

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.27188 of 2016

O R D E R:

Petitioners have filed this Writ Petition assailing the Notification under Section 11 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act 30 of 2013') issued by the 2nd respondent proposing to acquire Acs.295.00 guntas in the scheduled area in the State of Andhra Pradesh including the petitioners' land admeasuring Acs.8.48 cents in survey No.47/2 of Mulagalampalli Vilalge, Jeelugumilli Mandal, West Godavari District.

2. It is the contention of the counsel for petitioners that this acquisition violates Section 41 of the Act as well as the provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996 (for short "Act 40 of 1996") and the Rules made there under.

3. Admittedly, the lands are sought to be acquired to provide 'land to land compensation' for persons, whose lands have been acquired for Polavaram Irrigation Project.

4. Petitioners contend that no Gram Sabha was conducted as mandated by Section 4(1) of Act 40 of 1996 and even otherwise under Section 41 of Act 30 of 2013, there is a prohibition to acquire land in scheduled areas except where

such acquisition has to be done only as a demonstrable last resort.

5. It is further stated by the counsel for petitioner that the Sarpanch of Grampanchayat had issued a Certificate stating that no Gram Sabha has been conducted and no panchayath resolution has been passed. Petitioners thus seek to cancel the Notification for acquisition issued under Section 11 of the Act.

6. In the counter affidavit filed by the 3rd respondent no plea is raised that the acquisition of the land in the impugned Notification was a last resort and no evidence is filed in that regard. It is also not the plea of the respondents that no other land in the State of Andhra Pradesh is available except the subject land, which is notified for acquisition in the impugned Notification for providing land to landland compensation for persons who lost their lands in Polavaram Irrigation Project.

7. The counter affidavit harps on the fact that the lands which are sought to be acquired are the lands belonging to non-tribals and that some of them have given their willingness to part with their lands.

8. But, as per Section 41 of the Act 30 of 2013, the question to be considered is 'whether the land is in the Scheduled Area or not', and not 'whether in the Scheduled

Area, the land sought to be acquired belongs to scheduled tribe person or a non-scheduled tribe person’.

9. It is stated in the counter of 3rd respondent that a Gram Sabha was conducted, but no date of such Gram Sabha is mentioned. Though copy of the alleged Resolution said to have been passed in Gram Sabha was filed along with the counter affidavit, it bears no date and appears to have been created after the Writ Petition was filed. The said Resolution is not proved to have been passed before the issuance of Section 11 Notification acquiring petitioners’ land. Therefore, I hold that the said Resolution cannot save the impugned notification of acquisition.

10. Sri V.V.Raghavan, Counsel appearing for 5th respondent disputes the title of the petitioner to the subject land, which is notified for acquisition. I am not inclined to go into the said question in this Writ Petition and leave it open to the 5th respondent to avail appropriate remedy.

11. Accordingly, the Writ Petition is allowed; the impugned Notification issued under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 by the 2nd respondent is quashed in its entirety on the ground of violation of Sub-Section (2) of Section 41 of the said Act. No costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

27th September, 2018.
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