

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.11148 of 2007

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioners requesting to issue a Writ of Mandamus or any other writ or order declaring the notice in Rc.A.540/2007, dated 09.05.2007, issued by the Land Acquisition Officer-cum-Revenue Divisional Officer, Bandar, Krishna District/3rd respondent for acquisition of lands in Survey nos.205, 206/1, 206/2, 206/3, 206/4, 206/5, 207/1, 207/2, 207/3, 207/4, 207/5 & 207/6, situated at Avanigadda Village & Mandal of Krishna District, belonging to the petitioners, as wholly illegal, arbitrary and violative of Articles 14, 21 & 300-A of the Constitution of India, the provisions of the Land Acquisition Act, 1894, and also Circular Memo No.10054/LA.1/2005, dated 22.04.2006, issued by the Government of Andhra Pradesh and to grant further orders.

2. I have heard the submissions of Sri *K.Ravi*, learned counsel appearing for the petitioners 1 to 6 & 8 to 13; of the learned Government Pleader for Revenue (AP), appearing for the respondents 1, 2 & 4; and of the learned Government Pleader for Land Acquisition (AP), appearing for the 3rd respondent. I have perused the material record.

3. At the outset, it is to be noted that the writ petition insofar as the 7th petitioner is concerned is dismissed as withdrawn as per the orders of this Court, dated 18.04.2008, in W.P.M.P.No.10784 of 2008.

4. The case of the petitioners 1 to 6 & 8 to 13 is this:

The petitioners are the owners of very small extents of lands ranging from Ac.0.30 cents to Ac.2.00 cents, situated at Avanigadda Village & Mandal, Krishna District. They all hail from agricultural families. The land admeasuring Ac.1.54 cents in Survey no.205, which is in the name of the 10th petitioner, is already partitioned among the petitioners 10 to 13 and they are cultivating their respective extents of land. The 5th petitioner purchased lands admeasuring Ac.0.15 cents in Survey no.206/5 and Ac.0.31 cents in Survey no.207/4 under a registered Sale Deed. The 9th petitioner's mother purchased land in Survey no.206/2 of an extent of Ac.0.45 cents under a registered Sale Deed for her maintenance. She is maintaining herself with the income derived from the said land. The small extents of lands respectively owned and possessed by the petitioners are the only sources of livelihood for all the petitioners 1 to 6, 8 & 10 to 13. While so, the Land Acquisition Officer-cum-Revenue Divisional Officer, Bandar, Krishna District/3rd respondent issued notice in Rc.A.540/2007, dated 09.05.2007, under Section 5A of the Land Acquisition Act, 1894 ('the Act', for brevity). The lands of the petitioners were proposed for acquisition for the purpose of providing house sites to the members of the weaker sections of the society. By the said notice, he directed the petitioners to submit their objections on or before 25.05.2007. The petitioners submitted their detailed objections, on 17.05.2007, through their counsel. In the objections, they categorically stated their difficulties. Further, when the 3rd respondent called the petitioners, the petitioners appeared before the 3rd respondent, on

26.05.2007, and personally explained their difficulties and the hardships to which they would be subjected to, if their respective small extents of lands, which are the only sources of livelihood, are to be acquired by the Government. In spite of the petitioners submitting their objections, the 3rd respondent is proceeding with the acquisition of the lands of the petitioners. If the Government wants to acquire the lands for providing house sites to members of weaker sections, the Government can acquire lands from the land holders, who are having larger extents, instead of acquiring the small extents of lands of the petitioners. The 3rd respondent is proceeding to take possession of the lands of the petitioners. Before the acquisition proceedings are initiated, the lands proposed for acquisition are not proposed for conversion from agricultural use to non-agricultural use. Such an exercise is not undertaken even till the date of the institution of the writ petition. Large extents of Government lands are also available in Avanigadda Village. As per the Circular Memo, dated 22.04.2006, vide no.10054/LA.1/2005, if alternative Government lands are available, private lands shall not be acquired. The acquisition of agricultural lands for the purpose of providing house sites is opposed to the very scheme envisaged under Section 3 read with Section 9 of the A.P. Agricultural Land (Conversion for Non-Agricultural Purposes) Act, 2006. As per the scheme under the above said Memo, the entire process of land acquisition under Indiramma Programme should be completed by the end of June, 2006. However, in the instant case, land acquisition proceedings are initiated in May, 2007. Therefore, the impugned Land Acquisition proceedings are without jurisdiction. The acquisition

of the lands of the petitioners is highly illegal, arbitrary and violative of the provisions of the Act & Articles 14, 21 & 300-A of the Constitution of India. Hence, the writ petition is filed.'

5. On 30.05.2007, this Court admitted the writ petition and granted interim stay of all further proceedings including dispossession of the respective land owners/petitioners from their respective lands, which are notified for acquisition.

6. The respondents have not filed their counter in this writ petition, though the writ petition is pending since a long time. Therefore, this Court ordered for appearance of the respondents. Pursuant to the said orders, dated 01.02.2018, of this Court, the Land Acquisition Officer-cum-Revenue Divisional Officer, Bandar, Krishna District/3rd respondent appeared before this Court and filed a counter affidavit, on 20.02.2018.

7. The case of the respondents, as stated in the counter affidavit filed by the 3rd respondent, is this:

The Government took a policy decision to develop model villages and towns. The housing scheme (Indiramma Programme) is one of the programmes identified to meet the total demand and to achieve the object of providing permanent houses to all the members of the deserving sections of the society. Avanigadda Village is declared as a model and Adarsa Village under Indiramma Programme. On verification, it is found that 350 families are not having own houses or house sites. The then Revenue Divisional Officer, Bandar, along with the then Mandal Revenue Officer, Avanigadda Village, and the Field staff, inspected the lands in Avanigadda Village and found that the lands of a total extent of

Ac.10.00 cents, which are in Survey nos.205, 206/1, 206/2, 206/3, 206/4, 206/5, 207/1, 207/2, 207/3, 207/4, 207/5 & 207/6, are suitable for acquisition and proposed for acquisition of the said lands, which are abutting the Village. There are no structures or trees in the said lands. There is no Government Poramboke land available in Avanigadda Village for grant to the weaker sections, for being used as house sites. Therefore, it was proposed to acquire the said Ac.10.00 cents of land. The details of the said land proposed for acquisition are as follows:

R.S.No.	Extent Ac. Cents	Classification
205	1.54	Wet
206/1	1.02	Wet
206/2	0.90	Wet
206/3	0.90	Wet
206/4	0.88	Wet
206/5	0.92	Wet
207/1	0.82	Wet
207/2	1.39	Wet
207/3	0.81	Wet
207/4	0.42	Wet
207/5	0.21	Wet
207/6	0.19	Wet
	10.00	

The Draft Notification proposals were submitted to the Collector, Krishna District, on 30.04.2007. The District Collector, Krishna District, approved the same *vide* Rc.G4.2089/2007, dated 04.05.2007. The Draft Notification was published in the District Gazette No.97/2007, on 09.05.2007, and it was also publicised at all conspicuous places. The only grievance of the petitioners

herein is that they are small farmers and that their agricultural lands are being acquired illegally and arbitrarily. The selected land is a compact block and is having accessibility to the main village and also to the main road leading to the village. Hence, the version of the petitioners that big extents of lands are also available with land owners having large extents of lands and that the said lands were not proposed to be acquired is not correct. There are no suitable Government lands in the vicinity for provision as house sites. The provision of house sites under the scheme has to be invariably completed by June, 2006. Such a mandate is given only to accelerate the acquisition process. Therefore, the acquisition subsequent to June, 2006, is not invalid. The acquisition proceedings are being undertaken as per procedure under the Act and in a transparent manner. Hence, there is no necessity for the writ petitioners to approach this Court. They ought not have approached this Court. Hence, the writ petition is liable for dismissal.'

8. Learned counsel for the petitioners while reiterating the pleaded case of the petitioners submitted as follows: 'The very details of the lands proposed for acquisition, as were mentioned in the counter affidavit of the respondents, make it manifest that small extents of small ryots are proposed to be acquired. The said fact amply establishes that the petitioners are agriculturists owning small extents of lands. For providing house sites to members of weaker sections of the society, the petitioners cannot be deprived of their small extents of lands, since the petitioners are small farmers and their small extents of land are the only sources of livelihood for them and their families. The petitioners' objections

are not properly considered. Without providing opportunity of hearing, the 3rd respondent proposed to further proceed in the matter. Therefore, the petitioners approached this Court. Had an opportunity of hearing, more particularly effective hearing, been provided to the petitioners, the petitioners would have shown the Government lands, which are suitable and available in the village and in the vicinity of the village. In the counter affidavit, it is only stated that there are no Government Poramboke lands available in Avanigadda Village for grant of house sites to weaker sections under the Indiramma housing Programme. It is also stated in the counter affidavit filed on behalf of the respondents that the petitioners simply said that there are large extents of Government lands available without furnishing any details thereof and that there are no suitable Government lands in the vicinity for being provided for use as house sites. Therefore, there is no consistency in the case of the Government that there are no Government lands in the village, which are suited for house sites. There are also lands of landlords, who are owning large extents of lands, but, their lands were not proposed for acquisition.'

9. Learned Government Pleader while reiterating the pleaded case of the respondents had further submitted that because of the interim orders granted by this Court, no further steps could be taken by the respondents and, therefore, no award is passed till date.

10. I have given thoughtful consideration to the facts & submissions.

11. It is necessary to first deal with the following set of contentions: - Learned counsel for the petitioners first contended that no effective opportunity of hearing was afforded to the petitioners to substantiate their objections. Learned Government Pleader stated that admittedly an opportunity of hearing was provided and, therefore, the contention of the petitioners is not correct. Learned counsel for the petitioners in reply submissions having stated that in the counter affidavit, it is not specifically denied that the petitioners are owners of small extents of land and that their only sources of livelihood are their respective small extents of lands, which are proposed for acquisition and that it is only stated that the petitioners did not give particulars and details of Government lands for providing house sites, further submitted that had an effective opportunity been given, the petitioners would have shown such Government lands, which are available in the village and vicinity. Learned counsel further stated that the State Government had directed in memo no.1287, dated 31.03.1974, as amended by memo no.5814/C1/77-3, dated 29.09.1977, that 'the lands belonging to poor persons with meager land holdings (not more than Ac.2.00 – Ac.2.50 cents) should not be acquired unless otherwise inevitable for the purpose of maintaining proximity and vicinity to the main village and contiguity of the lands'. He further stated that administrative instructions of the Government though conditional are binding on the Collector and the RDO and that the said administrative instructions are violated in this case and, therefore, the land acquisition proceedings are vitiated since the said instructions regulate the policy decisions and give rights to the petitioners for whose benefit those instructions are intended.

He placed reliance on the decision in **State of Punjab v. Gurdial Singh¹**, of the Supreme Court. At paragraph 16 of the cited decision, it was held as follows:

“16. ... it is fundamental that compulsory taking of a man's property is a serious matter and the smaller the man the more serious the matter. Hearing him before depriving him is both reasonable and pre-emptive of arbitrariness, and denial of this administrative fairness is constitutional anathema except for good reasons.”

In view of the facts and legal position and as all the petitioners are having lands of smaller extents and as they were not provided effective hearing and an opportunity to substantiate their contentions, it follows that the acquisition proceedings are vitiated.

12. Further, dealing with the next contention, it is to be noted that though it is not specifically urged in the writ petition, it is contended on behalf of the petitioners that the District Collector is only the competent authority to issue the notification for acquisition of lands under Section 4(1) of the Act and to conduct an enquiry under Section 5A of the Act, but, in the case on hand, the RDO, who is not enjoined with the said duty and who is not authorised to discharge the functions of the Collector by a duly issued notification of the State Government, conducted the enquiry under Section 5A of the Act and that, therefore, the said enquiry is vitiated and has no validity in the eye of law. Learned Government Pleader for Land Acquisition submitted that the said contention which is not urged in the writ affidavit is not available to the petitioners. However, learned counsel for the petitioners submitted

¹ (1980) 2 SCC 471

that the said contention, which is a pure question of law, based on the admitted facts, can be permitted to be urged. It is undisputed that the Notification under Section 4(1) of the Act was issued by the District Collector, Krishna. However, the notice under Form 3 requiring the petitioners to file their objections and attend an enquiry under Section 5A of the Act was issued by the Revenue Divisional Officer, Bandar. It is not the case of the respondents that the Government have issued a Notification and delegated to the said RDO, the functions of the Collector. In this backdrop, it is necessary to refer to the relevant provisions of law.

Section 3(c) of the Act 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; that the State Government have to discharge the function of delegation by issuing a notification in the Gazette; and, that on such delegation by a notification, 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 issued by the Government delegating the powers of the Collector to the RDO. Despite the said fact, the RDO had issued Form 3 Notice under Section 5A of the Act proposing to conduct the 5A enquiry by exercising the powers of Collector without any authority conferred upon him by a notification of the State Government. Therefore, the contention of the petitioners that on this ground alone, the acquisition proceedings, which are illegal, are liable to be set aside merits consideration.

13. Further, as per the settled law, 'any person interested in any land, which has been notified under Section 4(1) of the Act can file objections under Section 5A(1) of the Act and show that the purpose specified in the notification is really not a public purpose or that his land is not suitable for the particular purpose and that other more suitable parcels of land are available and that the said available lands can be utilised for execution of the project or scheme. The specific case of the petitioners is that they have filed detailed objections through their counsel. A copy of such objections is filed along with the material papers. In their objections, they stated that they are owners and possessors of small extents of lands and that there are big landlords owning larger extents of lands and that the acquisition of small extents of lands of the petitioners is against the objects and intendment of the Act and also the administrative instructions in the memos of the Government. In the writ petition, the petitioners have also stated that there are other vast extents of Government lands in the village, which are suited for use as house sites and that therefore,

there is no need to acquire their lands. Reverting to the importance of the enquiry under Section 5A of the Act to be conducted by the Collector, 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 before the Collector, 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 the notice in Form 3 under Section 5A of the Act and also an opportunity of hearing to the objectors and objectively consider their pleas against the acquisition of their lands. Only thereafter, the Collector should make necessary recommendations supported by brief reasons as to whether the land proposed should be

acquired or not and whether or not the pleas 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. The settled legal position emphasises the importance of the enquiry under Section 5A which is to be conducted by the Collector unless such function is delegated by a notification of the State Government to the RDO. In the case on hand, since the Collector has not conducted the enquiry and as the RDO, who conducted the enquiry, is not enjoined with such function by a necessary notification of the State Government, it can be said that the enquiry conducted by the RDO has no statutory sanction. In the decision in **Hindustan Petroleum Corporation Limited v. Darius Shapur Chennai and others**² the main question which fell for its consideration was whether the objections raised by the Appellant objecting to the acquisition of land on various grounds have been considered by the Government. The Supreme Court while emphasising the importance of hearing under Section 5A of the Act held as follows:

“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 as regard consideration of relevant factors and rejection of irrelevant

² 2005 (7) SCC 297

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 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.”

Even assuming for a moment that the RDO is competent to conduct an enquiry, it is borne out by record that no effective opportunity of hearing was provided to the petitioners to substantiate their objections and the RDO eventually failed to effectively deal with the objections and, therefore, the enquiry held by him is vitiated.

14. It is to be noted that even if a fresh enquiry under Section 5A of the Act is to be ordered at this distance of time, in the considered view of this Court, no useful purpose would be served and such a direction would be of no avail as it is now not possible to comply with the mandatory statutory requirement under Section 6 and the other sections of the Act. Under Section 6 of the Act, declaration of intended acquisition of the land covered by Notification under Section 4(1) of the Act shall not be made after the expiry of one year from the date of the publication of the Notification. Further, the learned counsel for the petitioners submits that the Government are now not continuing with the Indiramma Housing Programme and that new housing schemes for members of weaker sections of society are in place, and since a long time has elapsed from the date of the notification under Section 4(1) of the Act, the Government are required to re-consider as to whether the property in question is required at present for acquisition or not, and hence, the writ petition may be allowed

leaving it open to the Government to initiate fresh proceedings for acquisition, if the Government are still desirous of acquiring the subject land for providing house sites or for any other public purpose.

15. On the above analysis and for the reasons aforesaid, this Court finds that the petitioners made out valid and sufficient grounds for granting the reliefs prayed for in the writ petition.

16. In the result, the Writ Petition is allowed. It is needless to state that this order shall not preclude the Government to proceed with the acquisition proceedings in accordance with Act 30 of 2013 if the Government are desirous of acquiring the subject land or any part of the land of the petitioners for the desired purpose or any other purpose, in future.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

JUSTICE M. SEETHARAMA MURTI

Date: 27th September, 2018

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THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**WRIT PETITION No.11148 of 2007**Date: 27th September, 2018

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