

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.4032 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief/s:

‘..to issue a writ of Mandamus, or any other appropriate writ, order or direction, declaring the notifications issued under Section 4(1) and Section 6 of the Land Acquisition Act, which were published on 06.01.2007 and 24.02.2007 respectively, for acquiring an extent of Ac.2.31 cents situated in Sy.No.54/1, Gudavalli Village, Vijayawada Rural Mandal, Krishna District is illegal, arbitrary and unconstitutional and pass such other or further orders.’

2. I have heard the submissions of the learned counsel appearing for the petitioners and of the learned Government Pleader for Land Acquisition appearing for the respondents. I have perused the material record.

3. The case of the petitioners is this:

The 1st respondent-District Collector, Krishna District issued a Notification under Section 4(1) of the Land Acquisition Act, 1894, for acquisition of land of an extent of Ac.2.31 cents in Sy.No.54/1 of Gudavalli village, stating that the said land is required for providing house sites to persons of weaker sections. However, having seen the Notification under Section 6 of the Act published in ‘Andhra Jyothi’, daily edition of Vijayawada, the petitioners approached the Revenue Divisional Officer and made enquiries and came to know that the Notification under Section 4(1) of the Act was already

issued on 06.01.2007 and that the same was published on the even date in 'Vaartha' daily, Vijayawada edition. In the said Notification, the name of Komma Ranga Rao was shown as pattadar and occupier of the said land. The petitioners were also informed that an enquiry under Section 5-A of the Act was also conducted. The petitioners 1, 2 & 4 have purchased a total extent of Ac.2.75 cents of Gudavalli village from Musunuri Lakshminarayana and others under registered sale deeds dated 08.06.1999 for valuable consideration and that thereafter, the Tahasildar, Vijayawada Rural had issued pattadar passbooks to the petitioners 1 to 4, on 27.04.2000. The fact of purchase of the lands in Sy.no.54/1 of the said village is thus borne out by the said passbooks. The fact that the petitioners are the pattadars of the said land is also reflected in the latest Adangal copy that was issued by the Panchayat Secretary, on 25.01.2007. The said documents establish that the above said land is the self-acquired property of all the petitioners and that they are in possession and enjoyment of the same since the date of the said purchase. However, the Notification was issued by showing the name of Komma Ranga Rao against Ac.2.31 cents of land in Sy.no.54/1 of the said village though he has no right, title and interest in the said land and he died on 29.03.2004. Since the Notification under Section 4(1) was issued in the name of such a dead person, who has no right, title and interest in the property, the said Notification was illegal and invalid. The enquiry under Section 5-A said to have been conducted pursuant to the said Notification is also vitiated, as the Notification under Section 4(1) is not a Notification in the eye of law and as all the consequential proceedings become illegal. The 2nd respondent has no jurisdiction to conduct enquiry as the Notification under Section 4(1) was issued by the District Collector. Earlier, a

Notification under Section 4(1) of the Act was issued to acquire land in an extent of Ac.2.55 cents of the same village said to be belonging to P.M.Samuel for the purpose of providing house sites to the people of weaker sections. And, however, the said proposal was dropped on the political pressure that was brought upon the officials by the said person. Thereafter, the subject Notification was issued. The lands in Sy.nos.61, 61/1, 2, 3 & 4, 60, 60/3, 44/1, 2, & 3 and 45/1 & 3 of N.Tayaramma and others are situated in close proximity to the existing Harizanwada and the said lands are more suited for the purpose of providing house sites to the people of weaker sections. The subject lands are not suited for acquisition for the desired purpose. There are Government lands available for acquisition. Acquisition of private lands when such Government land is available is contrary to the instructions and policy of the Government. Agricultural lands cannot be acquired for providing house sites. The present acquisition exercise, which is not *bona fide*, is liable to be set aside.

4. Learned Government Pleader while inviting the attention of this Court to the contents of the counter filed by the Sub-Collector & Land Acquisition Officer concerned wherein the chronology of events which lead to the filing of the writ petition are stated, submitted as follows: - ‘The material averments in the writ petition are false. Government started housing programme under ‘Indiramma Housing Scheme’ to provide house sites to the members of weaker section in view of the policy decision to develop model villages & Towns by providing basic infrastructure facilities and undertaking welfare measures. As the land of an extent of Ac.2.37 cents in R.S.no.54/1 and 56/2, which is adjacent to the village was found suited for acquisition for the desired purpose,

a Notification under Section 4(1) of the Act was issued, on 06.01.2007. Notice in Form – 3 under Section 5-A of the Act was issued on 06.01.2007 and it was served on the petitioners requiring them to attend the enquiry to be held by the RDO on 22.01.2007. Thus, notices were sent to the land holders to attend enquiry under Section 5-A of the Act. The petitioners attended the enquiry on that day and filed objections. After enquiring into the objections, the RDO had submitted a report to the Collector. The Collector rejected the objections and communicated his proceedings to the petitioners. At that stage, the petitioners approached this Court and obtained the interim orders. Musunuri Subrahmanyam, the legal heir of Musunuri Suryanarayana Sastry, whose land in an extent of Ac.0.006 cents in R.S.no.56/2 was acquired, had attended the enquiry and stated no objection. The remaining land holders, who have got major extents, did not attend the said enquiry and had not filed any objections. The Draft declaration under Section 6 of the Act was approved by the Collector and was published in various vernacular daily newspapers, on 19.02.2007 and 24.02.2007. The petitioners were issued pattadar passbooks is not in dispute. However, no changes were effected in revenue records. Hence, Section 4(1) Notification was published as per Village Account no.3 (Adangal). The wife of Komma Ranga Rao refused to receive the notice and failed to attend the enquiry. In the draft declaration, names of Komma Srinivasa Rao (1st writ petitioner) and others were mentioned in respect of land of an extent of Ac.2.31 cents in R.S.no.54/1 of Gudawalli village and the remaining extent was notified in the name of Musunuri Subrahmanyam in the said declaration, which was published as per the provisions of the Act. There is no Government land available in the village for grant of house sites to weaker sections.

Compensation will be paid to the person who is entitled to the extent of land, which was acquired. The 4(1) Notification is valid in the eye of law. Notices under Sections 9(1) and 10 of the Act were published in all Government Offices as required. The names of the writ petitioners were noted in the said notices. The Award enquiry was conducted, on 12.03.2007. The lands of others which are mentioned by the petitioners are far away from the village and are not suited for the purpose of providing house sites. Since no Government land is available, the land proposed was acquired. The due procedure was followed. The proceedings so far taken in respect of the acquired land are legal.'

4. At this stage it is apt to note that this Court admitted the writ petition on, 01.03.2007, and granted interim stay of all further proceedings including dispossession of the petitioners from the subject land. Be it also noted that during the course of hearing, it is submitted that as per Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Act 30/2013], if the land acquisition proceedings which were initiated under the Land Acquisition Act, 1894, do not culminate in an Award under Section 11 of the said Act, within the statutory time, all the provisions of the Act 30 of 2013 relating to the determination of the compensation shall apply. Be that as it may.

5. It is undisputed that a notification was issued proposing to acquire the lands for providing house sites to the persons of weaker sections of the society and that in that notification in so far as the subject land, the name of a dead person was shown and that the Land Acquisition Officer concerned proceeded

further in the matter notwithstanding the said fact. It is the specific case of the petitioners that the petitioners are the owners and possessors of the subject land having purchased the same under regular registered sale deed and that they were issued pattadar passbooks and that the copy of the latest Adangal issued by the Panchayat Secretary and the pass books issued to them reflect that they are the owners and possessors of the subject land and that they came to know about the acquisition of their land only after seeing the Notification under Section 6 of the Act published in newspapers, on 24.02.2007, and that by that time, 5-A enquiry was also held pursuant to the Notification under Section 4(1) of the Act issued by mentioning the name of a dead person. The Government does not dispute the ownership and possession of the petitioners over the subject land and the issuance of pass books to them, but contends that basing on the entries in no.3 village account, the Notification was issued. The respondents fairly admit that Musunuri Subrahmanyam, the legal heir of Musunuri Suryanarayana Sastry, who has land in an extent of Ac.0.006 cents in R.S.no.56/2, had attended the enquiry and stated no objection and that the remaining land holders, who have got major extents, did not attend the said enquiry and had not filed any objections and that the wife of Komma Ranga Rao, having refused to receive the notice, has not attended the enquiry held under Section 5-A of the Act. It is therefore, obvious that the person whose name is shown in the notification in respect of the subject land is dead by the date of the Notification and that he has no right, title and interest whatsoever over the said property. Therefore, the petitioners further submit that they are deprived of their valuable right to file objections and to participate in the enquiry contemplated under section 5 A of the Land Acquisition Act, 1894, as

the name of a dead person was shown in the notification. They also submit that the enquiry under Section 5-A was allegedly held pursuant to such invalid notification without an opportunity to them, who are the rightful owners and possessors, to file objections and participate in the enquiry and that, therefore, no enquiry, much less an effective enquiry as contemplated was held under Section 5 of the Act. Though in the later proceedings, that is, in the declaration under Section 6 and in the subsequent notices under Sections 9(1) and 10 of the Act, the names of the writ petitioners were said to have been mentioned, it is undisputed that the petitioners are not aware of the Notification under Section 4(1) of the Act and the enquiry under Section 5-A of the Act, till the Notification under Section 6(1) of the Act was published in the newspapers. What is to be noted is that, unless the enquiry under section 5 A of the Act is dispensed with by invoking the relevant provision of Section 17 of the Act, the land owners or the objectors are entitled to file objections at the time of enquiry under section 5A of the Act and avail the opportunity of personal hearing. 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. Therefore, as the names of the petitioners, who are the owners and possessors of the subject land do not find place in the notification under Section 4(1) of the Act and as the name of a dead person was only mentioned in the said Notification and as the petitioners were denied an opportunity to file their objections due to non service of notices at the stage of enquiry under Section 5-A of the Act and were also denied an opportunity of personal hearing at the time of enquiry under the said Section 5-A of the Act, it follows that the notification issued under Section

4(1) and the notification under Section 6 of the Land Acquisition Act, which was published in respect of acquisition of land of an extent of Ac.2.31 cents situated in Sy.No.54/1, Gudavalli Village, Vijayawada Rural Mandal, Krishna District, are liable to set aside being invalid, illegal and contrary to statutory mandate & violative of Article 300 A of the Constitution of India. This view of this Court finds support from the decision in **IIS Employees' House Building Coop. Society Ltd. v/s. State of Karnataka and others**¹.

6. In the result, the Writ Petition is allowed as prayed for. 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

20.08.2018

Vjl

¹ (2005) 12 SCC 483]