

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.21942 OF 2005

ORDER:

This writ petition is filed to declare the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'), published in Eenadu Daily newspaper on 21.09.2005 by invoking urgency clause under Section 17 of the Act and dispensing with Section 5-A enquiry of the Act, though the proceedings are pending since 1996 and alternative government lands are available, as illegal and arbitrary and consequently to set aside the same, and further direct the respondents not to interfere with the possession of the Ac.0.67 cents in Survey No.65/1, Ac.0.75 cents in Survey No.65/2, Ac.0.44 cents in Survey No.65/3A, Ac.0.41 cents in Survey No.65/4 and Ac.0.72 cents in Survey No.65/5 (in all Ac.3.17 cents), situated at Nagari Village and Mandal, Chittoor District.

2. The case of the petitioners is that they have purchased Ac.0.67 cents in Survey No.65/1, Ac.0.75 cents in Survey No.65/2, Ac.0.44 cents in Survey No.65/3A, Ac.0.41 cents in Survey No.65/4 and Ac.0.72 cents in Survey No.65/5 from one Sivaiah, partner of Rao Handlooms, on 28.03.1996 under registered sale deeds. The petitioners have been in possession and enjoyment of the aforesaid lands. The second petitioner is a small farmer and the first petitioner is his wife.

The petitioners' lands are located near to the Nagari to Puttur highway road. Puttur and Nagari were major gram panchayats and now they are upgraded as Municipalities and the lands which are surrounded by these Municipalities have become very costly. The government lands are available nearby and the acquisition of the petitioners' lands is burdensome on the State exchequer. Under section 4(1) of the Act, notification was issued on 21.09.2005. Urgency clause under Section 17 of the Act was invoked and Section 5-A enquiry was dispensed with by invoking the provisions under Section 17(4) of the Act, and Section 6 declaration was issued on 29.09.2005.

3. The petitioners filed this writ petition questioning the land acquisition proceedings and this Court, on 18.10.2005, passed interim order of *status quo*, with regard to the possession of the petitioners' lands in WPMP No.28154 of 2005. Thereafter, the respondents could not take up further proceedings as required under Sections 5-A, 6, 7 and 8 and pass award under Section 11-A of the Act.

4. The respondents filed counter-affidavit denying the contentions of the petitioners in the writ affidavit and stating that the notification under Section 4(1) and Section 6 declaration were issued and Section 5-A enquiry was dispensed with invoking the urgency clause under Section 17(4) of the Act. The counter further states that notices

under Section 9(1) and 10 of the Act were issued and published in the locality on 06.10.2005 and notices under Section 9(3) and 10 of the Act were issued on 26.09.2005 and served on the interested persons including the petitioners, asking them to appear before the Revenue Divisional Officer-cum-Land Acquisition Officer, Chittoor on 08.10.2005, for filing objections if any. Though the petitioners have received the said notices, they have not appeared before the Revenue Divisional Officer on the date of enquiry despite giving opportunity to them. Instead of filing objections before the Revenue Divisional Officer, Chittoor, the petitioners have approached this Court and filed the present writ petition.

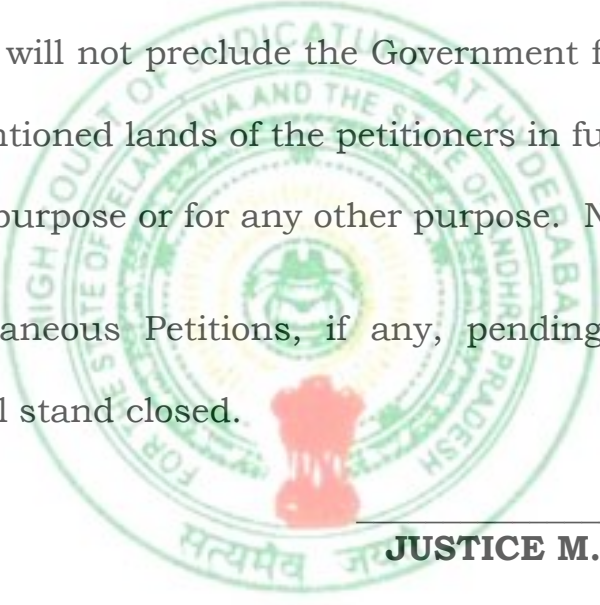
5. In the meanwhile, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act 30 of 2013') came into force with effect from 01.01.2014. As per Section 24(1)(a) of the Act 30 of 2013, if the land acquisition proceedings were initiated 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.

6. 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 set aside.

7. Accordingly, the writ petition is allowed. 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.

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



JUSTICE M.GANGA RAO

29th January, 2018
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