

THE HON' BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.8985 of 2007

ORDER:-

This Writ Petition is filed to issue a Writ of Mandamus declaring the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') by respondent No.2 in Rc.No.G1.4368/ 05 dated 28.06.2005 and the consequential Draft Declaration issued in Rc.No.G1.4368/ 05 dated 25.10.2005 by respondent No.2 as arbitrary, illegal and unconstitutional and consequently direct the respondents to refrain from acquiring the land belonging to the petitioner measuring an extent of Ac.4.74 cents situated in Survey No.903/ 2 at Kodur Bit-2 Village, T.P.Gudur Mandal, Nellore District.

2. The case of petitioner is that he is retired from the Railway Mail Services Department on 30.06.2003. He purchased an extent of Ac.4.85 cents of land situated in Survey No.903 at Kodur Bit-2 Village, T.P.Gudur Mandal, Nellore District vide registered document bearing No.922/ 2004 dated 31.08.2004 on receipt of the pension benefits and provident fund and other retirement benefits. Respondent No.2 issued a notification under Section 4(1) of the Act, published in the local newspapers on 28.06.2005 for acquisition of the petitioner's land for the purpose of

providing house sites to the weaker sections, invoking the urgency clause, in exercise of the powers conferred under the provisions of Section 17 of the Act, dispense with Section 5A enquiry under Section 17(4) of the Act. Under Section 6 of the Act, a Draft Declaration was published by respondent No.2 on 20.10.2005. The petitioner further stated that he approached the respondents and sought information as to why his agricultural land is fit for human habitation when the alternative lands are available within the vicinity of the village. As there is no urgency for providing house sites to the weaker sections, dispensing with Section 5A enquiry depriving the right to submit the objections to the land acquisition proceedings as per Section 5 of the Act, questioning the land acquisition proceedings the petitioner filed the present Writ Petition.

3. On 26.04.2007, this Court granted interim order in W.P.M.P.No.11491/2007 staying all further proceedings including the dispossession of the petitioner pursuant to the notification issued under Section 4(1) of the Act in Rc.No.G1.4368/2005 dated 28.06.2005 issued by respondent No.2. Thereafter, no further proceedings had taken place as per the provisions of the Act.

4. The respondents filed counter affidavit denying the averments of the Writ Affidavit.

5. Heard the learned counsel for both sides.

6. Respondent No.2 has not passed the award as required under Section 11(a) of the Act. It appears that in view of the interim order passed by this Court, respondent No.2 could not able to pass the award.

7. 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 Act and no award under Section 11 of the Act has been made, all the provisions of the new Act relating to the determination of compensation shall apply.

8. 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 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.

In the circumstances, this Writ Petition is allowed. It is needless to observe that allowing of the Writ Petition will not preclude the Government from acquiring the aforementioned land of the petitioner in future either for the original purpose or for any other purpose. No costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

29.01.2018  
MVA



M. GANGA RAO, J