

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.27354 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners requesting to issue a Writ of Mandamus declaring the proceedings, dated 23.06.1997, issued by the 1st respondent in Ref.No.APIIC/EG/SA/27/96, under Section 4(1) of the Land Acquisition Act, 1894 [‘the Act’, for short] and also the notice, dated 28.09.2007 issued in Form 5-A of the said Act for acquisition of the land of the petitioners admeasuring Ac.0.41 cents situated in Sy.No.277/1 at Gummalladoddi Village of Gokavaram Mandal as null & void, arbitrary and unreasonable as the same are contrary to the relevant provisions of the Act and are violative of Articles 14, 21 and 300-A of the Constitution of India and also the order of this Court, dated 24.01.2007, in WP.No.20018 of 1997.

2. I have heard the submissions of Sri Rajamalla Reddy, learned counsel appearing for the writ petitioners, and of the learned Government Pleader for Land Acquisition appearing for the respondents 1 & 2. Respondent No.3 is the beneficiary of the proposed acquisition. I have perused the material record.

3. The facts that are necessary to be stated as a prelude to this order, in brief, are as follows:

Notification under Section 4(1) of the Act was issued, on 23.06.1997, proposing to acquire the subject land of the petitioners for the development of industrial area by the Andhra Pradesh Industrial Infrastructure Corporation Limited, that is, the 3rd respondent. A perusal of the said notification shows

that the Government had invoked urgency clause under Section 17(4) of the Act and enquiry under Section 5-A of the Act was dispensed with. Raising various contentions, the petitioners earlier approached this Court and filed W.P.No.20018 of 1997. In the said writ petition, it was, *inter alia*, contended that no declaration under Section 6 of the Act was published in local dailies as required under the Act. In the said writ petition, the petitioners contended that they are small farmers and that except the subject lands, they have no other lands, and that the subject lands are the only sources of livelihood for them and their families and that they are dependant upon the income from their said lands and that they would be able to bring to the notice of the authority concerned the necessary facts and their difficulties, if only an enquiry under Section 5-A of the Act is conducted. In WP.No.20018 of 1997, this Court ordered Rule Nisi and directed the counter to be filed. However, even after long lapse of time, no counter is filed. In that view of the matter as there was no material contradicting the contentions of the writ petitioners, this Court allowed the said writ petition accepting the contention that no declaration under Section 6 of the Act was published in the local dailies and had accordingly set aside the declaration under Section 6 of the Act and disposed of the said Writ Petition directing the respondents to conduct an enquiry under Section 5-A of the Act in case the land is still required to be acquired for the desired purpose or any other purpose. Thereafter the impugned Form 5-A draft declaration was issued. Complaining that the same was issued without following the orders of this Court in the afore-stated writ petition and also the provisions of the Act, the petitioners filed this writ petition.

4. In this writ petition also, the petitioners reiterated the contentions in the earlier writ petition.

5. This Court, on 20.12.2007, admitted the writ petition and granted the following interim order : - **‘There shall be interim stay of dispossession as prayed for’.**

6. Thereafter the Government/respondents 1 & 2 have filed WVMP.No.486 of 2007 requesting to vacate the afore-said interim order; and, the 3rd respondent filed WVMP(SR).No.40832 of 2010.

7. The case of the respondents herein, in brief, is this: - ‘In the matter of acquisition of the land of the petitioners, for the purpose stated, the procedure contemplated under law is duly followed. The State is competent to exercise the said powers as the land is required for the purpose of development of Industrial Area, which is a public purpose. The acquisition was proposed in tune with the avowed policy of the State viz. promoting industrial sector as it would result in generation of revenue besides provision of employment (direct & indirect) to several persons. The writ petitioners’ earlier writ petition was disposed of directing to conduct a 5-A enquiry. The present writ petition is, therefore, barred by the principle enshrined in the doctrine of *res judicata*. Section 6 declaration was published in Gazette no.15/97, on 23.07.1997, and also in the Prajasakthi daily, on 19.07.1997, and in the Indian Express, on 20.07.1997, and in the locality, on 15.07.1997. The allegations that no publication was made is, therefore, not correct. It is not possible to exclude the land from the acquisition. The writ petition is, therefore, liable to be dismissed and the interim order is liable to be vacated.’

8. It is pertinent to note that this Court heard and disposed of the vacate petition filed by the respondents 1 & 2 herein by an order, dated 12.09.2011. It is profitable to note that at the time of hearing of the said vacate petition, the record related to the acquisition of the subject land was produced before this Court and this Court, having had the advantage of perusing the said record, found that the record does not contain any order passed by the competent authority under Section 5-A of the Act. However, the learned Government Pleader contended that since no objections are filed by the petitioners, no order was passed by the respondents. This Court did not accept the said contention, as such a contention cannot be countenanced in view of the fact that if objections are not filed by the petitioners, it is for the authority concerned to bring it to the notice of the higher authority, who is the competent authority, and it is for the said authority to pass an appropriate order and that the same was not done in this case. Accordingly, the interim order is being continued.

9. Despite the orders of this Court, dated 24.01.2007, no enquiry was conducted and no order as envisaged under Section 5-A was passed before issuing the impugned notification/draft declaration in Form 5-A. Further, in this writ petition this Court only granted orders not to dispossess the petitioners; and, the said order did not prevent the respondents from proceeding with the other procedural requirements in the direction of finalization of the proceedings related to the acquisition of the subject land, except taking possession of the subject land. However, no further steps have been taken and, as rightly contended by the learned counsel for the petitioners, it is possible to hold that the acquisition lapsed in view of the provisions in

Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

10. Further, the contention that the petitioners did not raise objections also cannot be countenanced because they had earlier approached this Court and filed a writ petition stating all their objections therein and as the Government/respondents herein are aware of the said objections of the petitioners.

11. It is pertinent to note that Sub-Section (2) of Section 5A of the Act makes it obligatory on the Collector to give an objector or the land owner an opportunity of being heard and that after the hearing of the objections and making further inquiry, he has to make a report to the appropriate Government containing his recommendations on the objections. The hearing contemplated under the said provision of law is necessary to enable the Collector to effectively deal with the objections raised against the proposed acquisition and to make a report. The enquiry and the report of the Collector are not empty formalities, as the Collector is required, by his report, to notify the appropriate Government his recommendations. It is only upon receipt of the said report that the Government can take a final decision on the objections and make a declaration under Section 6 of the Act. At the hearing, the objector can make an effort to convince the Land Acquisition Officer to make recommendations against the acquisition; and, the objector can produce evidence to show that his land is not suited or is liable for acquisition and that a suitable piece of Government land is available in the village or in the vicinity and that the same can be utilized for the desired project or scheme. Therefore, the Collector is

required to give an opportunity of hearing to the objectors and objectively consider their pleas against the acquisition of their lands. Only thereafter, the Collector should make recommendations supported by brief reasons as to whether the land proposed should be acquired or not and whether or not the plea put forward by the objectors merits acceptance or not. Thus, the right to file objections is an important right; and, the hearing contemplated under the provision of law must be effective; and, it is not an empty formality. Any recommendation made by the Collector, without duly providing an opportunity to file objections and without providing an opportunity of effective hearing will denude the decision of the appropriate Government of statutory finality, is the settled legal position.

12. Therefore, in the considered view of this Court, this is not a case where the respondents can be heard to say that the petitioners have not raised any objections, and, therefore, there is no need to conduct an enquiry or to pass any order by the Land Acquisition Collector. Since no enquiry as contemplated under Section 5-A of the Act was conducted despite the orders of this Court and as the decision of the Government stands denuded of statutory finality in the absence of such an exercise by the Collector, it follows that the writ petition is to be allowed.

13. On the above analysis, this Court finds that the writ petition deserves to be allowed.

14. Accordingly, the Writ Petition is allowed. . It is needless to observe that if the Government are still desirous of acquiring the subject land of the petitioner, in future, either for the originally intended purpose or for any other

purpose, this order shall not preclude the Government from doing so by following the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

28.08.2018

Vjl

