

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.5043 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 declaring the impugned notification in Roc.No.G2/3703/06, dated 18.03.2006, published in Eenadu Telugu Newspaper, dated 25.03.2006, insofar as it related to the agricultural lands of the petitioners situated at Kolladam Village, Sathyavedu Mandal of Chittoor District, as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and to set aside the same and direct the respondents not to dispossess the petitioners from the subject lands.

2. I have heard the submissions of *Sri S.V. Muni Reddy*, learned counsel appearing for the petitioners, and of the learned Government Pleader for Land Acquisition, appearing for respondents 1, 2 and 5. I have perused the material record. I have gone through the pleadings.

3. In this Writ Petition, though the notification was challenged on various grounds, learned counsel for the petitioners first contended that under the very notification issued under Section 4 (1) of the Land Acquisition Act, 1894 (for brevity, 'the Act'), the District Collector delegated his powers to the Revenue Divisional Officer, Tirupati, and that in the notification, it is stated that the Revenue Divisional Officer (RDO) would conduct the enquiry under Section 5A of the Act and that, therefore, the competence of the RDO to issue a notice and conduct an enquiry under Section 5A of the Act is questioned. Learned counsel further submitted that under Section 3(c) of the Act, the Collector is

required to perform his functions; and, if any delegation is to be made, the delegation must be made only by the State Government by notification in AP Gazette, as per Section 3-A of the Act, as amended by the State of AP [Act 22 of 1976]. Hence, he submitted that the delegation is illegal and the RDO has no jurisdiction or powers to issue a notice or to conduct the enquiry and deal with the acquisition proceedings.

4. Learned Government Pleader, on written instructions, dated 06.09.2018, a copy of which is placed on record, submitted that in this Writ Petition, this Court, by order, dated 16.03.2007, granted interim stay and, therefore, the respondents could not proceed with the further acquisition proceedings and that the possession of the subject lands was also not taken and at the relevant time, there are agricultural crops in the lands and that the petitioners are in possession and enjoyment of their lands. He further submitted that, in the event, this Court is inclined to allow the Writ Petition, liberty may be reserved to the Government to acquire the subject lands in future for either the desired purpose viz., establishing Industrial park or any other public purpose.

5. It is undisputed that notification under Section 4(1) of the Act was issued by the District Collector, Chittoor, and in the said notification it was stated that the power to conduct enquiry under Section 5A of the Act is delegated to the RDO, Tirupati, under Section 3(c) of the Act. Section 3(c) 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 AP [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.”

From the above provisions of law, it is noticeable that the power of delegation is not with the Collector and that the State Government have to discharge the function of delegation by 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 by the Government delegating the powers of the Collector to the RDO. However, the Collector delegated his statutory function even by the very notification to the RDO and the notification states that the RDO would conduct the 5A enquiry. Since the RDO cannot exercise the powers and discharge the functions of the Collector without a notification by the State Government conferring such powers and the authority upon him, on this ground alone, the notification is liable to be set aside and the Writ Petition deserves to be allowed.

6. 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. At the hearing, it is contemplated under law that 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 above legal position emphasises the importance of enquiry under Section 5A, which is to be conducted by the Collector. Therefore, the notification, which states that the Collector empowered the

RDO to discharge the function of conducting 5A enquiry contrary to the statutory mandate, is not legal and valid.

7. 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 the issuance of 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 to be 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 counsel for the petitioners has also submitted that in view of the long lapse of time since the date of the notification, the Government are required to re-consider as to whether or not the acquisition of the subject property is necessary at present for the originally desired purpose, 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 the desired purpose or any other public purpose.

8. On the above analysis and for the reasons aforesaid, this Court finds that the Writ Petition deserves to be allowed as prayed for.

9. In the result, the Writ Petition is allowed as prayed for. It is needless to observe that if the Government are still desirous of acquiring the subject lands of the petitioners, in future, either for the originally intended purpose or for 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.

September 24, 2018
MD

M.SEETHARAMA MURTI, J

