

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 14006 OF 2010

ORDER :

This Writ Petition is filed to call for the records relating to the declaration issued under Section 6 of the Land Acquisition Act, 1894 (for short, 'the Act'), dated 09.02.2010 published in *Vartha* daily newspaper on 17.02.2010.

Petitioners claim to be the owners of residential premises bearing Municipal Door No. 3/130 and 3/131 respectively in Masapet Village, Rayachoty Mandal, Kadapa District. It is stated that the notification under Section 4(1) of the Act dated 17.08.2009 was published proposing to acquire an extent of 154.12 square feet of constructed area and 57.08 square feet of open space belonging to the 1st petitioner and 237.49 square feet of constructed area and 66.11 square feet of open area belonging to the 2nd respondent. The petitioners stated that they had submitted objections; principal among them is that survey was not carried out properly by the Tahsildar and further, he had also failed to locate the stone markings and encroachments. The petitioners therefore, prayed for re-survey to be conducted. It is further asserted that the notification was issued without there being governmental sanction for acquisition of the land. Since the report under Section 5-A of the Act, dated 03.02.2010 is without specifically mentioning the objections raised by the petitioners, the same is liable to be ignored and consequently, the declaration issued under Section 6 is to be set aside, adds the petitioners. It is their complaint that the respondents had visited their premises on 05.06.2010 and

demanded to vacate the same. In those circumstances, the petitioners pray for a writ of *certiorari*.

This Court while admitting the Writ Petition on 21.06.2010, granted interim stay as prayed for.

Thereafter, W.P.M.P.No.35367 of 2017 was taken out by Sri P. Kishore, S/o Sri P. Nagi Reddy to implead himself as the 3rd respondent to the Writ Petition and the said Application was ordered on 01.11.2018. It is his claim that the 2nd petitioner had sold him the property, suppressing the pendency of the Writ Petition, by executing a registered sale deed dated 24.07.2014, but however, he was denied the compensation. It is his further case that he is ready to forego the extent of the building, which is required for acquisition, and receive the compensation.

The 2nd respondent Land Acquisition Officer had filed a counter-affidavit stating that the Writ Petition does not deserve any consideration. It is asserted that in the process of enquiry under Section 5-A of the Act, notices were issued to all the affected parties including the petitioners and a meeting was also convened on 29.10.2009 in the Office of the Tahsildar, Rayachoty. 56 interested persons including the petitioners attended the meeting and most of them have filed objections for re-survey of road, re-measurement of structures / vacant sites, change of door numbers. It is stated that the petitioners had also filed their objections to locate the survey stones as per the Field Map / Field Measurement Records available and to identify and remove the encroachment on the road side. All the objections were sent to Municipal Commissioner and Tahsildar, Rayachoty for taking necessary action. It is further stated that thereafter, based on the

map supplied by the N.H. Authorities and as per the Field Measurements books, re-measurement and re-survey was conducted by the Municipal Commissioner and the Tahsildar, Rayachoty and that as contended by the petitioners, encroachments have been identified and removed; that certain variations were noticed in measurement of structures and vacant sites of various persons including that of the 1st petitioner and the same were rectified by issuing errata to draft notification *vide* proceedings dated 09.02.2010, and in respect of the 2nd petitioner there is no variation in the extent of structure / vacant site, as notified in the notification. It is further stated that in all respects, objections of the petitioners have been considered and draft declaration under Section 6 of the Act was issued and it is only on account of the stay granted by this Court on 21.06.2010 in W.P.M.P. No. 17619 of 2010, which was extended from time to time, further proceedings could not be taken up. Though the entire road work has been completed, the possession of the properties of the petitioners was not taken on account of the stay granted by this Court.

Heard learned counsel for the petitioner, learned Government Pleader for Land Acquisition and Sri V.R. Reddy Kovvuri, learned counsel for the 3rd respondent.

The fact that the grievance of the 1st petitioner stood redressed is not controverted by filing a reply affidavit. The basic objection of the petitioners is that the site was not ascertained and the stone markings were not located properly. The 2nd respondent, in the counter-affidavit, had categorically asserted that the said anomaly has been rectified with the help of the revenue /

municipal authorities. So far as the 2nd petitioner is concerned, he had sold the property and hence, he has no interest thereon and the said aspect is required to be taken into consideration. Further, in view of the order of stay granted by this Court, except passing of the Award, in all other respects, acquisition proceedings have come to a particular stage. In those circumstances, considering repeal of the Land Acquisition Act, 1894 and enactment of Act 30 of 2013, in terms of Section 24(1) which mandates that in respect of the land acquisition proceedings initiated under 1984 Act, where no award under Section 11 was passed while the said Act was in force, then the provisions of Act 30 of 2013 shall apply relating to the determination of compensation. In fact, similar issue was considered by this Court, taking into consideration the changed legal position, in its judgment in **P. Sudha Madhavi v. District Collector/LAO Visakhapatnam**¹ and also in Writ Petitions No. 22781 of 2008 and 18274, 18619 of 2009.

In view of the above settled legal position, particularly taking into consideration the no objection expressed by the 2nd petitioner, the Writ Petition is disposed of with a direction to the Land Acquisition Officer to make an Award in terms of Section 24 of 2013 Act and determine the compensation accordingly by extending the benefits under the said Act. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

26th November 2018
ksld

¹ 2017(5) ALD 127