

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 20959 of 2008

ORDER :

The Writ Petition is filed challenging the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') which proposed to acquire the wet land belonging to the petitioners, in an extent of Acs.2.00 and Ac.1.00 in Survey Nos. 87/6C and 87/6B respectively situated at Atchampet Panchayat, Koppavaram Village, Samalkot Mandal, East Godavari District for the purpose of providing house sites to the weaker sections under Phase-III Indiramma Programme.

Among the other, the principal ground urged in the Writ Petition is that the enquiry as contemplated under Section 5-A of the Act, preceding issuance of declaration under Section 6 is to be conducted by the District Collector but not his delegate, in terms of Section 3(c) of the Act. Learned counsel for the petitioners has placed on record the judgments of this Court in Writ Petitions No.13207 of 2007, 234 of 2008, 7326, 8689 and 9302 of 2009 and 3016 of 2001, to support his contention that delegation of functions of the Collector is not proper and the land Acquisition proceedings are vitiated on that ground itself.

Learned Government Pleader for Land Acquisition (Andhra Pradesh) has placed on record the written instructions received from the Revenue Divisional Officer, Kakinada, wherein it was stated that the subject land was proposed for acquisition and at the stage of award inquiry, the land owners filed the Writ Petition and obtained the order of stay, hence, further land acquisition proceedings could not be taken up and the subject land is in the

possession of the land owners. It was further stated that the fresh acquisition proceedings would be initiated under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, if the land is still required to provide house sites to poor families, as and when instructions are received from the government.

Admittedly, a perusal of the impugned notification discloses that the District Collector, under Section 3(c) of the Act, had delegated the Revenue Divisional Officer, Kakinada to perform the functions of the Collector under Section 5(A) of the Act, which, according to the petitioners is impermissible. In Writ Petition No. 3016 of 2001, my learned Brother Justice C.V. Nagarjuna Reddy had dealt with the issue in question, in detail, as under:

“ As regards the second contention, namely, that the District Collector has no power to appoint the Special Deputy Collector (Land Acquisition), A.P.I.I.C., Section 3(c) of the Act defines “Collector” as the Collector of a district and includes a Deputy Commissioner and an officer specially appointed by the appropriate Government to perform the functions of a Collector under the Act. Under Section 5-A(2) of the Act, every objection filed under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf. The expression “Collector” found in this provision shall be read in the light of the definition of “Collector” under Section 3(c) of the Act. So read, the said expression has to be understood as the District Collector or a Deputy Commissioner and any other officer specially appointed by the appropriate Government to perform the functions of a Collector. In the impugned notification, it is stated that the District Collector appointed Special Deputy Collector (Land Acquisition), A.P.I.I.C. to perform the functions of the Collector. Such a power is not conferred on the District Collector. Under Section 3(c) of the Act it is only the appropriate Government, which is empowered to delegate the powers of the Collector to a functionary other than the District Collector. Thus, even if a Special Deputy Collector is intended to be

the Collector, it is only the State Government which can delegate such power to him and not the District Collector”

In view of the above, since in terms of Section 3(c) of the Act, the Collector is not authorized to appoint another officer to discharge the functions of a District Collector, the impugned notification is liable to be set aside, outright.

Further, as seen from the written instructions, the Award pursuant to the subject notification was not passed and the land acquisition proceedings came to a stand still on account of the order of stay obtained by the petitioners and that there is no possibility of carrying out further proceedings under the 1894 Act, in terms of Sections 8 and 9 and passing an Award in terms of Section 11. In that view of the matter, and also taking into consideration the submission made by the 2nd respondent that if the land is needed for the purpose of providing house sites in future, they would take necessary steps in terms of the 2013 Act, the impugned notification is liable to be set aside.

The Writ Petition is therefore, allowed setting aside the notification issued under Section 4(1) of the 1894 Act, dated 23.06.2018. No costs.

Consequently, the Miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

20th November 2018

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