

HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE S.V.BHATT

WRIT APPEAL No.706 OF 2017

JUDGMENT: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Respondents in W.P.No.401 of 2008 are the appellants. The appeal is directed against the order dated 13.10.2014 in W.P.No.401 of 2008. The learned Single Judge through the order under appeal set aside Award No.23/2008 made by the Land Acquisition Officer-cum-Revenue Divisional officer/2nd appellant and has granted liberty to acquire the land in Survey No.45/2A, 2B, 2C in an extent of Acs. 3-11 cents in accordance with law.

The parties are referred to as arrayed in the writ petition.

W.P.No.401 of 2008 was filed for Mandamus declaring the action of respondents in issuing notification dated 13.10.2007 under Section 4(1) of the Land Acquisition Act 1894 (for short 'the Act') in Rc.G4 4874 of 2007, Form-3 notice in Section 5-A dated 18.10.2007 in Ref.No.Rc.A/1392/2007, draft notification dated 07.01.2008 under Section 6 of the Act, award enquiry notice under Sections 9 (1) and 10 of the Act on 09.01.2008 and Award No.23/2008 dated 06.08.2008, as illegal, violative of principles of natural justice and set aside the same.

The petitioner through registered sale deeds dated 10.08.2006 claims as the owner and possessor of Acs.3-11 cents in R.No.45/2A, 2B, 2C of Singarayapalem Village, Pedana Mandal,, Krishna District (for short 'the subject matter') and also a small farmer eking out her

livelihood by cultivating the subject matter. On 13.10.2007, the Land Acquisition Officer/2nd respondent issued Section 4(1) notification under the Act followed by notice dated 18.10.2007 under Section 5-A of the Act for conducting enquiry. On 07.01.2008, draft declaration was made under the Act. The 2nd respondent issued award enquiry notice under Sections 9 (1) and 10 on 09.01.2008 and 06.08.2008 respectively. The petitioner in the instant writ petition challenges draft declaration under Section 6 as illegal and issued without satisfying the requirements of Section 5-A of the Act. In other words, without proper enquiry report etc., the draft declaration was made and further steps under Section 9, Section 10 etc., were initiated in award enquiry. The Land Acquisition Officer overruling the objections under Section 5-A enquiry firstly is without enquiry and secondly does not record the findings on each one of the objections raised by writ petitioner. Hence, draft declaration dated 07.01.2008 is vitiated. It is further contended at the time of final hearing of writ petition that during the subsistence of the status quo order granted by this Court, the Land Acquisition Officer passed Award No.23/2008. The Award is illegal and *non est* in the eye of law.

The learned Government Pleader confines the challenge to order under appeal on the following grounds:

The order under appeal is unsustainable inasmuch as there is nothing on record to show that status quo order dated 08.01.2008 granted for a period of four weeks was communicated to respondents so that the respondents are bound by the status quo

order. There is no record to show that the order dated 22.08.2008, making the status quo order until further order, was communicated to respondents. Therefore, according to him, even if the writ petition is pending as the status quo order at the first instance was for a period of four weeks, making Award No.23/2008 dated 06.08.2008 is valid and tenable. In other words, the Government Pleader contends that the order extending status quo was not communicated to respondents. Therefore, the respondents were right in making the Award dated 06.08.2008. The Government Pleader also contends that there is no illegality or infirmity in the order dated 31.12.2007 made under Section 5-A of the Act and consequently the draft declaration dated 07.01.2008 is tenable in law. Hence, the order under appeal is untenable and warrants interference of this Court.

Mr.Ch.Dhanamjaya contends that the petitioner challenges the land acquisition proceedings and making of the Award during the pendency of the writ petition does not take away the scope of judicial review of impugned land acquisition proceedings. According to him, on 08.01.2008, status quo was ordered for four weeks, thereafter, at the request of respondents, the writ petition underwent adjournments for counter or production of record. He admits that on 26.02.2008, the writ petition was dismissed for default and again on 24.04.2008, the writ petition was restored to file. The orders passed at several stages are communicated through Registry and the knowledge of filing writ petition to respondents is evident from the reference shown in the Award proceedings dated

06.08.2008. He contends that the draft declaration under Section 6 dated 07.01.2008 is illegal and vitiated and the consequent making of Award No.23/2008 dated 06.08.2008 during the currency of the status quo or pendency of writ petition is illegal and *non est* in the eye of law. The case of petitioner in nutshell is that draft declaration firstly does not satisfy the requirement of Section 5-A of the Act and secondly, the award enquiry through notice dated 07.01.2008, when this Court directed status quo order renders the Award illegal and void in the eye of law.

We have heard the learned counsel appearing for the parties and also perused the record in W.A.No.706 of 2017 and also W.P.No.401 of 2008.

The recap of the circumstances is that the petitioner challenges the land acquisition proceedings initiated through Section 4(1) notification dated 13.10.2007. The petitioner specifically challenges each one of the stages in the land acquisition proceedings up to the making of Award No.23/2008. The petitioner challenges draft declaration dated 07.01.2008 as not conforming to the requirement of Section 5-A of the Act. Further, no opportunity was afforded to the petitioner in the enquiry held under Section 5-A. The challenge to draft declaration, in the considered view of this Court, particularly, after perusing the order Rc.G4. 4874/2007 dated 13.10.2007 under Section 5-A is that the District Collector/1st respondent did not conduct the enquiry envisaged under Section 5-A of the Act and also that the respondents could not satisfy the Court that the writ

petitioner was given opportunity of participating in the enquiry held under Section 5-A of the Act. This Court after perusing the record cannot but advert to this infirmity in the land acquisition proceedings initiated through Section 4(1) of the Act. The next ground of challenge against the order under appeal is that the learned Single Judge committed an error by setting aside the Award by referring to status quo order dated 08.01.2008 of this Court, inasmuch the Award was made when the status quo order was not subsisting or in operation.

Mr. Dhananjaya by way of reply contends that the learned Single Judge found fault with issuing notices under Sections 9 and 10 of the Act when the status quo order dated 08.01.2008 was subsisting and no enquiry could have been held, even behind the back of petitioner. According to him, the respondents ought not to have moved, when this Court directed parties to maintain status quo, further in the matter pursuant to draft declaration dated 07.01.2008. Therefore, the findings recorded by the learned Single Judge are tenable and no ground is made out for interference in this intra Court appeal.

The respondents contend that they are not aware of the filing of the writ petition in this Court and also status quo order dated 08.01.2008. The contention is referred and liable to be rejected by referring to the 2nd reference in Award No.23/2008 dated 06.08.2008. The 2nd reference in Award No.23/2008 refers to letter received from the office of Government Pleader for land acquisition dated 10.01.2008 in W.P.No.401 of 2008. There is no

explanation except pleading lack of knowledge of pendency of writ petition or interim order for completing the acquisition proceedings notwithstanding the status quo order granted by this Court. The Award enquiry was conducted on 28.01.2008 and the respondents could not show whether the Award enquiry has been conducted in the presence of petitioner or behind the back of petitioner. Therefore, this Court is of the view that the initiation of Award enquiry was during the subsistence of status quo order granted by this Court. This Court restored writ petition and on 22.08.2008 extended the status quo order until further orders, ignoring the extended order as well the respondents claim to have deposited the amount before the learned Senior Civil Judge. The memorandum of grounds refers to making Award on 14.07.2008 and depositing amount in the civil Court on 06.08.2008. The copy of the Award placed before the Court refers to draft Award as 14.07.2008, the Joint Collector consented to draft award and Award under Section 11 of the Act was passed on 06.08.2008. From the above, it is clear that the respondents with a view to getting over the challenge made against the making of Award during the pendency of the writ petition or initiating the Award enquiry when the status quo orders are in force, state these dates conveniently. A close look discloses that the convenient plea of lack of knowledge of pendency of writ petition now taken, is unsustainable.

For the above reasons, we are in agreement with the findings recorded by the learned Single Judge and writ appeal fails and is, accordingly, dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V.BHATT, J

Date:27.08.2018
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