

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.7537 OF 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a Writ of Mandamus or any other appropriate Writ declaring the action of the respondents in issuing the notification, dated 24.11.2007, and the consequential proceedings in Ref.No.G2/8244/2007, dated 26.02.2008, & the proposed draft declaration, as illegal, arbitrary and against the provisions of the Land Acquisition Act, 1894 (for brevity, 'the Act') and Articles 14 and 300-A of the Constitution of India. A request is also made in the Writ Petition to set aside the same.

2. I have heard the submissions of Sri *K.B. Ramannadora*, learned counsel for the petitioner, and of the learned Government Pleader for Land Acquisition, appearing for the respondents. I have perused the material record.

3. The case of the petitioner is this:

"The petitioner is the absolute owner and possessor of Ac.1-12 cents of land in Survey no. 455 and Ac.1-92 cents in Survey no.456, that is, a total extent of Ac.3-04 cents, in Chebrolu Village, Gollaprolu Mandal, East Godavari District. The said land is a double crop wet land. The family of the petitioner is surviving on the cultivation of the said land. The petitioner and his family members are eking out their livelihood on agricultural operations in the said lands. The income derived from the said lands is the only source of livelihood for the petitioner and his family members. Presently, palm oil plantations are there in the said lands. The petitioner is also raising intermediary crop

of sugarcane as standing crop. However, the 1st respondent/District Collector proposed to acquire the afore-stated lands of the petitioner for the purpose of phase-II Indiramma Housing Scheme for providing house sites to the persons of weaker sections. A notification under Section 4(1) of the Act was issued. The 2nd respondent was appointed to perform the functions of the Collector under Section 5A of the Act. Pursuant to the notification under Section 4 (1) of the Act, the 2nd respondent/Revenue Divisional Officer issued notice, dated 30.11.2007, in Form-3, under Section 5A of the Act. The petitioner, having received the said notice, submitted through his Advocate, Sri D. Srinivasa Rao, the objections *inter alia* informing as follows: "That the lands are double crop wet lands and are very low lying; that the same are not fit for use as house sites; that the lands are valuable and potential lands; that the petitioner belongs to agrarian family; he has no other source of income, except the said lands; that the lands, if acquired, would deprive pathways and water sources for the remaining lands; that if the agricultural lands are converted into high level mounds, for construction of houses, the water channels and other canals for irrigation would be badly affected; that there are dry lands available in the village for use as house sites; that there are lands belonging to the Government adjoining to the village; that the said Government lands are best suited for assignment as house sites; that there is vast assessed waste land available with the Government; that the said land is adjoining the village; that instead of distributing the land belonging to the Government to the beneficiaries as house sites, initiation of acquisition proceedings in respect of the subject lands, which are 2 KMs. away from the village, is unwarranted; that the acquisition is being done under political influence at the behest of the

political leaders.” On 04.01.2008, during discussions, the petitioner and others have shown Government land to the 2nd respondent. The 2nd respondent suggested to the petitioner and others and advised them to incur necessary expenditure to level up the Government land adjacent to the village to enable the Government to give up the proposal of acquisition of the petitioner’s lands. As there is no other alternative and so as to safeguard his lands, the petitioner offered to incur 50% of the costs that are to be incurred for leveling the Government land. The 2nd respondent promised to look into the proposal and settle accordingly. However, the 2nd respondent, to the surprise of the petitioner, rejected the petitioner’s objections in a causal manner. The 1st respondent without taking into consideration the objections and without conducting due enquiry on the objections of the petitioner, further directed the 2nd respondent to submit for approval, a draft declaration under Section 6 of the Act. The actions of respondents 1 and 2 are high handed and illegal. An extent of Ac.8-98 cents of dry land in Survey nos.121/1 and 121/2, being part of petitioner’s properties, was acquired from his grandfather for the purpose of providing house sites and therefore, initiating acquisition proceedings once again in respect of the lands of the petitioner is illegal and against the principles of natural justice. The land in Survey No.208 to an extent of Ac.10-82 cents was acquired under the Ceiling Act; and, out of the said land, an extent of Ac.7-50 cents in Survey Nos.208/2B to 2F was allotted to landless poor persons; but, the said land, which is abutting the village house sites is still lying vacant. If the Government are really interested, the said lands could be allotted for use as house sites, instead of acquiring the lands of the petitioner and others afresh. The petitioner is having two unmarried daughters and

other dependants who are dependant upon him. The remaining land in his possession is not sufficient for their livelihood. Hence, the present Writ Petition is filed.”

4. On 18.08.2008, this Court, while admitting the Writ Petition, passed the following interim order in W.P.MP.No.9915 of 2008:

“Pending further orders, there shall be interim stay of dispossession of the petitioner from the land in question.”

5. The case of the respondents, as stated in the counter affidavit filed by the 2nd respondent – The Land Acquisition Officer-cum-Revenue Divisional Officer, in brief, is this:

Chebrolu Village of Gollaprolu Mandal was selected under phase-II Integrated Novel Development in Rural and Model Municipal Areas (INDIRAMMA) Programme to provide house sites to 485 eligible beneficiaries. After proposing to provide the available L.C.C. land in Survey no.208 of an extent of Ac.2-00 for house sites, as there is still necessity, the private lands are proposed for acquisition. Therefore, the lands in Survey nos.663, 418, 453 and 454 were proposed for acquisition. The Revenue Divisional Officer issued notice under Section 5A of the Act, on 30.11.2007, posting the 5A enquiry, on 04.01.2008. On the date of 5A enquiry, the land owners along with their Advocates attended for personal hearing before the Land Acquisition Officer – cum Revenue Divisional Officer. They have filed their objections. The Land Acquisition Officer has enquired into the objections of the landowners and submitted his remarks on the objections to the District Collector. The District Collector, after careful examination of the objections filed by the land owners and the remarks of the Land Acquisition Officer, opined that there are no valid grounds in the objections and issued orders,

dated 26.02.2007, duly rejecting the objections of the landowners. Compensation for the trees existing in the land belonging to the petitioner along with the land value will be paid as per Land Acquisition Act. As there are no suitable Government lands, the petitioner's land is proposed for acquisition. All the wet lands are low-lying in nature and will be levelled at the time of construction of houses. The petitioner is having landed property of Ac.23-40 cents in Chebrolu Village. The present acquisition proposal is for a very meager extent of Ac.3.04 cents; and, it may not affect the livelihood of the petitioner. The present acquisition will not cause any obstruction to the pathways and water sources for the remaining lands. The petitioner has not given the details of the Government lands adjacent to the village. There is no political influence. No discussion was had with the petitioner about the levelling of the Government land or for providing personal hearing before the District Collector. There is no bar to acquire the land from the landowner, whose lands were previously acquired for house sites. The petitioner's land is nearer to the existing habitation and is suitable for providing to the weaker sections for use as house sites. There are no Government or poramboke lands available in the village for providing to the weaker sections for use as house sites. The writ petition is liable to be dismissed.

6. Learned counsel for the petitioner, while reiterating the case pleaded by the petitioner, which is stated supra, would further submit that the Government has no tenable defence; that, though, the interim order is only granted to not to dispossess the petitioner, no further steps, as per the procedure contemplated under the Act, have been taken and

that therefore, it is obvious that the contentions of the petitioner are tenable and deserve acceptance by this Court.

7. Learned Government Pleader for Land Acquisition submits that because of the orders of stay directing the Government not to dispossess the petitioner, no further steps could be taken; and, hence no Award is passed.

8. The case of the petitioner is that the notification under Section 4(1) of the Act was issued by the District Collector, East Godavari District; but, the RDO has issued the notices for enquiry under Section 5A of the Act. Learned counsel for the petitioner has invited the attention of this Court to Section 3(c) of the Act, which reads as under:

“the expression “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act.”

Further, Section 3-A of the Act, as amended by the State of A.P. [Act 22 of 1976], which deals with delegation of functions, reads as under:

“Delegation of functions: The State Government may, by notification in the Andhra Pradesh Gazette, direct that any power conferred or any duty imposed on them by this Act, shall in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised or discharged by the District Collector.’

In view of the above provisions of law, it is undisputed that the power of delegation is not with the Collector; that the State Government has to discharge the function of delegation by issuing a notification in the Gazette; and, that on such delegation only, the delegated authority can exercise and discharge the functions, which are to be discharged by the District Collector. Learned Government Pleader reiterated the contentions in the counter affidavit. However, the fact that the notification under Section 4(1) was issued by the Collector and no

notification was issued by the Government delegating the powers to the RDO is not disputed and such notification, if any, is not produced. Thus, in the case on hand, it is sufficiently established that there is no notification issued by the Government delegating the powers of the Collector to the RDO. However, RDO conducted the 5A enquiry by exercising the powers of Collector without any authority conferred upon him by a notification of the State Government. It is contended that on this ground alone, the acquisition proceedings, which are illegal, are liable to be set aside. Suffice if it is noted that this contention of the petitioner merits consideration.

9. According to the petitioner, during the course of 5A enquiry, discussions were held, on 04.01.2008, and that at that time, he has shown Government land to the 2nd respondent and that he suggested and advised the petitioner to incur expenditure for leveling the Government land, which is adjacent to the village, in order to facilitate the Government to give up the proposal for the acquisition of his lands and that the petitioner, having no alternative and to protect his lands, offered to incur 50% of the costs that are to be incurred in that regard and that the 2nd respondent promised to look into the proposal and settle accordingly; but, no further enquiry was held and that the objections of the petitioner were rejected in a casual manner without affording an opportunity of personal hearing.

10. 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 an opportunity of being heard. After 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. As contemplated under law, at the time of hearing, the objector can make an effort to convince the Land Acquisition Officer to make recommendations against the acquisition. Further, the objector can produce evidence to show that suitable piece of Government land is available and the same can be utilised 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. 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 considering the objections of the objectors and the submissions made at the hearing, will denude the decision of the appropriate Government of statutory finality, is the settled legal position. The settled legal position emphasises the importance of the enquiry under Section 5A which is to be conducted by the Collector unless delegated by a notification of the State Government to the RDO. In the case on hand

since the Collector has not conducted the enquiry and as the RDO, who conducted the enquiry, is not enjoined with such function by a necessary notification of the State Government, it can be said that the enquiry conducted by the RDO has no statutory sanction. Even assuming for a moment that the RDO is competent to conduct an enquiry, it is borne out by record that after the discussions, no effective opportunity of hearing was provided to the petitioner to substantiate his objections and the RDO eventually failed to effectively deal with the objections and yet the 1st respondent directed the 2nd respondent to submit for approval draft declaration under Section 6 of the Act.

11. Adverting to the aspect as to whether the Collector can now be directed to conduct an enquiry under Section 5A of the Act, what is to be noted is that after 4(1) notification an enquiry as contemplated under Section 5A of the Act has to be held and after completion of the requirements, a declaration under Section 6 of the Act has to be published in the Gazette within one year from the date of notification under Section 4(1). Therefore, if such a direction is to be given, the Government will not be able to publish the declaration under Section 6 as the statutory time of one year has elapsed long time back.

12. Learned counsel for the petitioner further submits that at present the Government is not continuing the Indiramma Housing Scheme and that new housing schemes are being implemented. He has drawn the attention of this Court to Section 11A of the Act, which reads as under:

“11A - Period within which an award shall be made

The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencements.

Explanation: In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court shall be excluded.”

He further submitted that as per the provision of the above Section of law, the Award was not passed within a period of two years and that as there was no blanket stay order staying all further proceedings, pursuant to the impugned proceedings, the acquisition proceedings lapsed and therefore, if the Government require the subject lands for the desired purpose, it is for the Government to initiate fresh land acquisition proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and that therefore, the Writ Petition deserves to be allowed.

13. On the above analysis and for the reasons aforesaid, this Court finds that the Writ Petition deserves to be allowed as prayed for.

14. 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 lands 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, if any, pending in this Writ Petition shall stand closed.

August 23, 2018
MD

M.SEETHARAMA MURTI, J

