thereby, the petitioner invoked the jurisdiction of this Court filing Writ Petition No.2678 of 2018. In the order under appeal, in I.A.No.1 of 2018 in W.P.No.2678 of 2018 dated 31.01.2018, the learned Single Judge held that, since land acquisition proceedings were at the stage of passing of the award, he was not inclined, at this stage, to stay the passing of the award; however, pending further orders, the respondents should not dispossess the petitioner from the subject land. Aggrieved thereby, the present appeal.

Sri K.S. Murthy, learned counsel for the appellant-writ petitioner would submit that the preliminary notification, issued under Section 11(1) of the 2013 Act, does not even reflect the name of the petitioner's father Sri Karneti Srinivasa Rao; it is for the first time, in the declaration issued under Section 19(1) of the 2013 Act, was his name reflected, that too only for the lands in Sy.No.427; it is only in the award enquiry notice, issued under Section 21(4) of the 2013 Act, was the name of the petitioner's father referred to as the interested person with respect to the lands in Sy.Nos.421 and 427; as the petitioner is the owner of the subject land, it is her name which should have been reflected in the Section 11(1) notification; permitting an award to be passed would result in completion of the land acquisition proceedings, and would deprive

the appellant-writ petitioner of the safeguards provided under the 2013 Act.

On the other hand, both the learned Government Pleader for Land Acquisition and Sri D. Ramesh, learned Standing Counsel for C.R.D.A would submit that, in view of Section 25 of the 2013 Act, an award is required to be passed within 12 months from the date of publication of the notification under Section 19; if no award is passed, then the entire proceedings, for acquisition of the land, would lapse; the proviso to Section 25 confers power on the Government to extend the period by another twelve months if, in its opinion, circumstances exist justifying the same; as the declaration under Section 19(1) of the 2013 Act was issued on 22.2.2017 the time limit, prescribed under Section 25 and its proviso for an award to be passed, would commence from that date; the 2013 Act does not exclude the period of stay granted by this Court; and if this Court were to grant stay of passing of the award and, if the Writ Petition is not finally heard within two years, the entire acquisition proceedings would lapse.

The petitioner has the Constitutional right, under Article 300-A of the Constitution of India, not to be deprived of her property except in accordance with law. It has not been disputed before us, either by the learned Government Pleader for Land Acquisition or by Sri D. Ramesh, learned Standing Counsel for the C.R.D.A, that the subject property was transferred in the name of the petitioner by way of registered sale deeds executed in June and September, 2016 several months before the notification, under Section 11(1) of the 2013 Act, was issued on 16.5.2017. It is only if the petitioner's

name is reflected in the notification, issued under Section 11(1) of 2013 Act, can the respondents then issue a notice to her under Section 15; and after providing her an opportunity to submit her objections, and after affording her an opportunity of hearing, the declaration, under Section 19(1) of 2013 Act, can be issued. It is not in dispute that the petitioner's name is not reflected in the preliminary notice issued under Section 11(1) of 2013 Act. As her entitlement for compensation is based on the market value of the subject lands as on the date of the notification issued under Section 11(1) of 2013 Act, failure to record her name, in the preliminary notification issued under Section 11(1) of the 2013 Act, would not only violate Article 300A of the Constitution of India, but would also deprive the petitioner of her right to claim compensation, for the subject land, in accordance with the provisions of the 2013 Act. While it is no doubt true that grant of stay of the award may result in the possibility of lapse of the acquisition proceedings, the fact remains that, without a preliminary notification being issued under Section 11(1) of 2013 Act reflecting her name, acquisition of the petitioner's property would violate her constitutional rights under Article 300A of the Constitution of India and her statutory rights under the 2013 Act.

The preliminary notification issued under Section 11(1) of the 2013 Act, the declaration issued under Section 19(1) of the 2013 Act, and the notice of award enquiry issued under Section 21(4) of the 2013 Act, are set aside to the limited extent the petitioner's lands are concerned. It is left open to the respondents to issue a preliminary notification, under Section 11(1) of the 2013 Act, afresh

to acquire the petitioner's land; and, thereafter, to complete acquisition proceedings in accordance with the provisions of the 2013 Act.

Both the Writ Petition and the Writ Appeal are disposed of accordingly. No order as to costs. Miscellaneous Petitions, if any pending in this writ appeal shall also stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

26th February, 2018
Gk



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