

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.10327 OF 2007

ORDER:

This writ petition is filed challenging the initiation of the land acquisition proceedings by the second respondent in Rc.No.G5/2390/2006 in respect of the land of the petitioner situated in Survey No.175 of Tamminapatnam Village, Chillakur Mandal, Nellore District, and to set aside Section 4(1) notification and Section 6 declaration issued by the second respondent.

2. The petitioner is a limited company. The petitioner states that it is the absolute owner and possessor of land to an extent of Ac.2.22 cents in Survey No.175 of Tamminapatnam Village, Chillakur Mandal, Nellore District. The land was purchased by the petitioner through a registered sale deed, dated 09.12.1993, executed by one M.Raghuramaiah. The second respondent issued Section 4(1) notification under the provisions of the Land Acquisition Act, 1894 (for short 'the Act, 1894') on 17.05.2006, invoking urgency clause under the provisions of Section 17(4) of the Act, 1894, dispensing with Section 5-A enquiry. Section 6 declaration under the provisions of the Act, 1894 was issued on 18.05.2006. The land was acquired for the purpose of development of Krishnapatnam Port (in the existing). The petitioner further states that the respondents have not

complied the provisions of Section 17(3-A) of the Act, 1894 and neither possession was taken nor 80% of compensation has been deposited.

3. The respondents filed counter stating that Section 4(1) notification and Section 6 declaration were issued in respect of the land to an extent of Ac.2.22 cents in Survey No.175 of Tamminapatnam Village of Chillakur Mandal. The award enquiry was conducted on 04.10.2006. The award was passed on 10.05.2007. Since the petitioner has not given consent for passing of award, compulsory award under Section 11(1) of the Act, 1894 has been passed vide Award No.7/2007-08, dated 10.05.2007 and notice under Section 12(2) of the Act, 1894 was sent to the petitioner. Except in respect of the petitioner's land, compensation was paid to the other land owners.

4. When the respondents tried to interfere with the peaceful possession and enjoyment of the land of the petitioner on 12.05.2007, he resisted the officials of the respondents and filed writ petition before this Court. This Court, while admitting the writ petition on 16.05.2007, passed interim orders in W.P.M.P.No.13043 of 2007, directing the respondents not to take possession of the land to an extent of Ac.2.22 cents in Survey No.175 of Tamminapatnam Village, Chillakur Mandal, Nellore District.

5. During pendency of the writ petition before this Court, the Parliament enacted **The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** (for short 'the Act, 2013'). Section 24(2) of the Act, 2013 reads as under:

“24. (2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.”

6. The Act, 2013 came into force on 01.01.2014. The period of 5 years prior to the coming into force of the Act, 2013 could commence on 01.01.2009. In view of the law laid down by the Hon'ble Supreme Court in *Pune Municipal Corporation Vs. Harakchand Misirimal Solanki*¹ and *Sharma Agro Industries Vs. State of Haryana and others*², it could be fairly concluded that the land acquisition proceedings initiated under the provisions of the Act, 1894 deemed to have lapsed in terms of Section 24(2) of the Act, 2013, in the present case.

7. The learned Assistant Government Pleader would contend that the award has been passed in respect of the

¹ (2014) 3 SCC 183

² (2015) 3 SCC 341

land of the petitioner in Award No.7/2007-08, dated 10.05.2007 under Section 11(1) of the Act, 1894, but the amount could not be deposited and possession could not be taken in view of the stay granted by this Court on 16.05.2007 and relied on a judgment of the Hon'ble Supreme Court in a case of *Aligarh Development Authority Vs. Megh Singh and others*³, wherein it is held that the land acquisition proceedings could not be deemed to have lapsed under Section 24(2) of the Act, 2013. As the award has not been passed and possession has not been taken in the present case, the case (3 supra) has no application to the facts of the present case.

8. In this case, the award was passed prior to 5 years of the Act, 2013 came into force i.e. 01.01.2009, but no compensation was paid and no possession was taken. Further, the learned Assistant Government Pleader having relied on a judgment of the Hon'ble Supreme Court in *Yogesh Neema and others Vs. State of Madhya Pradesh and others*⁴, submitted that the period during which award remained stayed by virtue of interim order of the Court should be excluded for the purpose of determination of applicability of provisions of Section 24(2) of the Act, 2013 and the Hon'ble Supreme Court referred the matter to the Larger Bench and the said land acquisition proceedings could not be deemed to

³ 2016 LawSuit (SC) 484

⁴ (2016) 6 SCC 387

have lapsed under Section 24(2) of the Act, 2013. But, the decision, in the case of *Sree Balaji Nagar Residential Association Vs. State of Tamil Nadu and others*⁵ holds the field for the present, wherein the Hon'ble Supreme Court held that the period during which the land acquisition proceedings remained stayed on account of order of stay/injunction granted by any court, the period of stay/injunction could not be excluded in computing 5 years period mentioned in Section 24(2) of the Act, 2013.

9. In view of the circumstances stated above, the land acquisition proceedings issued in respect of the land of the petitioner shall be deemed to have been lapsed under Section 24(2) of the Act, 2013. Hence, the land acquisition proceedings in Rc.No. G5/2390/2006 were set aside in respect of the petitioner's land.

10. Accordingly, the Writ Petition is disposed of. No costs.

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

JUSTICE M.GANGA RAO

19th January, 2018
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⁵ (2015) 3 SCC 353

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