

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

**WRIT PETITION No.11948 OF 2007**

**ORDER:**

This writ petition is filed to declare the proceedings in Rc.No.62/2007/E2/SW, dated 05.04.2007, issued by the first respondent as published in Andhra Bhoomi Daily newspaper dated 09.04.2007, under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'), notifying for acquisition of the petitioner's land admeasuring Ac.1.20 cents in Survey No.211/2 of Cherlopalem Village, Nathavaram Mandal, Visakhapatnam District, as illegal and arbitrary, and to set aside the same.

2. The case of the petitioner is that he claims to be the owner of the land admeasuring Ac.1.20 cents in Survey No.211/2 of Cherlopalem Village, Nathavaram Mandal, Visakhapatnam District.

3. The first respondent issued notification under Section 4(1) of the Act vide proceedings in Rc.No.62/2007/E2/SW, dated 05.04.2007 of the District Collector, Visakhapatnam. The notification was published in the A.P. Gazette 31/2007, dated 18.04.2007 and said to be made publication in Andhra Bhoomi on 09.04.2007 and before approving draft declaration under Section 6 of the Act, a notice in Form No.3 to conduct enquiry under Section 5-A of the Act was issued to the

petitioner on 21.05.2007. Section 4(1) notification was issued for acquisition of the petitioner's land to provide house sites to the weaker section of the people under Indiramma programme. The petitioner has attended Section 5-A enquiry and deposed that he got Ac.8.00 cents of land as against his share of Rs.4.00 cents. Further, as contended by the writ petitioner, an extent of Ac.1.20 cents was not acquired. The petitioner is only having the land in possession to an extent of Ac.0.95 cents of dry land. The petitioner contended that the selection of his land for acquisition is irrational and discriminatory.

4. The petitioner filed this writ petition questioning the land acquisition proceedings and this Court, on 11.06.2007, granted interim direction in WPMP No.14849 of 2007, staying all the land acquisition proceedings including dispossession of the petitioner.

5. The second respondent filed counter-affidavit on behalf of the first respondent. The petitioner's land to an extent of Ac.1.20 cents in Survey No.211/2 of Cherlopalem Village, Nathavaram Mandal, Visakhapatnam District, was proposed to acquire for purpose of providing house sites to the weaker section of the people under Indiramma programme as the land is suitable for the house sites. Before acquiring the land of the petitioner, Section 5-A enquiry was conducted, but no draft declaration was issued.

6. During the pendency of the writ petition, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act 30 of 2013') came into force with effect from 01.01.2014. As per Section 24(1)(a) of the Act 30 of 2013, if the land acquisition proceedings were initiated under the Land Acquisition Act, 1894 and no award under Section 11 of the said Act has been made, all the provisions of the new Act relating to the determination of compensation shall apply.

7. Under Section 11(a) of the Act, the award has to be passed within a period of two years from the date of publication of the declaration and in computing the period of two years, the period during which any action or proceeding to be taken in pursuance of the said declaration stayed by the order of the Court shall be excluded. Even if that period is excluded and an award is liable to be passed, now it cannot be done under the provisions of the Act, as the action has to be taken as per Section 24(1)(a) of the Act 30 of 2013. For the reasons stated above, the notification issued under Section 4(1) of the Act is liable to be set aside.

8. Accordingly, the writ petition is allowed, setting aside the land acquisition proceedings in Rc.No.62/2007/E2/SW, dated 05.04.2007. In the circumstances, it is needless to observe that allowing of the writ petition will not preclude the Government from acquiring the aforementioned lands of the

petitioners in future either for the original purpose or for any other purpose. No costs.

9. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

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**JUSTICE M.GANGA RAO**

1<sup>st</sup> February, 2018  
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