

*** THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

+ WRIT PETITION No.7799 OF 2008

% Date 01-10-2018

Sonti Kamala Kumari,
W/o. Late Lakshminarayana,
Hindu, aged about 70 years,
R/o.Bommuluru (V), Gudivada (M),
Krishna District & 2 others ... Petitioners

V.

\$ State of A.P., Rep. by its Principal Secretary (Revenue),
Secretariat, Hyderabad & 2 others ...Respondents

! Counsel for the Petitioners : Sri Ch.Dhanamjaya

^ Counsel for Respondents : Government Pleader for Land
Acquisition

< **GIST :**

> **HEAD NOTE:**

? **CASES REFERRED:**



THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**WRIT PETITION No.7799 OF 2008****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 appropriate Writ or order or direction declaring the action of the respondents in issuing notice under Sections 9 (3) and 10 of the Land Acquisition Act, 1894 (for brevity, 'the Act'), without issuing a declaration under Section 6 of the said Act with respect to the land of the petitioners in a total extent of Ac.3-68 cents in R.S.no.104 of Bommuluru Village, Gudivada Mandal, Krishna District, as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondents to drop all further proceedings.

2. I have heard the submissions of Sri Ch. Dhanamjaya, learned counsel for the petitioners, and of the learned Government Pleader for Land Acquisition, appearing for the respondents. I have perused the material record.

3. The case of the petitioners, in brief, is this:

The petitioners are the owners of the abovesaid land. They belong to BC Community. They are small farmers. Petitioners 1 to 3 are the owners of Ac.1-00, Ac.1-18 cents & Ac.1-50 cents, respectively, out of the afore-stated land. They were issued pass books separately in their names for the above said respective extents of lands. While so, the District Collector, Krishna at Machilipatnam/the 2nd respondent issued a draft notification under Section 4 (1) of the Act and the same was

published in the District Gazette, on 30.08.2006, proposing to acquire the lands of the petitioners, for providing house sites to members of weaker sections of the society under Indiramma Awas programme. A notice, under Section 5A of the Act, has been issued, on 03.10.2006, and the draft declaration was also approved by the 2nd respondent and the same was published, on 07.02.2007. At that stage, the petitioners filed W.P.No.19751 of 2006. In the said Writ Petition, this Court, *vide* orders, dated 22.02.2007, passed in W.P.MP.No.24932 of 2006 granted an interim order. That Writ Petition along with a batch of Writ Petitions was disposed of by this Court *vide* common judgment, dated 28.12.2007, and the respondents herein are directed to give personal hearing to the petitioners by providing a reasonable opportunity and to consider their objections to the proposed acquisition. Thereafter, the Land Acquisition Officer – cum – Revenue Divisional Officer, Gudivada/the 3rd respondent (for brevity, ‘the Land Acquisition Officer’) issued a notice under Section 5A of the Act directing the petitioners to submit their objections, on 14.02.2008. The petitioners filed their objections contending as follows: “The 1st petitioner is aged 70 years. The petitioners are members of Backward Community and are small farmers. There are suitable lands in the village fit for providing as house sites to the members of weaker sections. The lands of the petitioners are acquired with *mala fide* intention and without any justifiable reason. The Gram Panchayat has also passed a resolution that the lands proposed for acquisition are not fit for use as house sites. Even if the lands of the petitioners are to be acquired and are to be provided as house sites to the beneficiaries, they cannot fill up and level the lands, as the lands are wet lands. There is land in Gramakantam of the village, which is more suited for the proposed purpose.” However, without taking into consideration the

detailed objections of the petitioners, the 3rd respondent, in a mechanical manner, rejected the objections of the petitioners by his remarks, dated 15.03.2008, and sent his report to the 2nd respondent stating that the objections of the petitioners are untenable and requested the 2nd respondent to issue further proceedings to acquire the subject lands of the petitioners. On receipt of the alleged remarks from the 3rd respondent, the 2nd respondent passed an order, dated 21.03.2008, stating that the objections of the petitioners are overruled and their request for withdrawal of their lands from the proposed acquisition is rejected. The said order was signed by the 2nd respondent on 24.03.2008. Thereafter, the 2nd respondent issued notice, dated 29.03.2008, in Form-7, under Sections 9(3) and 10 of the Act, requiring the petitioners to appear, on 08.04.2008, before the 3rd respondent to submit the objections, if any, with regard to the measurements and title of the lands proposed to be acquired. The said notice under Sections 9 (3) and 10 of the Act is *ex facie* illegal, as no fresh declaration under Section 6 of the Act was issued or published after the 5A enquiry. Before issuance of notice under Section 9(3) of the Act, issuance of a declaration and publication of the same is mandatory and such a statutory requirement cannot be by-passed. Further, no personal hearing was given to the petitioners during the course of enquiry under Section 5A of the Act. It clearly indicates that the respondents are bent upon proceeding with the impugned action of acquisition. The respondents were under the impression that the earlier declaration published under Section 6 of the Act is valid, though, the same was quashed by the order of this Court in the earlier Writ Petition. Hence, the notice, under Section 9 (3) of the Act, is to be quashed and a direction is to be given to the respondents to give an opportunity of personal hearing to the

petitioners, as contemplated under Section 5A of the Act, which is a valuable statutory right under the said provision of law. Further, the 3rd respondent overlooked the resolution, dated 12.09.2006, of the Gram Panchayat, wherein the Gram Panchayat requested the 3rd respondent not to proceed with the proposed acquisition *inter alia* stating that Government land is available in the Gramkantam. Hence, the Writ Petition is filed.

4. The case of the respondents, as stated in the counter of the Land Acquisition Officer, in brief, 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. On verification, it is found that 137 families are not having own houses or house sites. The Tahasildar, Mandal Revenue Inspector of Gudivada Mandal and Village Revenue Officer, Bommuluru Village, have inspected the lands in Bommuluru Village. Since no Government vacant land is available in the village, the respondents selected the land of the petitioners, which is adjacent to the village and suitable for construction of houses. There are no structures in the lands of the petitioners. Proposals were submitted by the Tahasildar to the Land Acquisition Officer. Draft notification under Section 4 (1) of the Act was submitted to the District Collector by the Land Acquisition Officer *vide* letter, dated 19.08.2006. The same was approved by the District Collector, on 25.08.2006. It was published in the District Gazette, on 30.08.2006, and thereafter, in the newspapers, on 03.09.2006, and 05.09.2006. Substance of the notification was publicised in the locality,

on 06.09.2006. Thereupon, notice under Section 5A of the Act in Form-3 was issued to all land owners requesting to attend for an enquiry, on 03.10.2006, and to file their objections, if any, and for personal hearing for consideration of their objections to the proposed acquisition. The petitioners attended the enquiry, on 03.10.2006, which was conducted by the Land Acquisition Officer. Thereafter, a report was sent to the District Collector, Krishna. Thereafter, a draft declaration under Section 6 of the Act was approved by the Collector, on 05.02.2007; and, it was published in the District Gazette, on 07.02.2007. It was published in the newspapers, on 19.02.2007 & 22.02.2007. Its substance was published in the locality, on 22.02.2007. The Land Acquisition Officer issued notices under Sections 9 (1) & 10 and 9 (3) & 10 of the Act requesting the interested parties, whose lands are acquired, to attend for an enquiry before him, on 09.03.2007. At this stage, the petitioners approached this Court and obtained interim orders of stay, on 22.02.2007, in W.P.No.19751 of 2006. The said Writ Petition was dismissed by judgment, dated 28.12.2007, and the Land Acquisition Officer was directed to give an opportunity of personal hearing to the petitioners and consider their objections to the proposed acquisition. The Land Acquisition Officer, accordingly, issued notice, on 05.02.2008, for conducting enquiry and accordingly, conducted enquiry on 14.02.2008. The petitioners availed the opportunity of personal hearing. The Land Acquisition Officer submitted a report to the Collector. The Collector having perused the objections and the enquiry report of the Land Acquisition Officer, has taken a decision *vide* his order, dated 21.03.2008, to proceed with the acquisition by rejecting the objections of the petitioners. The said order was communicated to the petitioners. Thereafter, notices in Form-6 (under Sections 9 (1) & 10) and in Form-7

(under Sections 9 (3) & 10) were issued, on 29.03.2008, fixing the date for award enquiry on 08.04.2008. The said notices sent by registered post to petitioners 1 and 3 were returned as they were not present. Notice sent to the 2nd petitioner was received by him. At that stage, the petitioners once again approached this Court and filed the present Writ Petition and obtained an interim order. Therefore, the respondents could not proceed further in the matter. It may be true that the petitioners are the owners of the proposed lands. But, only after completion of award enquiry and on proof of title, compensation will be paid to the true land owners. The contra allegations in the Writ Petition are false. The petitioners using local politics motivated some of their henchmen and got the resolution of Gram Panchayat against the proposed acquisition in order to gain personal benefit. The Government is providing necessary funds for leveling the land and for other infrastructural facilities. Therefore, the lands are wet lands and require leveling is not an obstacle to make the lands fit for use as house sites. There is no vacant Gramakantam land, as being contended by the petitioners. The declaration under Section 6 of the Act issued, on 05.02.2007, was not quashed and it is in force. Therefore, the question of publication of draft declaration again does not arise. Hence, there is no illegality in issuing further notice under Sections 9 (3) & 10 of the Act. Hence, the Writ Petition may be dismissed.

5. On 01.05.2008, this Court, while admitting the Writ Petition, granted the following interim order in W.P.MP.No.10266 of 2008:

“There shall be interim stay of dispossession of the petitioners from an extent of Acs.3.68 cents of land situated at Bommuluru Village of Gudivada Mandal in Krishna District.”

6. Though, by the above interim order, stay of dispossession of the petitioners from the subject land was only granted, the respondents, however, have not taken further proceedings and therefore, as on today, no award has been passed as required under law. In their submissions, the learned counsel appearing for the petitioners and the learned Government Pleader reiterated the respective pleaded cases.

7. It is not in dispute that the notice proposing to conduct enquiry under Section 5A of the Act was issued by the Land Acquisition Officer - RDO. On filing of the objections by the petitioners, he conducted the enquiry and submitted to the 2nd respondent-District Collector, a report overruling the objections of the petitioners. It is urged on behalf of the petitioners that the Land Acquisition Officer - RDO is not competent to issue such a notice and conduct enquiry under Section 5A of the Act. In view of the said contention, it is necessary to refer to Section 3(c) of the Act, which 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 has to discharge the function of delegation by issuing a notification in the Gazette; and, that on such delegation only, 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 State Government delegating the powers of the Collector to the RDO. However, RDO conducted the 5A enquiry by exercising the powers of Collector without any authority conferred upon him by a notification of the State Government. It is hence, contended that on this ground alone, the acquisition proceedings, which are illegal, are liable to be set aside. Suffice if it is noted that this contention of the petitioners merits consideration.

8. According to the petitioners, they submitted detailed objections; but, they were not afforded a reasonable opportunity of personal hearing and that there was no effective hearing on their objections and they were denied a valuable right to substantiate their objections. However, learned Government Pleader submits that after the orders of this Court in the earlier writ petition & batch, notices were again issued under Section 5A of the Act asking the petitioners to submit their objections and to attend the enquiry, on 14.02.2008, and that all objections were got enquired into. However, the specific contention of the petitioners is that the Gram Panchayat passed a resolution in September, 2006, and that the said fact was mentioned in their objections; but, the said objection was not considered at all. A perusal of the gram panchayat resolution, a copy of which is filed before this Court, would show the following aspects: The Village panchayat area merged in

Gangadharapuram; in R.S.no.6/R Ac.1.79 cents of land is available in Gramkantam; land of Ac.1.02 cents of Zilla Parishad is also there in Harizanwada in Bommuluru village; the same is convenient for use as residential sites; the Government lands can be utilized for the scheme; it is not necessary to acquire private lands and pay lakhs of rupees to private persons; the land in the gramkantam is nearer to the road. The said facts are already informed to the Collector. Private wet lands in the village, which are given 12 years back as house sites remained as it is, after laying foundations, as the beneficiaries were unable to bear the expenses for leveling and the leveling of the said lands was stopped in the middle; survey may be conducted of the lands; hence, the facts are being brought to the notice of the Collector as some revenue authorities are not bringing the facts to his notice.' In the counter, it is stated that the petitioners using local politics motivated some of their henchmen and got the resolution of Gram Panchayat against the proposed acquisition in order to gain personal benefit. However, the objections of the petitioners supported by the resolution of the Gram Panchayat, which contains the details of the lands with survey numbers etcetera, was simply ignored/brushed aside without verification from the President and Members of the Gram Panchayat though there are verifiable details in the resolution of the Gram Panchayat and the Collector is enjoined with the duty to make necessary verification. Thus, there is *prima facie* proof that the objections of the petitioners were not properly considered and that there was no effective personal hearing.

9. 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 an opportunity of being heard. After 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. As contemplated under law, at the time of hearing, the objector can make an effort to convince the Land Acquisition Officer to make recommendations against the acquisition. Further, the objector can produce evidence to show that suitable piece of Government land is available and the same can be utilised 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. 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 considering the objections of the objectors and the submissions made at the hearing, will denude the decision of the appropriate Government of statutory finality, is the settled legal position. The settled legal position thus emphasises the importance of the enquiry under Section 5A of the Act which is to be conducted by the Collector unless 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. 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.

10. Another important aspect, which is urged by the petitioners is that after an enquiry under Section 5A of the Act, without publication of draft declaration under Section 6, notices under Sections 9(1) & (10) and 9(3) & (10) of the Act were issued requesting the petitioners to attend before the Land Acquisition Officer, on 09.03.2007, to show the nature of their interest & claims over the subject land and that such issuance of notices without fulfilling the statutory mandatory requirement of publication of declaration under Section 6 is illegal and that the same vitiates the acquisition proceedings. As per the factual matrix, the Land Acquisition Officer initially conducted an enquiry under Section 5A of the Act and sent his report with objection statements to the Collector and that thereafter, a declaration under Section 6 was approved by the Collector, on 05.02.2007, and the same was published in the District Gazette, on 07.02.2007. However, this Court, by its orders in the earlier writ petition directed to conduct enquiry under Section 5A afresh. Later, 5A enquiry was conducted, on 14.02.2008. It is an admitted fact that after the above said 5A enquiry held on 14.02.2008, the declaration under Section 6 of the Act was not published. The respondents contend that earlier an enquiry under Section 5A was first conducted and that at that time, a

declaration under Section 6 was published in February, 2007 and that in that view of the matter, after conducting an enquiry under Section 5A once again, on 14.02.2008, there is no need to publish a fresh declaration under Section 6 of the Act. The petitioners contend that when once the earlier enquiry conducted under Section 5A of the Act is held invalid and when the respondents were directed to conduct the enquiry under Section 5A afresh, it follows that the declaration under section 6 of the Act, which was issued earlier to the fresh enquiry under Section 5A, is bad and *non-est*. However, the learned Government Pleader for the respondents would submit that by the earlier orders of this Court, the declaration under Section 6, which was published on 07.02.2007, was not quashed, and therefore, there is no need to publish a fresh declaration as the declaration was already published. In the considered view of this Court, this contention has no acceptable merit and hence, does not merit consideration. Though the declaration under Section 6 earlier published was not quashed by this Court in the earlier orders passed in the batch of writ petitions, yet, the procedure contemplated under the Act envisages that the declaration has to be published after the enquiry under Section 5A and not prior to such enquiry. Therefore, even if the declaration under Section 6(1) published, on 07.02.2007, was not set aside by this Court, by virtue of the order directing the respondents to conduct enquiry afresh under Section 5A of the Act, the earlier declaration under Section 6(1) published on 07.02.2007, became *non est* in the eye of law. This view of this Court finds support from the decision in **Sudarsanam Venkatacharyulu and others v. Government of Andhra Pradesh and others**¹. Therefore, on

¹ 2000 (3) ALD 299

this ground, this Court finds that the acquisition proceedings are vitiated.

11. Adverting to the aspect as to whether the Collector can now be directed to conduct an enquiry under Section 5A afresh, what is to be noted is that after 4(1) notification, an enquiry as contemplated under Section 5A of the Act has to be held and that after completion of the requirements, a declaration under Section 6 of the Act has to be published in the Gazette within one year from the date of notification under Section 4(1). Therefore, even if such a direction is now given, it would not be possible for the Government to comply with the requirement of publication of the Declaration under Section 6 of the Act within statutory time frame, as the statutory time of one year has elapsed long time back. Learned Government pleader submitted that in view of the orders of stay granted by this Court, the respondents could not take further steps in the matter and that hence, no award is passed and that the possession of the subject lands is continuing with the petitioners. In view of the above said facts and the further fact 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, the learned counsel for the petitioners submits that 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 lands for providing house sites or for any other public purpose.

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

13. For all the above reasons, this Court finds that the Writ Petition deserves to be allowed. Accordingly, the Writ Petition is allowed directing the respondents to drop all further proceedings pursuant to the notification under Section 4 (1) of the Act insofar as the subject lands of the petitioners are concerned. It is needless to observe that if the Government are still desirous of acquisition of the subject lands of the petitioners either for originally intended purpose or 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, if any, pending in this Writ Petition shall stand closed.

01st October, 2018

Note: LR copy to be marked.

[B/o]

MD

M.SEETHARAMA MURTI, J