

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.12630 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for respondents 1, 4 and 5 and Sri Sampath Prabhakar Reddy for respondents 2 and 3.

2. In the present writ petition, challenge is to the order passed by the District Collector, Ranga Reddy District/the fifth respondent herein vide proceedings No.G2/2982/2016 dated 16.02.2018, rejecting the objections of the petitioners herein under Section 15 (2) of Act 30/2013 and the Award passed vide File No.C/494/SRDP/2017, dated 03.04.2018 by the fourth respondent herein.

3. There are two contentions broadly raised by the learned counsel for the petitioner in the present writ petition viz., 1) the objections submitted by the petitioner were not considered from proper perspective and 2) the process of hearing was undertaken by the Joint Collector, Ranga Reddy District, but the order under Section 15 (2), which is impugned in the present writ petition, was passed by the District Collector. It is further contended by the learned counsel for the petitioner that the said action on the part of the respondent authorities is in contravention of the law laid down by the Hon'ble Apex Court in *UNION OF INDIA v. SHIV RAJ*¹ and *DEV SHARAN AND OTHERS v. STATE OF UTTAR PRADESH AND OTHERS*².

4. In *UNION OF INDIA (supra 1)*, the Hon'ble Apex Court, at paragraphs 11 to 17 held, as under:

11. In *Nandeshwar Prasad v. U.P. Government*, AIR 1964 SC 1217, this Court dealt with the nature of objections under Section 5-A of the Act 1894 observing as under:

¹ (2014) 6 SCC 564

² (2011) 4 SCC 769.

“13. The right to file objections under Section 5-A is a substantial right when a person's property is being threatened with acquisition and we cannot accept that that right can be taken away as if by a side wind...”

12. The rules of natural justice have been ingrained in the scheme of Section 5-A of the Act 1894 with a view to ensure that before any person is deprived of his land by way of compulsory acquisition, he must get an opportunity to oppose the decision of the State Government and/or its agencies/instrumentalities to acquire the particular parcel of land.

13. Section 5-A(2) of the Act 1894, which represents statutory embodiment of the rule of audi alteram partem, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the notification issued under Section 4(1) of the Act 1894 or that there are other valid reasons for not acquiring the same. Thus, section 5-A of the Act 1894 embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made.

14. On the consideration of the said objection, the Collector is required to make a report. The State Government is then required to apply mind to the report of the Collector and take final decision on the objections filed by the landowners and other interested persons. Then and then only, a declaration can be made under Section 6(1) of the Act 1894.

15. Therefore, Section 5-A of the Act 1894 confers a valuable right in favour of a person whose lands are sought to be acquired. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in

law. It is also not in dispute that Section 5-A of the Act, 1894 confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right. Thus, the limited right given to an owner/person interested under Section 5-A of the Act, 1894 to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason and within the limitations prescribed under Section 17(4) of the Act, 1894.

16. The Land Acquisition Collector is duty-bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons.

(See : *Munshi Singh & Ors. v. Union of India*, AIR 1973 SC 1150; *Union of India & Ors. v. Mukesh Hans*, AIR 2004 SC 4307; *Hindustan Petroleum Corporation Ltd v. Darius Shahpur Chenai and Ors.*, AIR 2005 SC 3520; *Anand Singh & Anr v. State of U.P. & Ors.*, (2010) 11 SCC 242; *Dev Sharan v. State of U.P.*, (2011) 4 SCC 769; *Raghubir Singh Sehrawat v. State of Haryana*, (2012) 1 SCC 792; *Usha Stud and Agricultural Farms (P) Ltd. v. State of Haryana*, (2013) 4 SCC 210; and *Women's Education Trust v. State of Haryana*, (2013) 8 SCC 99).

17. This Court in *Gullapalli Nageswara Rao* (supra), held:

“Personal hearing enables the authority concerned to watch the demeanour of the witnesses and clear up his doubts during the course of the arguments, and the party appearing to persuade the authority by reasoned argument to accept his point of view. If one person hears and another decides, then personal hearing becomes an empty formality. We therefore hold that the said procedure followed in this case also offends another basic principle of judicial procedure.” (Emphasis added).”

5. In the instant case also, as observed supra, the Joint Collector heard the objections, which is evident from the impugned order and the District Collector passed the order, rejecting the objections. Therefore, the above said judgment in *UNION OF INDIA (supra 1)* is squarely applicable to the facts of the present case.

6. It is also required to be noted that on 01.12.2017 petitioner herein submitted his objections under Section 15 of the Act, bringing to the notice of the Land Acquisition Officer various aspects, but the impugned order does not discuss the said aspects.

7. Being the quasi judicial authority, it is obligatory on the part of the authority to deal with the objections under Section 15 (2) and assign reasons for rejecting the said objections and the same is conspicuously absent in the present case.

8. For the aforesaid reasons, the writ petition is allowed, setting aside the proceedings No.G2/2982/2016, dated 16.02.2018 of the fifth respondent and the consequential Award passed vide File No.C/494/SRDP/2017 dated 03.04.2018 and Notice of Award under Section 37 (2) and Notice under Sec. 38(1) dated 04.04.2018 to the extent of the property of the petitioner herein. It is open for the respondents to hold enquiry only under Section 15 of the Act 30 of 2013, after affording opportunity to the petitioner herein and to proceed further in accordance with law. Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand disposed of. There shall be no order as to costs.

A. V. SESA SAI, J

Date:02.05.2018
grk

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.12630 of 2018

Dated 02.05.2018

grk