

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.5261 OF 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed requesting to issue a Writ of Mandamus or any other appropriate Writ declaring the action of the respondents in issuing the notification, dated 24.11.2007, and the consequential proceedings in Ref.No.G2/8244/2007, dated 26.02.2008, & the proposed draft declaration, as illegal, arbitrary and against the provisions of the Land Acquisition Act, 1894 (for brevity, 'the Act') and Articles 14 and 300-A of the Constitution of India. A request is also made in the Writ Petition to set aside the same.

2. I have heard the submissions of Sri *K.B. Ramannadora*, 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 is this:

"The 5th petitioner is the absolute owner and possessor of Ac.2-00 of land in Survey no.418 situated at Chebrolu Village, Gollaprolu Mandal, East Godavari District. The petitioners 1 to 4 are the joint owners of agricultural land admeasuring Ac.2-50 cents in Survey no.663 of the same Village. The petitioners are in possession and enjoyment of their respective lands and are eking out livelihood by raising crops in their respective lands. They are totally dependant upon agriculture. The said lands are wet lands and yield two crops per annum. Except the wet lands stated above, respectively owned by the 5th petitioner and the petitioners 1 to 4 jointly, there are no other sources of income for the

petitioners. On the date of the filing of the Writ Petition, there was standing crop of sugarcane in the subject lands. There are also coconut trees in the said lands. However, the 1st respondent/District Collector proposed to acquire the afore-stated lands of the petitioners for providing house sites to the persons of weaker sections. A notification under Section 4(1) of the Act was issued. The 2nd respondent was appointed to perform the functions of the Collector under Section 5A of the Act. Pursuant to the notification under Section 4 (1) of the Act, the 2nd respondent/Revenue Divisional Officer issued notice, dated 30.11.2007, in Form-3, under Section 5A of the Act. The petitioners, having received the said notice, submitted their objections *inter alia* informing as follows: "That the preliminary notification, dated 24.11.2007, is erroneous, as a civil suit in O.S.No.1 of 2007 is pending on the file of III Additional District Court, Kakinada; that the lands, which are double crop wet lands, are on low lying; that the lands are not fit for use as house sites; that the lands are valuable and potential lands; that the petitioners belong to agrarian families; that they have no other source of income, except the said lands; that the lands, if acquired, would deprive pathways and water sources for the remaining lands; that if the agricultural lands are converted into high level mounds, for construction of houses, the water channels and other canals for irrigation would be badly affected; that when the tank receives water to its full tank level, a part of wet Ayacut under Kotalankavari tank will be subjected to submersion; that therefore, if the lands are to be acquired, the said lands shall invariably be converted into very high level lands; that the acquisition would be at the cost of the remaining lands of the petitioners; that in the subject lands sugarcane crops are being raised; that coconut

trees in the lands are now more than 10 years old; that they are at fruit bearing age; that the notification does not contain the particulars of beneficiaries of the acquisition; that the lands acquired by the Government earlier were not distributed to landless poor persons in the Village; that no assigned lands were in occupation of those beneficiaries; that the lands remained in the possession of the benamidars; that there are Government lands adjoining the village; that they are well suited for assignment as house sites; that there is vast assessed waste land available with the Government; that the said land is situated adjoining the village; that instead of distributing the land belonging to the Government to the beneficiaries as house sites, initiation of acquisition proceedings in respect of the subject lands, which are 2 KMs., away from the village, is unwarranted; that the acquisition is being done under political influence, at the behest of the political leaders; that there are dry lands of an extent of Ac.4765-00 in the village; that therefore, the said land can be used for the desired purpose instead of acquiring the wet land of Ac.500-00 out of the total extent of land in the village.” On 04.01.2008, during discussions, the petitioners have shown Government land to the 2nd respondent. The 2nd respondent suggested to the petitioners and advised them to incur necessary expenditure to level up the Government land adjacent to the village to enable the Government to give up the proposal of acquisition of the petitioners’ lands. As there is no other alternative and so as to safeguard their lands, the petitioners offered to incur 50% of the costs that are to be incurred for leveling the Government land. The 2nd respondent promised to look into the proposal and settle accordingly. However, the 2nd respondent, to the surprise of the petitioners, rejected the petitioners’ objections in a causal manner.

The 1st respondent without taking into consideration the objections and without conducting due enquiry on the objections of the petitioners, further directed the 2nd respondent to submit a draft declaration under Section 6 of the Act, for approval. The specific contention of the petitioners is that there are vast Government dry lands suitable for use as house sites and that the said lands are situated adjacent to the village. Therefore, the remarks in the report of the 2nd respondent that the petitioners have not given survey numbers and particulars of the Government lands are absurd. The Government officials ought to have verified their own records or called for explanation from the Tahasildar before rejecting the objections of the petitioners. The actions of respondents 1 and 2 are high handed and illegal. The land in Survey No.208 to an extent of Ac.10-82 cents was acquired under the Ceiling Act; and, out of the said land, an extent of Ac.7-50 cents in Survey Nos.208/2B to 2F was allotted to landless poor persons; but, the said land, which is abutting the village house sites is still lying vacant. If the Government are really interested, the said lands could be allotted for use as house sites, instead of acquiring the lands of the petitioners and others afresh. The 5th petitioner and his four children constitute a Hindu Undivided Family. The other petitioners are having 10 members in each of their families; and, Ac.20-00 of land for each of such families is not sufficient for livelihood. There are number of dependants on each of the petitioners. Hence, the present Writ Petition is filed.”

4. On 18.08.2008, this Court, while admitting the Writ Petition, passed the following interim order in W.P.MP.No.6830 of 2008:

“Pending further orders, there shall be interim stay of dispossession of the petitioners from the land in question.”

5. No counter is filed by the respondents.

6. Learned counsel for the petitioners, while reiterating the case pleaded by the petitioners, which is stated supra, would further submit that the Government have no tenable defence; hence, no counter has been filed since the year 2008 till date; that, though, the interim order is granted to not to dispossess the petitioners, no further steps, as per the procedure contemplated under the Act, have been taken and that therefore, the acquisition proceedings lapsed by efflux of time; and that it is obvious that the contentions of the petitioners are tenable and deserve acceptance by this Court.

7. Learned Government Pleader for Land Acquisition submits that because of the orders of stay directing the Government not to dispossess the petitioners, no further steps could be taken, and, hence, no Award is passed.

8. The case of the petitioners is that the notification under Section 4(1) of the Act was issued by the District Collector, East Godavari District; but, the RDO has issued the notices for enquiry under Section 5A of the Act. Learned counsel for the petitioners has invited the attention of this Court 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. Denying the allegations in the writ petition, no counter has been filed. The fact that the notification under Section 4(1) of the Act was issued by the Collector and no notification was issued by the Government delegating the powers to the RDO is not disputed and such notification, if any, is not produced. Thus, in the case on hand, it is sufficiently established that there is no notification issued by the 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 thus 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.

9. According to the petitioners, during the course of 5A enquiry, discussions were held, on 04.01.2008, and that at that time, they have shown Government land to the 2nd respondent and that he suggested and advised the petitioners to incur expenditure for leveling the Government land, which is adjacent to the village, in order to facilitate the Government to give up the proposal for acquisition of their lands and

that the petitioners, having no alternative and to protect their lands, offered to incur 50% of the costs that are to be incurred in that regard and that the 2nd respondent promised to look into the proposal and settle accordingly; but, no further enquiry was held and that the objections of the petitioners were rejected in a casual manner without affording an opportunity of personal hearing.

10. 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. The law contemplates that 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 emphasises the importance of the enquiry under Section 5A 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 after the discussions, 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 and yet the 1st respondent directed the 2nd respondent to submit for approval draft declaration under Section 6 of the Act.

11. Adverting to the aspect as to whether the Collector can now be directed to conduct an enquiry under Section 5A, 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 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, if such a direction is to be given, the Government will not be

able to publish the declaration under Section 6 as the statutory time of one year has elapsed long time back.

12. Learned counsel for the petitioners further submits that at present the Government are not continuing the Indiramma Housing Scheme and that new housing schemes are being implemented. He has drawn the attention of this Court to Section 11A of the Act, which reads as under:

“11A - Period within which an award shall be made

The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencements.

Explanation: In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court shall be excluded.”

He further submitted that as per the provision of the above Section of law, the Award was not passed within a period of two years and that as there was no blanket stay order staying all further proceedings, pursuant to the impugned proceedings, the acquisition proceedings lapsed and therefore, if the Government require the subject lands for the desired purpose, it is for the Government to initiate fresh land acquisition proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and that therefore, the Writ Petition deserves to be allowed.

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

14. 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.

August 23, 2018
MD

M.SEETHARAMA MURTI, J

