

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.32478 & 32507 OF 2016

COMMON ORDER:

Heard Mr.C.Raghu for petitioners, the learned Assistant Government Pleader for respondents 1 to 3 and Ms.N.Saskala for respondent Nos.4 to 7.

The petitioners are different in these writ petitions but the prayers are substantially same. The prayers in the writ petitions are as follows:

W.P.No.32478 of 2016

“.....this Hon'ble Court may be pleased to issue a Writ or order or direction more particularly one in the nature of WRIT OF CERTIORARI calling for the records pertaining to the Award No.3/GEN/2011 vide Ref No B/1505/2002 dated 16.05. 2011 made by the Respondents particularly Respondent No 3 and declare the same as illegal, arbitrary, erroneous, without following due procedure of law contemplated under the Land Acquisition Act, 1894 and further against Article 21 and 300-A of Constitution of India guaranteed to the petitioners and consequently quash the same in so far as the Petitioners extents of land Ac 0.61 cents in S.No.23/1, an extent of Ac 0.60 cents in S.No.1/9B, Ac.0.65 cents in S.No.1/7, Ac.0.47 cents in S.No.1/11 Ac 0.28 cents in S.No.23/1, Ac.0.78 cents in S.No.1/12 Ac.0.37 cents in S.No.42/5D, Ac.0.3 cents in S.No 43/1A, Ac.0.08 cents in S.No.11/9/B, Ac .0.52 cents in S.No.1/13 B, Ac.0.55 cents in S.No.11/1B, Ac.0.20 cents in S.No.11/2, Ac.0.86 cents in S.No.11/2 and Ac.1.26 cents in S.No.21/3 all the petitioners land are situated at Sanapalli Lanka, Ainavilli Mandal, East Godavari District and pass such other order

W.P.No.32507 of 2016

“.....this Hon'ble Court may be pleased to issue a Writ or order or direction more particularly one in the nature of WRIT OF CERTIORARI calling for the records pertaining to the Award

No.4/GEN/2011 vide Ref.No.B/3923/2001 dated 31.05.2011 made by the Respondents particularly Respondent No.3 and declare the same as illegal, arbitrary, erroneous, without following due procedure of law contemplated under the Land Acquisition Act, 1894 and further against Article 21 and 300-A of Constitution of India guaranteed to the petitioners and consequently quash the same in so far as the Petitioners extents of land Ac.0.27 cents in S.No.141/3B, Ac.0.40 cents in S.No.141/6B and Ac.0.40 cents in S.No.141/7/B, Ac.1.39 cents in S.No.182/3D, Ac.2.04 cents in S.No.216/1, Ac.0.18 cents in S.No.216/2C, Ac.0.37 cents in S.No.152/8A, Ac.0.05 cents in S.No.152/2B, Ac.0.15 cents in S.No.152/2B, Ac.0.08 in S.No.152/2F, Ac.0.15 cents in S.No.152/4D, Ac.0.31 cents in S.No.152/1B, Ac.0.16 cents in S.No.152/2F, Ac.0.23 cents in S.No.153/2B, Ac.0.53 cents in S.No.174D and Ac.0.66 cents in S.No.141/7B all the petitioners land are situated at Thotharamudi Village Ainavilli Mandal East Godavari District and pass such other order

The learned counsel appearing for the parties have referred to the pleadings in W.P.No.32507 of 2016 and have stated that reference to averments and contentions in this writ petition would be sufficient for disposing of both the writ petitions.

AVERMENTS IN W.P.No.32507 of 2016:

The petitioners are residents of Thotharamudi Village, Ainavilli Mandal, East Godavari District and owners of agricultural land in different survey numbers referred in the writ prayer. Respondent No.7 proposed for acquisition of agricultural land measuring Acs.42-47 Cts for laying New Broad-Gauge Railway Line (NBRL) between Kotipalli and Amalapuram. In the process of laying NBRL, the 3rd respondent, on 01.07.2003, issued Section 4(1) notification under the Land Acquisition Act, 1894 (for short 'the Act'). On 02.07.2003, the substance of the notification was

published in the locality. Section 4(1) notification dated 01.07.2003 refers to invoking the provisions under Section 17(1) & (2) of the Act. The enquiry under Section 5-A of the Act was dispensed with. The petitioners either admit or do not dispute receipt of notices under Sections 9(1) & (10), 9(3) & (10) of the Act. The award enquiry was fixed on 21.09.2003. It is alleged that 3rd respondent did not conduct Award enquiry properly and the valuation determined by 3rd respondent does not reflect the market value of the property acquired under Section 4(1) notification dated 01.07.2003. The 3rd respondent passed Award No.4/GEN/2001 vide Ref.No.B/3923/2001 dated 31.05.2011. It is contended that the Award impugned is bad in law, for no compensation is determined or paid to the fruit bearing trees which are in existence in the land under acquisition. Likewise, the compensation determined and paid to structures is vitiated and arbitrary. The petitioners refer to negotiations held for fixing the rate of compensation per acre at Rs.3 lakhs and to pass consent Award. Notwithstanding the amount offered during negotiations, the 3rd respondent fixed compensation at Rs.1,53,000/- per acre. The determination of compensation at Rs.1,53,000/- is nothing but illegal, arbitrary and violative of Article 300-A of the Constitution of India.

The petitioners contend that the invocation of power under Section 17 (1) & (2) of the Act is *prima facie* untenable and illegal. The urgency clause, in the manner invoked, is not justified in the facts and circumstances of the case. Therefore, the Award passed by dispensing with enquiry under Section 5-A of the Act is contrary to Article 300-A of the Constitution of India. The petitioners

submit that the 3rd respondent did not undertake enquiry and such lopsided approach is evident from non-payment of compensation to structures and trees in existence in the land under acquisition. Therefore, the Award is totally illegal and arbitrary. The 3rd respondent has not balanced the competing right/obligation of State to acquire the land under its eminent domain and the right of petitioners to receive compensation reflecting the market value of the property deprived the valuable rights of petitioners by such procedure. The possession claimed to have been taken on 26.09.2003 is denied. The petitioners claim to be in possession of land under acquisition and the revenue accounts are not changed in favour of respondents. Therefore, the petitioners pray for setting aside the Award impugned in the writ petition.

Respondent No.3 filed counter and a petition to vacate the *status quo* order dated 26.09.2016. The 3rd respondent states that the 7th respondent sent requisition for acquiring private lands in an extent of Acs.42-47 Cts in R.S.Nos.112/2B etc., of Thotharamudi Village and an extent of Ac.1-99 Cts of Government land for NBRL between Kotipalli and Amalapuram. The following are the dates of draft notification and draft declaration:

Draft notification:

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|----|-----------------------------------|--------------|
| 1. | E.G Extraordinary Gazette (No.80) | : 05.06.2003 |
| 2. | Paper publication | |
| | (a) Andhra Prabha (Telugu) | :01.07.2003 |
| | (b) The Hindu (English) | :02.07.2003 |
| 3. | Locality | :02.07.2003 |

Draft declaration:

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| 1. | E.G Extraordinary Gazette (No.80) | :06.06.2003 |
| 2. | Locality | :04.07.2003 |
| 3. | Paper publication | |
| (a) | Pledge (English) | :05.07.2003 |
| (b) | Andhra Bhoomi (Telugu) | :05.07.2003 |

Notices under Section 9(1) of the Act etc., were issued fixing the Award enquiry on 10.09.2003. On 26.09.2003, possession of the land under acquisition was taken and 80% of the compensation was paid to the petitioners herein under acknowledgement in Form CC. Thereafter, the land acquired was handed over to requisition department/railways on 25.09.2010. The 3rd respondent negotiated with the owners of the land under acquisition, including the petitioners for fixing the market value payable to the lands acquired under Section 4(1) notification dated 01.07.2003. It is stated that the negotiations with land owners were held to avoid reference under Section 18(2) of the Act. The 3rd respondent states that the land owners claimed the compensation at Rs.10 lakhs per acre and the counter offer of 3rd respondent was Rs.3 lakhs per acre. The requisition department was not willing to accept the price demanded by ryots or determined by the 3rd respondent, and insisted on passing Award so that the parties can work out their remedies before the Civil Court under Section 18 of the Act. The 3rd respondent passed Award No.4/GEN/2011 dated 31.05.2011 and served notices under Section 12(2) of the Act on all the land owners of Thotharamudi village. The 3rd respondent further alleges that petitioner Nos.1, 2, 3 and 10 objected to the compensation determined in the Award, and requested for reference under

Section 18 of the Act. On the request, the 3rd respondent referred the matter to Civil Court and the reference is numbered as LAOP 87/2013. An effort was made in the Mega Lokadalat held on 14.03.2015 for settlement of compensation payable to the land owners. Since no settlement could be arrived at, the matters are pending before the Civil Court for adjudication. The 3rd respondent objects on the maintainability of writ petition, more particularly the grievance against Award and the compensation determined therein cannot be the subject matter of a petition under Article 226 of the Constitution of India. Such of the petitioners who have sought reference will have to work out their claims in the LAOP pending before the Civil Court. The 3rd respondent justifies the public purpose of acquisition and also invocation of urgency clause under Section 17(1) & (2) of the Act. The 3rd respondent further states that passing Award on 31.05.2011 is not in breach of the mandate of Section 11-A of the Act and places reliance on *ALLAHABAD DEVELOPMENT AUTHORITY v. NASIRUZZAMAN AND OTHERS*¹. It is further stated that the petitioners never objected to the acquisition but were insisting upon payment of compensation at the rates suggested by them. In other words, the objection now raised by 3rd respondent is - the petitioners cannot challenge the Award or the acquisition proceedings. The 3rd respondent prays for dismissing the writ petition.

Fourth respondent filed counter affidavit and also a petition to vacate the interim order dated 26.09.2016. The counter affidavit of 4th respondent refers possession given to railways by the

¹ (1996) 6 SCC 424

3rd respondent and payment of 80% compensation to land owners. According to 4th respondent, possession of land under acquisition was taken from land owners on 26.09.2003 by paying 80% compensation and on 25.09.2010, possession was handed over to Railways. Railways claim to be in possession of the land under acquisition w.e.f., 25.09.2010. Railways categorically deny the possession of petitioners. It is further stated that 80% compensation was paid, possession taken over and delivered to Railways and the land under acquisition stood vested in the Railways. The petitioners never objected to the acquisition but were insisting on higher compensation. In other words, the objection now raised is - the petitioners could not have challenged the Award or the acquisition proceedings. The 4th respondent refers to a few circumstances to impress upon the necessity of acquisition, the benefits conferred on the locality, and refers that the *status quo* granted by this Court is hindering the implementation of NBRL.

Mr.C.Raghu incidentally takes up challenge to the land acquisition proceedings initiated through Section 4(1) notification dated 05.06.2003 while challenging the Award impugned in the writ petition. He contends that the draft declaration dated 05.07.2003 is vitiated and liable to be set aside. According to him, 02.07.2003 is the last of the dates of Section 4(1) notification, but in the case on hand, draft declaration No.81 dated 06.06.2003 was published in East Godavari Extraordinary Gazette. Therefore, once the draft declaration is held as vitiated, the proceedings initiated thereafter, including the impugned Award are liable to be declared as illegal and are set aside accordingly. He asserts that the possession of

land was not taken by 3rd respondent and likewise not handed over to Railways. The petitioners are cultivating the land under acquisition. According to him, dispensing with Section 5-A enquiry is liable to be set aside and the Award dated 31.05.2011 is contrary to Section 11-A of the Act. He further contends that in respect of the same project, the Railways are paying discriminatory compensation to the ryots whose land is acquired in the project i.e., so far as the petitioners are concerned compensation is paid under 1894 Act and compensation is paid to other land owners under Act 30/2013. Therefore, the procedure followed for acquiring the lands of petitioners is illegal, arbitrary and unconstitutional. He contends that the petitioners are not against the acquisition of land for NBRL, but the petitioners are insisting on payment of fair compensation under Act 30/2013.

Mr.Raghu for the propositions that the publication of Draft Declaration is vitiated, award is passed contrary to Section 11-A of the Act and dispensing with the enquiry under Section 5-A is vitiated etc., relies on the following decisions:

1. M.SOWBHAGYAMMA (DIED) v. LAND ACQUISITION OFFICER, HYDERABAD²
2. MOHMED ABDULLAH (DIED) v. LAND ACQUISITION (GENERAL) HYDERABAD³
3. COLLECTOR (DISTRICT MAGISTRATE) ALLAHABAD AND ANOTHER v. RAJA RAM JAISWAL⁴
4. UNION OF INDIA AND OTHERS v. KRISHANLAL ARNEJA AND OTHERS⁵
5. O.BALAJOJAMMA v. GOVT. OF AP AND OTHERS⁶

² 2004(1) ALD 287

³ 1998 0 SUPREME (AP) 408

⁴ (1985) 3 SCC 1

⁵ (2004) 8 SCC 453

6. STATE OF U.P AND OTHERS v. RAJIV GUPTA AND ANOTHER⁷
7. ROYAL ORCHID HOTELS LIMITED AND ANOTHER v. G.JAYARAMA REDDY AND OTHERS⁸
8. KHUB CHAND AND OTHER v. STATE OF RAJASTHAN AND OTHERS⁹
9. BHAVNAGAR UNIVERSITY v. PALITANA SUGAR MILL (P) LTD. AND OTHERS¹⁰
10. RAGHBIR SINGH SEHRAWAT v. STATE OF HARYANA AND OTHERS¹¹

He contends that the Award may be set aside and the 3rd respondent may be directed to continue the acquisition under Section 24 of Act 30/2013 and pay compensation to petitioners. The decisions relied on by the petitioners are distinguishable to the fact situation of this case and also the conduct of the petitioners. Therefore, this Court since is not examining the merits of the objections raised against draft declaration etc., those decisions are not adverted to.

The Assistant Government Pleader for land acquisition contends that the writ petition is liable to be dismissed on account of laches. In the case on hand, Section 4(1) notification was published in the Gazette on 05.06.2003, Award was passed on 31.05.2011 and notices under Section 12(2) of the Act were served on the petitioners. A few of the petitioners herein have sought reference to Civil Court under Section 18 of the Act and the petitioners, without disclosing that they have already availed

⁶ 2000(5) ALD 322

⁷ (1994) 5 SCC 686

⁸ (2011) 10 SCC 608

⁹ AIR 1967 SC 1074

¹⁰ (2003) 2 SCC 111

¹¹ (2012) 1 SCC 792

remedy, have filed the instant writ petition. The petitioners who have not availed the remedy under Section 18(2) of the Act, he contends that they can work out for enhanced compensation, as awarded by Civil Court on application under Section 28-A of the Act. He further contends that the petitioners challenge the Award and now expand the prayer to challenging the land acquisition proceedings initiated on 05.06.2003. According to him, at no point of time the petitioners objected to the acquisition *per se* and assuming without admitting that there is some procedural defect in the land acquisition proceedings, the petitioners by keeping quiet cannot now agitate on the legality of the acquisition proceedings initiated in the year 2003 and completed long back. To meet the contention raised under Section 11-A of the Act, he relies on the decision of the Apex Court in ALLAHABAD DEVELOPMENT AUTHORITY's case (1 supra) and contends that the petitioners since have allowed the land acquisition proceedings initiated under Section 17(1) & (2) read with Section 6 Declaration to become final, received 80% compensation, on 26.09.2003, possession from petitioners was taken and on 25.09.2010, possession was handed over to Railways.

The learned Standing Counsel for Railways submits that the challenge to Award after five years from the date of passing the Award is vitiated by laches and the writ petition is not maintainable. The petitioners have acquiesced in the subject land acquisition proceedings but also have received 80% of the compensation without demur. Therefore, the objections now raised either against the land acquisition proceedings or against the Award are

unavailable and this Court in exercise of its jurisdiction under Article 226 of the Constitution of India ought not to reopen the issues which are settled long ago. She further contends that the petitioners, if have objected to the proceedings taken up at any one of the stages from 05.06.2003 up to 31.05.2011, the objections would have been tested within four corners of law and/or alternatively timely steps as are warranted could have been taken. The petitioners ought not to compare payment of compensation between new and old enactment. She lay emphasis on the work stopped by the contractor at site which is resulting in huge loss and also that when the issue of compensation is pending before the Civil Court, the parties can work out the remedies in accordance with law. She prays for dismissing the writ petition.

I have perused the record and noted the submissions made by all the counsel appearing for the parties.

The following point arises for consideration:

“whether the petitioners are entitled to the relief of declaring that the land acquisition proceedings initiated through Section 4(1) notification together with Award No.4/GEN/2001 dated 31.05.2011, as illegal, arbitrary and unconstitutional”?

POINT:-

The writ prayer challenges Award No.4/GEN/2001 dated 31.05.2011. The ground of challenge against impugned award is that the enquiry conducted by 3rd respondent under Sections 9 to 11 is lopsided and all the aspects which have bearing on the determination of compensation are not adverted to or a decision

taken by 3rd respondent. The petitioners claim compensation for structures, trees and higher rate for the lands acquired by 3rd and 4th respondents. The claim for higher compensation is seized by the Civil Court and this Court is of the view that if the Award failed to determine compensation in accordance with Section 23 of the Act, the Award is not set aside under Article 226 of the Constitution of India, are matters for proof before Civil Court. The legal ground raised against Award No.4/GEN/2001 dated 31.05.2011 is that the Award is contrary to Section 11-A of the Act. Therefore, the Award is null and void. The petitioners raise the contention on the premise that possession of land is still with the petitioners and Award is required to be passed within two years from the date of draft declaration. The case of respondent Nos.3 and 4 is that 80% of compensation determined by 3rd respondent was paid to all the land owners, including the petitioners. The compensation was received without protest. On 25.09.2003, possession of land under acquisition was taken, retained with respondent No.3 up to 25.09.2010, on which date possession was handed over to Railways. The petitioners refer to cultivation of the land under acquisition. This Court *prima facie* is of the view that the petitioners are the owners of land acquired through Section 4(1) notification dated 01.07.2003 and also balance of extents, if any, in the same survey numbers. The Railways if has not objected to or for that matter Land Acquisition Officer did not object to cultivation undertaken by the owners, the cultivation ought not to be understood as possession taken under the Act and payment of 80% compensation is erased. These isolated acts after receiving compensation ought

not to be understood as dislodging the possession claimed by respondents. In the case on hand, the 3rd respondent invoked Section 17(1) & (2) of the Act for acquiring the subject lands. The applicability of time stipulated for passing Award under Section 11-A of the Act was considered by the Supreme Court in ALLAHABAD DEVELOPMENT AUTHORITY's case (1 supra), which held thus:

"The question that arises for consideration is whether the High Court was right in passing the order dated 15.12.1993 and the order dated 29.1.1990 declaring that the acquisition proceedings by operation of Section 11-A, as amended by Act 68 of 1984, stood lapsed and direction given for delivery of possession to the respondents would be in accordance with law? The controversy is no longer res integra. In Lt. Governor of H.P. v. Avinash Sharma (1970)2 SCC 149 this Court had laid down that once the lands stood vested in the State free from all encumbrances there is no question of divesting the land and revesting the land in the erstwhile owners. The only right the erstwhile owner has is as to the determination of compensation in accordance with the provisions of the Act. In view of the fact that there was inordinate delay in passing the award after the declaration under Section 6(1) was published, Parliament in the Amendment Act introduced Section 11-A and directed that the Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. Under the proviso, it was said that where the declaration has been published before the commencement of the Amendment Act, the award shall be made within a period of two years from the commencement of the Amendment Act. In the impugned judgment, it would appear that the learned Judges asked the counsel to verify whether the award came to be made within two years, as indicated. The counsel on verification had stated that the award was not made within two years from the commencement of the Amendment Act, namely, 24.9.1984. Consequently, the declaration was given that the notification under Section 4(1) and the declaration under Section 6 stood

lapsed. This question was examined by this Court in *Satendra Prasad Jain v. State of U.P* (1993) 4 SCC 369 and *Awadh Bihari Yadav v. State of Bihar* (1995) 6 SCC 31) and held that Section 11-A does not apply to cases of acquisitions under Section 17 where possession was already taken and the land stood vested in the State. The notification under Section 4(1) and declaration under Section 6 do not lapse due to failure to make an award within two years from the date of the declaration. The view of the High Court is erroneous in law” *(emphasis added)*.

Keeping in view the ratio laid down by the Apex Court in the decision referred to above, this Court is not persuaded to accept the objection raised against the Award as contravening Section 11-A of the Act and accordingly the objection is rejected.

Mr. Raghu contends that the 3rd respondent issued Section 4(1) notification in East Godavari Extraordinary Gazette on 05.06.2003 invoking the powers under Section 17(1) & (2). On 02.07.2003, paper publication of Section 4(1) notification was made. The 3rd respondent even before the last of the dates under Section 4(1) expires, issued draft declaration on 02.07.2003. Therefore, the draft declaration is vitiated and consequently the land acquisition proceedings are liable to be declared as illegal. As already noted, these grounds are raised while challenging the Award dated 31.05.2011. It is correct to observe that at no stage of acquisition proceedings, the objection was raised.

On 22.09.2016, the petitioners filed writ petition. There is no material placed by petitioners evidencing that the petitioners at any point of time objected to any of the procedural deviations now pointed against the subject acquisition

proceedings initiated by 3rd respondent. The conduct of petitioners is to be appreciated from the equitable doctrine of acquiescence. The word 'acquiesce' means to give silent or passive assent to; to tacitly agree to; resting satisfied with any state of things and 'acquiescence' means a resting satisfied with or submission to an existing state of things. The term implies both knowledge and power to contract on the part of the person acquiescing. Acquiescence is the common element in a somewhat indefinite group of equitable estoppels, constituted by the fact that the person entitled has, as it said "slept upon his rights," and bias conduct at the time of a breach of them, or subsequently thereto, has, with full knowledge, both of his own rights and of the acts which infringed them, led that person responsible for the infringement to believe that he has waived or abandoned his rights. The term 'laches' "acquiescence" "standing by" and delay are frequently associated together, and they do not appear to be capable of distinct definitions. A learned single Judge of Himachal Pradesh in KRISHNA DEV V. RAM PIARI¹² held that the word 'acquiescence' is used to denote conduct, which is evidenced of an intention of a party to abandon an equitable right and also to denote conduct through which another party will be justified in inferring such an intention. There are two situations which establish acquiescence. The first situation would be when a person abstains from interfering while his legal rights were being violated and the second situation would be where a person initially had no knowledge of his right being violated, but later discovered the

¹² AIR 1964 HP 34, 37

violation and still refrained from seeking redressal at the earliest point of time.

Draft notification is dated 05.06.2003 and draft declaration is dated 06.06.2003. In the case on hand, the petitioners in the year 2003 received 80% of the compensation determined by respondent No.3 and thereafter negotiated for higher compensation. Therefore, the petitioners have for all purposes acquiesced in the acquisition proceedings and now Act 30/2013 ought not to be a source for reopening the settled proceedings. The challenge to dispensing with enquiry under Section 5-A and also the publication of draft declaration on 05.07.2003 is unavailable and rejected. A few of the petitioners have asked for reference to Civil Court under Section 18 of the Act and others have accepted the Award. In the case on hand, as is evident from Section 4(1) notification filed by respondent No.3, the respondents acquired as much as 42 acres from 100 ryots. A few of the petitioners after consenting to steps or proceedings initiated by respondent No.3 now pray for setting aside the Award and also Section 4(1) notification dated 01.07.2003. This Court is not persuaded to interdict at this point of time, for the acquisition proceedings are already concluded.

Mr. Raghu during and in the course of his submissions contended that the petitioners are interested in receiving compensation under Act 30/2003 and, therefore, the challenge to Award is made. This Court after taking note of the totality of circumstances is unable to accept the challenge raised by the petitioners. The acquisition proceedings are completed, and,

therefore, the issue cannot be reopened only to facilitate petitioners receiving compensation under Act 30/2013. The prayers in both the writ petitions fail. Point is answered against the petitioners and in favour of respondents.

The writ petitions are, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending stand closed.

S.V.BHATT, J

01st May, 2018
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