

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

**Writ Appeal No. 592 of 2018
And
Writ Petition No. 5336 of 2018**

Common Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in I.A. No. 1 of 2018 in W.P. No. 5336 of 2018.

The appellants herein filed the Writ Petition seeking a mandamus to declare the notification issued under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (hereinafter referred to as "the 2013 Act") dated 12.8.2015, the proceedings issued under Section 15(2) dated 25.11.2017, and the declaration under Section 19(1) dated 27.1.2018, as illegal, arbitrary and contrary to the provisions of the 2013 Act.

Among the contentions, urged on behalf of the appellant-writ petitioners in the Writ Petition filed by them, are that the objections raised by them, pursuant to the Section 11(1) notification, were not considered by the Collector while submitting his report under Section 15(2) of the 2013 Act. Two contentions, which Sri D. Krishna Murthy, learned counsel for the appellant-writ petitioners, claims were urged before the Collector under Section 15(1) are (a) change in the alignment, contrary to the alignment approved by the Superintending Engineer based on the report of the Committee of experts, was impermissible; and (b) no social impact assessment was conducted, and thereby the provisions of Chapter II of the 2013 Act were violated.

In the order under appeal, the learned Single Judge observed that, having gone through the report made under Section 15(2) and

considering the scope of the objections that could be raised, the decision taken by the respondent-authorities, with respect to the alignment, could not be found fault with; this Court could not substitute its opinion merely because there was yet another view possible; before finalizing alignment of the canal, the respondents had tried their best to bring about an amicable solution among all the villagers; having failed to satisfy the warring groups, the respondent-authorities, taking into consideration all aspects and technical feasibility, had come to the conclusion that the alignment, which was originally proposed in 2008, was the best possible alignment that could be adopted; and merely because the authorities had attempted to bring an amicable solution in the Gram Sabha, it could not be said that the Gram Sabha, which had taken a decision with respect to the alignment, had acted illegally. The learned Single Judge, thereafter, observed that construction of a canal, which was in larger public interest, could not be stalled on technicalities; and he did not consider it appropriate to stay further proceedings including dispossession of the petitioners from their lands. The WPMP was dismissed.

With regards the first contention of Sri D. Krishna Murthy, learned counsel for the appellant-writ petitioners, regarding change in the alignment of the canal, the Collector has elaborately dealt with it in his report made under Section 15(2) of the 2013 Act. Even if the view canvassed by Sri D.Krishna Murthy, learned counsel for the appellant-writ petitioners, is presumed to be one possible view, as a contrary view, which weighed with the authorities concerned, is also a possible view, this Court, in judicial review proceedings under Article 226 of the Constitution of India, would, save perversity, neither sit in judgment over the views of the Collector as expressed in his report made under Section 15(2) of the 2013 Act, nor would it substitute its views for that

of his. We are satisfied, therefore, that the learned Single judge was justified in holding against the appellant-writ petitioners, on this score, for refusing to grant them the interim relief sought for.

The fact, however, remains that another contention was raised by the appellant-writ petitioners regarding failure on the part of the respondents to conduct a social impact assessment before issuing the notification under Section 11(1) of the 2013 Act, and this contention has not been dealt with by the Collector in his report made under Section 15(2) of the 2013 Act.

Chapter II of the 2013 Act relates to determination of social impact and public purpose, and Section 4 relates to preparation of social impact assessment study. Section 5 relates to a public hearing for social impact assessment, and Section 6 for the publication of the social impact assessment study. Section 7 relates to appraisal of the social impact assessment report by an expert group. Section 8 relates to the examination of proposals for land acquisition, and social impact assessment report, by the appropriate Government. It is only after a social impact assessment report is submitted, could the authorities have issued the preliminary notification under Section 11(1) of the 2013 Act for acquisition of the subject lands.

Section 15 of the 2013 Act relates to hearing of objections and, under sub-section (1)(c) thereof, any person interested in any land which has been notified under Section 11(1), as being required or is likely to be required for a public purpose, may, within 60 days from the date of the publication of the preliminary notification, object to the findings of the social impact assessment report.

In their objections submitted to the Collector, under Section 15(1) of the 2013 Act, the appellant-writ petitioners contended that no social impact assessment study was conducted. The Collector, while

making his report under Section 15(2) was obligated, therefore, to consider this specific objection, as it was one of the permissible objections under Clauses (a) to (c) of Section 15(1) of the 2013 Act. Failure on the part of the Collector to deal with this contention in the report made by him under Section 15(2) of the 2013 Act, would justify the declaration made under Section 19(1) of the 2013 Act and all proceedings subsequent thereto, being set aside.

Learned Advocate General for the State of Andhra Pradesh, would, submit that, in terms of the proviso to Section 6(2) of the 2013 Act, in respect of irrigation projects where the process of environment impact assessment is required under the provisions of any other law for the time being in force, the provisions of the 2013 Act, relating to social impact assessment, would not apply.

It is only if (a) the land sought to be acquired is for the purposes of establishing an irrigation project; and (b) the process of environment impact assessment is required, for the said irrigation project, under the provisions of any other law in force; would the provisions of the 2013 Act, relating to a social impact assessment, not apply. It is only if the conditions (a) of the project being an irrigation project and, (b) such a project requiring a process of environment impact assessment to be undertaken under the provisions of any other law in force and, (c) environmental clearance having been granted, for the said irrigation project, in terms of the said law; would the authorities no longer be required to conduct a social impact assessment.

None of these contentions have been considered by the Collector, much less dealt with by him in his report made under Section 15(2) of the 2013 Act. As rightly pointed out by the learned Advocate General, dismissal of the interim application at the admission stage, disabled the respondents from bringing these issues to the notice of the learned

Single Judge. While we were initially inclined to set aside the order under appeal, restore the IA to file, grant interim stay for a limited duration, and permit the respondents to file their counter-affidavit, the learned Advocate General, for the State of Andhra Pradesh, would fairly state that, instead, this Court may direct the Collector to examine this issue alone and submit a fresh report, to the Government, under Section 15(2) of the 2013 Act. Sri D. Krishna Murthy, learned counsel for the appellant-writ petitioners, readily agrees for such an order to be passed.

In such circumstances, we set aside the declaration made under Section 19(1) of the 2013 Act, and all proceedings subsequent thereto, with respect to the lands which belong to the appellants-writ petitioners. In compliance with Section 15(2) of the 2013 Act, the Collector shall give the appellant-writ petitioners a fresh opportunity of an oral hearing, only with respect to the failure of the Government to conduct a social impact assessment, consider the appellant-writ petitioners' objections in this regard, and submit a report under Section 15(2) of the 2013 Act to the Government, which shall, in the light of the report submitted by the Collector, take action afresh in accordance with law.

Both the Writ Appeal and the Writ Petition are disposed of accordingly. Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

12th April, 2018

Pnb

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**



**Writ Appeal No. 592 of 2018
And
Writ Petition No. 5336 of 2018**

Date:12.04.2018

pnb