

**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**WRIT PETITION No.5676 OF 2007**

**ORDER:**

This Writ Petition is filed seeking to issue a Writ of Mandamus declaring the notification issued under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') published on 03.03.2006 and draft declaration under Section 6 of the Act and consequential award as illegal, arbitrary and without jurisdiction.

Brief facts of the case are that the first respondent had issued notification under Section 4 (1) of the Act proposing to acquire the lands to an extent of Acs.28.62 cents in Konduru Village, Tada Mandal, Nellore District. Notices in Form-III were issued to all the notified enjoyers and pattedars. After conducting enquiry under Section 5-A of the Act on 09.08.2006 in the office of Mandal Revenue Officer, Tada, and after due publication of notices under Sections 9 (1) and 10 of the Act on the persons concerned, compulsory award was passed vide Award No.33/2006 dated 23.12.2006 in respect of lands to the extent of Acs.11.30 and consent award was passed vide Award No.32/2006-07 dated 23.12.2006 in respect of the remaining extents. Notices under Section 12 (2) of the Act were served and compensation was paid to the land owners. The possession of the land was also handed over to the requisition department i.e. APIIC Limited, Nellore, on 06.01.2007.

Sri Chandra Mouli, learned counsel for the petitioner, submits that the petitioner's land to an extent of Ac.0.09 cents in 102/18, Ac.0.14 cents in survey No.102/19 was not notified in the notification issued under Section 4 (1) of the Act, which was

published on 03.03.2006. Hence, the petitioner was not aware of the acquisition of his lands. But, however, he received notice in Form-III dated 04.03.2006 in first week of April, 2006, in respect of the land in survey Nos.102/18 and 102/19 from the Revenue Divisional Officer, Gudur. Pursuant to the same, the petitioner submitted his objection with regard to way to reach his other lands along with rough sketch of the acquired land and the remaining land. The proposed acquisition would cut off the approach to his other lands in survey Nos.130/5 to 130/80. Since the petitioner was not informed about further enquiry, he filed a petition on 06.11.2006. Thereafter, the petitioner received notice dated 23.12.2006 under Section 12 (2) of the Act on 18.01.2007 stating that award has been passed in respect of the land in survey Nos.102/18 and 102/19, however the details of date of the award and number of the award were not mentioned therein. Petitioner approached the second respondent and enquired as to why the land was acquired without leaving a way of approach to the land in survey No.130. The land of the petitioner in survey Nos.102/18 and 102/19 was not mentioned in the notification dated 03.03.2006, however they were mentioned in draft declaration dated 30.04.2006 without publishing any errata to notification, which is impermissible under the provisions of the Act. He would further state that during second week of January, the officer of the Special Collector Office, distributed cheques and obtained signatures in the village. The petitioner was also given cheque dated 28.01.2006 for Rs.38,466/-, but he refused to receive the cheque stating that he had objection for the acquisition. Petitioner filed a petition on 19.02.2007 before the Sub-Collector, but no

reply was given for the same. The subject lands are admittedly agricultural lands and they are sought to be acquired for undisclosed public purpose without converting the land use as required under Section 3 of the Andhra Pradesh Agricultural Land (Conversion For Non-Agricultural Purposes) Act, 2006.

The Revenue Divisional Officer, Naidupeta, SPSR Nellore District, filed counter affidavit stating that on receiving requisition from the APIIC Limited, Nellore, notification under Section 4 (1) of the Act was issued proposing to acquire the land to an extent of Acs.28.62 cents in survey No.102/1, etc. of Konduru Village of Tada Mandal. The substance of the notification has been published on 03.03.2006 duly mentioning that the acquisition of lands was for the purpose of establishing Industrial Park to APIIC Limited, Nellore. Out of the total extent of Acs.28.62 cents, land of the petitioner admeasuring Ac.0.09 cents in survey No.102/18 and Ac.0.14 cents in survey No.102/19 were included. Denying the contention of the petitioner that as the land in survey No.102/18 and 102/19 was not notified in notification under Section 4 (1) of the Act, the said land cannot be acquired, it is stated that notifying the lands in declaration under Section 6 of the Act itself is sufficient for acquisition. It is averred that part of the petitioner's land, which was not notified, was also included in the requisition submitted by the APIIC Limited. The said lands were not identified and therefore the lands admeasuring Ac.0.13 cents in survey No.130/5, Ac.0.18 cents in survey No.130/6, Ac.0.20 cents in survey No.130/7 and Ac.0.10 cents in survey No.130/8 and other adjacent lands will be notified under Section 4 (1) of the Act for the purpose of establishing Industrial Park. Notices in Form-III were

issued to the notified enjoyers and pattedars. The petitioner ought to have filed objection for acquisition of his land under Section 5-A of the Act without filing objection petition. After taking compensation for the land acquired from him, the petitioner approached this Court. The award enquiry was conducted on 09.08.2006 and award was passed after issuance and service of notices under Sections 9 (1) and 10 of the Act. Award under Section 11 (1) of the Act was passed on 23.12.2006 vide Award No.33/2006 and consent award under Section 11 (2) of the Act was passed on the same day vide Award No.32/2006-07. The petitioner's land was included in award No.33/2006, notice of award under Section 12 (2) of the Act was sent to the petitioner. Petitioner received compensation amount of Rs.38,466/- vide cheque bearing No.899459 and possession of the land was also handed over to the requisition department on 06.01.2007. Since the award was already passed, compensation was also paid and possession of the land was also handed over to the requisition department, the writ petition is not maintainable.

Sri M.P.Chandra Mouli, learned counsel for the petitioner, would contend that the entire land acquisition proceedings in respect of the petitioner's land are liable to be set aside as the petitioner's land was not notified in notification issued under Section 4 (1) of the Act. Further, no notice under Section 5-A of the Act was served on the petitioner enabling the petitioner to participate in the 5-A enquiry. For non-conducting of enquiry, as per the provision of Section 5-A of the Act, the consequent declaration under Section 6 of the Act suffers from irregularity and liable to be set aside. Further, he would contend that no proper

notices as required under Sections 9 (3) and 10 (1) of the Act were served on the petitioner to participate in the award enquiry and as such passing of the award is contrary to the provisions of the Act. He would further contend that the petitioner filed sworn affidavit before this Court stating that possession of the subject land was not handed over to the APIIC Limited, as contended by the respondents, and still the petitioner is in possession of the said land. In support of his claim, petitioner filed cist receipts and copies of 1-B and Adangals showing that the land is in possession of the petitioner. Further, Encumbrance Certificate is also filed showing that the names of the petitioner and his wife are continued in the records in respect of the subject lands whereas in respect of the other lands acquired under the award, the name of APIIC is shown. Thus, he would contend that it is clear from the Encumbrance Certificate that the subject land is in possession of the petitioner.

While admitting the writ petition, this Court on 23.03.2007 granted interim direction and admittedly thereafter possession was not handed over to the requisition department. Hence, the plea of the respondents that possession was handed over on 06.01.2007 to the requisition department could not be belied as no procedure was followed in taking/handing over the possession of the land.

Learned Government Pleader while reiterating the averments of the counter would contend that mentioning the petitioner's land in draft declaration itself is sufficient for acquisition and non-mentioning of the petitioner's land in the notification issued under Section 4 (1) of the Act is not fatal to the acquisition proceedings. Further, the proposal submitted by the requisition department in

respect of the petitioner's land is sufficient. He had also made feeble attempt, without any details or supporting evidence, that form-III notices were served on the petitioner and the petitioner has not participated in the award enquiry under Section 5-A of the Act and *in spite* of notices under Sections 9 (3) and 10 (1) of the Act the petitioner had not participated in the award enquiry, award was passed on 23.12.2006, notice of award under Section 12 (2) of the Act were served on the petitioner, compensation was paid by way of cheque, the petitioner received, the land was handed over to the requisition department on 06.01.2007. Thus, he would contend that after passing of the award, the writ petition is not maintainable and the writ petition is liable to be dismissed.

In the above backdrop, it is found that the petitioner's land admeasuring Ac.0.09 cents in survey No.102/18 and Ac.0.14 cents in survey No.102/19 of Konduru Village of Tada Mandal, Nellore District, was acquired along with other lands for establishing Industrial Park by the APIIC Limited, Nellore, without mentioning the details of the petitioner's land in the notification issued under Section 4 (1) of the Act and without serving notice on the petitioner to participate in 5-A enquiry and thereby the petitioner was deprived of the opportunity to participate in the 5-A enquiry. Further, from the series of events i.e. mentioning the petitioner's land in draft declaration issued under Section 6 of the Act and without issuing notices under Sections 9 (3) and 10 (1) of the Act before passing of the award under Section 11 (1) of the Act, issuance of notice under Section 12 (2) of the Act, payment of compensation, subsequent alleged taking of the possession of the land and handing over the same to the requisition department on

06.01.2007, it could be safely concluded that a farce of enquiry was conducted under the provisions of the Act without giving proper opportunity to the petitioner before acquiring his lands. The acquisition proceedings are, therefore, vitiated by discrimination and abuse of power violating Article 14 of the Constitution of India. Issuance of notices under Sections 5-A, 9(3) and 10(1) of the Act is mandatory. *In spite* of the fact that the petitioner is the owner of the land, he was not issued any proper notice to participate in the enquiry proceedings under Section 5-A of the Act, award enquiry under Section 11 (1) of the Act, which amounts to deprivation of statutory rights and therefore the entire acquisition proceedings are vitiated as held by this Court and the Hon'ble Supreme Court.

For the above-said reasons, the Writ Petition is allowed impugned notifications published on 03.03.2006 and 30.04.2006 are set aside in respect of the petitioner's land.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

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**(M.GANGA RAO, J)**

27.04.2018  
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