

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.4953 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed requesting to issue a Writ of Mandamus declaring the notification issued on 09.05.2007, under Section 4(1) of the Land Acquisition Act, 1894 ['the Act', for short] and the enquiry proceedings in Roc.G1/5446/07-4, dated 18.02.2008 under Section 5-A of the said Act and the declaration *vide* proceedings in G1/5327/2007 & G1/5329/2007, dated 01.03.2008, under Section 6 of the said Act published, on 04.03.2008, in respect of the lands of the petitioner Trust admeasuring in all Ac.17.13 cents situate in Survey Nos.275/1, 276/1, 277/2, 277/3 and 296/3 of Gandrajuapalle Village, Gangavaram Mandal, Chittoor District, as illegal, arbitrary, contrary to law, principles of natural justice and violative of Articles 14 & 300-A of the Constitution of India and grant such other orders as this Court deems fit and proper in the facts and circumstances of the case.

2. I have heard the submissions of Sri V. Vinod K. Reddy, learned counsel appearing for the writ petitioner, of the learned Government Pleader for Land Acquisition, appearing for the respondents 1 to 4, and of Ms. A. Jayanthi, learned standing counsel for APIIC, appearing for the respondents 5 & 6. I have perused the material record.

3. The case of the petitioner as per the pleadings, additional pleadings and the submissions made, in brief, is this: - 'The petitioner Trust purchased, under registered sale deeds bearing document nos.3201 of 2000, 91 of 2001, 90 of

2001, 1905 of 2001 and 1008 of 2001, agricultural lands viz., Ac.7.48 cents in Sy.no.275/1, Ac.0.29 cents & 0.72 cents in Sy.no.276/1 and 277/3, Ac.2.32 cents in Sy.no.272/2 and Ac.6.32 cents in Sy.no.296/3 of Gandrajupalle village of Gangavaram Mandal of Chittoor District. The Trust is thus the owner and possessor of the land of a total extent of Ac.17.13 cents. Having purchased the property, the Trust commenced construction of a Saibaba temple and the construction was completed almost upto 70%. At a huge cost of Rs.50.00 lakhs, a reservoir was also dug in the said land, that is, in part of the land which is in Sy.no.296/3, for the benefit of the said temple and the other lands. While so, Andhra Pradesh Industrial Infrastructure Corporation [APIIC] represented by its Vice Chairman and Managing Director, that is, the 5th respondent sent requests to the District Collector, Chittoor – 2nd respondent, on 04.05.2007, requesting the Collector for acquisition of Ac.482.64 cents, which is assigned land, and Ac.104.05 cents which are patta lands for the purpose of industrial park. The Tahasildar, Gangavaram, issued notice, dated 09.05.2007, to the assignees of the land in an extent of Ac.482.62 cents stating that the lands are required for the purpose of Special Economic Zone (SEZ). A notification under Section 4(1) of the Act was issued and published, on 09.05.2007, in Andhra Jyothi and Vartha daily newspapers; and, in the said notification it is stated that the land of the petitioner Trust of Ac.17.13 cents in the afore-stated survey numbers would be acquired for the said purpose. The petitioner Trust requested the District Collector to drop all further proceedings pursuant to the said notification by submitting a representation, dated 30.05.2007. Ignoring the said representation, a notice under Section 5-A of the Act was issued. The petitioner submitted objections, dated 14.07.2007, to the 3rd respondent –

RDO and the same was received by him on 16.07.2007. However, without properly considering the objections and without application of mind, proceedings were mechanically issued, on 18.02.2008, and the same were received by the petitioner Trust, on 29.02.2008. The proceedings show that the objections of the petitioner Trust were not properly considered and that there has been non application of mind in issuing the said proceedings. Declaration under Section 6 of the Act was published, on 04.03.2008, in Vartha and Andhra Jyothi Telugu dailies. Contrary to the purpose mentioned in the notification and in the earlier proceedings, it was stated in the declaration that the acquired property is required for Textile Park. Non consideration of the objections and not affording a right of personal hearing at the time of enquiry under Section 5-A resulted in defeat of valuable right available to the petitioner Trust. In the proceedings, there is absolutely no reference to the detailed objections which are stated by the petitioner. The notification was issued only for the benefit of APIIC to gain profits and by selling the property in turn to others for establishing industries. If land is required for acquisition, there is 1500 acres of poramboke land available. The lands of the petitioner are situated adjacent to National Highway. Lands of persons having hotels, petrol pumps and other establishments were excluded though they are abutting the national highway. Thus, the Trust was discriminated in the matter of acquisition of its lands. 70% of the temple work is completed and a reservoir was constructed in the part of the land of the Trust by spending Rs.50.00 lakhs. Notification under Section 4(1) of the Act was issued by the Collector. However, notice for enquiry under Section 5-A of the Act was issued by the RDO stating that the Collector delegated the authority to the RDO. Under Section 3(c) of the Act, the

Collector is required to perform his functions; and, if any delegation is to be made, the delegation must be made only by the State Government by notification in A.P.Gazette as per Section 3(a) of the Act as amended by the State of A.P. [Act 22 of 1976]. Therefore, the delegation is illegal and the RDO has no jurisdiction or powers to deal with the acquisition proceedings. The substance of public notice related to Section 4(1) notification is not published at convenient places in the locality and the said fact is not also mentioned in the counter of the respondents. On this ground, it is possible to hold that the acquisition proceedings lapsed.'

4. The case of the official respondents as stated in the counter of the RDO and as per the submissions made before this Court is as follows:

The material allegations in the affidavit of the writ petitioner filed in support of the writ petition are false. The allegations that a Saibaba temple was constructed upto 70% and a reservoir was established by spending huge amount as stated in the writ affidavit are false. The expenditure incurred for construction upto foundation level and for the pond dug will be around Rs.3.00 lakhs only. The acquisition is as per the requests of the Zonal Manager, APIIC, Tirupathi, for allotment of Ac.482.64 cents of assigned lands and Ac.104.05 cents of patta lands for establishment of industrial park which may include food processing units, Textile park etcetera but not for SEZ. The draft notification and draft declaration proposals were approved by the District Collector and were published in A.P.Gazette and local newspapers. Gandrajupalle village is most backward area. It experiences drought conditions. Hence, Government decided to improve the economic status of

the villagers by providing opportunities for alternative livelihoods through non-agricultural and industrial activities to be promoted by APIIC in the lands proposed for acquisition. The draft notification, which was approved by the Collector, was published, on 09.05.2007, in A.P.State Gazettes. Draft declaration approved by the Collector was published in A.P.State Gazettes, on 01.03.2008, and also in local newspapers. The writ petitioner submitted a representation to the Collector, Chittoor, and LAO/RDO, Madanapalle to drop the proceedings. The writ petitioner is not depending upon agricultural income and income derived from the lands. The writ petitioner is having business. The writ petitioner is having Ac.14.00 cents of land in Nandi Kothur Mandal of Kurnool District. The objections have been carefully considered and rejected, on 18.02.2008. The land has been resumed by the Government and exgratia has been paid to the assignees in respect of the proposed Government lands of Ac.29.82 cents. Alienation proposals are under process. As on the date, the physical and advance possession of both the assigned and Government lands are given to APIIC, Tirupathy by the Tahasildar, Gangavaram, on 09.06.2008. Apart from that, an extent of Ac.94.02 cents of patta lands has been proposed for acquisition. The schedule lands are in the midst of the lands proposed for acquisition. The land was selected for acquisition to form a compact block and ensure geographical contiguity. Hence, acquisition has become inevitable. The proposed lands are intended for SEZ is not true. It is false to say that the objections filed to the notification are not properly considered. After passing of the Award and on payment of compensation to the writ petitioner, physical possession of the land will be

taken. In the meanwhile, the petitioner rushed to this Court. Hence, the petition may be dismissed.

5. At the hearing, learned counsel for the petitioner and learned Government Pleader reiterated their respective contentions.

6. Learned Government Pleader submitted that no award has been passed and, therefore, the compensation payable to the acquired lands is not finalized and hence, possession of the subject lands is not taken from the petitioner.

7. During the course of hearing, it is fairly stated that in view of the provision of 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 the 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. In that view of the matter, it is also stated that the subject notification issued under Section 4(1) of the Act of 1894 stood lapsed and that it is for the respondents to issue a fresh notification under the provisions of the Act 30 of 2013 and hence, the writ petition can be disposed of accordingly. Be that as it may.

8. It is undisputed that notification under Section 4(1) of the Act was issued by the District Collector, Chittoor, and in the said notification it was stated that the power to conduct enquiry under Section 5-A of the Act is delegated to the RDO, Nandi Kothur, under Section 3(c) of the Act. Section 3(c) 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 and that the State Government has to discharge the function of delegation by notification in the Gazette and that on such delegation, the delegated authority can exercise and discharge the functions which are to be discharged by the District Collector. In the case on hand, admittedly, there is no notification by the Government delegating the powers of the Collector to the RDO. Further, the RDO conducted the 5-A enquiry by exercising the powers of Collector without any authority conferred upon him by a notification of the State Government. On this ground alone, the acquisition proceedings are illegal and are liable to be set aside.

9. Even assuming for a moment that the RDO is competent to conduct an enquiry, 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. Since it is obvious that in the case on hand no opportunity of hearing was afforded and the objections are not considered in

proper perspective, the writ petitioner is entitled to the reliefs claimed in the writ petition.

10. In the result, the Writ Petition is allowed. 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.

14.09.2018
Vjl



M.SEEETHARAMA MURTI, J