

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.19352 OF 2007

ORDER:

Petitioners are the owners and possessors of the land to an extent of Acs.0.14 guntas, Ac.00-13 1/3 guntas, Ac.0.13 1/3 guntas, Ac.0.13 1/3 guntas, Ac.0.13 guntas and Ac.0.13 guntas in survey No.453 (E) and Ac.0-10 1/3 guntas, Ac.0-10 1/3 guntas, Ac.0-10 1/3 guntas in survey No.448 situated at Nampalli Village of Vemulawada Mandal respectively. They have purchased the said lands from its original pattedars namely Balgam Vajramma and Kasa Rajaiah and applied for mutation of the lands. The Mandal Revenue Officer, Vemulawada, issued pattedar and ownership passbooks. The first respondent issued notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') for resettlement zone under Mid Maner Reservoir for rehabilitation of Project displaced families of Kodumunja Village, Vemulawada Mandal of Karimnagar District, and the same was gazetted on 08.06.2007, published on 25.06.2007, in the locality on 19.07.2007. Further, declaration under Section 6 of the Act was passed in proceedings No.G1/1822/2007-2 dated 07.06.2007 published in government gazette on 04.07.2007. The 5A enquiry was dispensed with by invoking urgency clause under Section 17 (4) of the Act. Aggrieved by the same, the petitioners filed the present writ petition.

2. The case of the petitioners is that they are small farmers, except the above lands, they are not having any other lands to eke out their livelihood. If their lands are acquired, they will become

landless poor persons and will be forced to leave their village in search of coolie works. The authorities have not exercised their power under the provisions of the Act properly. The provision of Section 17 (4) of the Act has to be exercised only after causing public notice under Section 4 (1) of the Act and thereafter declaration under Section 6 of the Act has to be made. But, the authorities have taken decision to notify the lands under Section 4 (1) of the Act, decision under Section 17 (4) of the Act and made declaration under Section 6 of the Act on the same day on 07.06.2007. Hence, acquisition of petitioners' lands is illegal and contrary to the provisions of the Act. Petitioners further state that the government has initiated acquisition proceedings to acquire the petitioners' lands contrary to Government Orders in G.O.Ms.No.68 Irrigation & CAD (Project Wing LA-IV R & R) Department, dated 08.04.2005 and Government Memo No.1287 dated 31.03.1974 as amended by Memo No.5814/C1/77-3 dated 29.09.1997 wherein it is stated that the lands belonging to poor persons with meagre land not holding more than Acs.2-00 to Acs.2 ½ should not be acquired unless and otherwise inevitable for the purpose of maintaining the proximity and vicinity to main village and continuity of the lands similarly situated as per Memo No.7342/C1/76-4 dated 27.12.1976. The Government directed the Collectors in Memo No.2600/C1/78-A dated 12.06.1978 that the lands belonging to small farmers, marginal farmers, SC and ST should not be acquired unless there are alternative suitable lands are not available for the purpose of house sites. However, if lands of such persons have to be acquired, alternative lands need to be given to them in exchange of the acquired lands, available at the

disposal of the Government. The Mid Maner project was started more than three years back. Hence, dispensing with 5A enquiry is not justified. If enquiry under Section 5-A would have been conducted, the petitioners would have brought to the notice of the respondents that they are the small farmers and acquiring their lands leaving the lands of big landlords is not justified. Invocation of urgency clause and dispensing with 5A enquiry is illegal when there is no urgency to invoke the urgency clause.

3. The second respondent filed a counter affidavit on his behalf and on behalf of the first respondent-District Collector, Karimnagar District, stating that as per G.O.Ms.No.68 I & CAD dated 08.04.2005, the Collector has to form 'Resettlement Zone' to rehabilitate the people of completely submerged villages not disturbing their social patterns within the District. The Joint Collector acted as Administrator of 'Resettlement and Rehabilitation'. The villagers of Kodimunja of Vemulawada Mandal, the sub-merged village, have sought their 'Resettlement Zone' to be formed by the side to the road of 'Karimnagar to Kamareddy'. Accordingly, some road side patta lands in Nampally (V) of Vemulawada Mandal totally admeasuring Acs.63.28 were identified for acquisition apart from Acs.4-23 of government land. As proposed patta lands are located side by side to above government lands, they were found to be suitable for formation of 'Resettlement Zone' i.e. to form a new village for the sub-merged people. As such, the proposal for draft notification under Section 4 (1) of the Act and draft declaration under Section 6 of the Act were submitted to the District Collector, Karimnagar, by the Land Acquisition Officer/Revenue Divisional Officer, Siricilla, on

04.06.2007 and the same was approved by the District Collector, Karimnagar, on 07.06.2007 vide proceedings No.G1/1822/2007-1 dated 08.06.2007 and G1/1822/2007-2 published in Gazette No.33 dated 08.06.2007 and Gazette No.37 dated 04.07.2007 respectively, invoking urgency clause under Section 17 (4) of the Act dispensing with 5A enquiry as there was an urgent need to rehabilitate the submerged people immediately. It is further stated that the petitioners were not shown as owners of land in survey Nos.453 and 448 of Nampally (V) in 4(1) notification or declaration under Section 6 of the Act. Said notifications were prepared on the basis of the pahani in which the petitioners were not shown either as pattedars or occupiers. Hence, their names were not published in notifications. The petitioners' ownership will be enquired at the time of award enquiry. The lands under occupation are in compact block involving the lands of the petitioners. The acquisition of lands of the petitioners is inevitable in public interest. As per clause 5.13 of Chapter V of Government of AP Resettlement and Rehabilitation Policy 2005 (for short 'Policy 2005') communicated by GO No.68 dated 08.04.2005, 'the Administrator for R & R or any other officer empowered by Government, on behalf of the appropriate Government, may compulsorily acquire lands required for Resettlement and Rehabilitation of Project Affected Families under the provision of LA Act, 1894'. Hence, the contention of the petitioners that their lands cannot be acquired as they are small farmers, is not acceptable. It is further stated that the lands belonging to small farmers, marginal farmers and SCs & STs should not be acquired unless there are alternative lands are unavailable for the purpose of house sites. However, if lands of

such persons have to be acquired, alternate land may be given in exchange, which is available at the disposal of the government. But, there are no government lands available in the village for the purpose of providing house sites to the project displaced families and acquisition of petitioners' lands is inevitable in public interest, under the provisions of Policy, 2005.

4. This Court, while admitting the writ petition on 27.09.2007, granted interim stay in WPMP No.24884 of 2007.

5. Sri V.Ramana Rao, learned counsel for the petitioners, would contend that the second respondent had issued notification under Section 4 (1) of the Act and made declaration under Section 6 of the Act approved by the District Collector on 07.06.2007 acquiring the lands of the petitioners without showing the names of the petitioners, by invoking urgency clause under Section 17 (4) of the Act and dispensing with 5A enquiry, contrary to the provisions of the Act. The notification and declaration were approved on the same day i.e. on 07.06.2007 without application of mind by the concerned authority. Hence, the same are liable to be set aside. Learned counsel relied on ***E.Rama Murthy vs. Government of Andhra Pradesh***¹ to support his contention that invocation of urgency clause under Section 17 (4) of the Act cannot be a matter of routine and matter of course. The concerned Land Acquisition Officer, on the basis of the material placed before him, shall satisfy himself that there is a real urgency to dispense with enquiry under Section 5-A of the Act. *In spite* there is a lach of delay between the execution of the project and issuance of the notifications under the Act, it cannot be said that there is such an

¹ 2000 (4) ALD 74

urgency to invoke the urgency clause under Section 17 of the Act and for dispensing with 5A enquiry. Further, he would contend that a declaration under Section 6 may be made at any time after publication of notification under Section 4 (1) of the Act and not before. In the present case, a notification under Section 4 (1) of the Act was published in the locality on 25.06.2007 and declaration under Section 6 of the Act was made on 07.06.2007 itself. Hence, there is a clear violation of the mandatory provision of Section 6 (1) and Section 17 (4) of the Act. Consequently, the impugned notification and declaration made under the Act are liable to be quashed. For the same, he relied on **Nalamaty Venkata Durga Prakasa Rao v. The State of A.P.**². With regard to invocation of urgency clause under Section 17 of the Act and taking possession after expiry of 15 days from publication of notification under Section 9 (1) (2) of the Act, reliance is placed in **Union of India, New Delhi vs. Nand Kishore**³ wherein it has been held that the object of Section 17 is to regulate the rights of the subject and the obligations of the executive when lands are taken on the occasion of a public exigency. If there is no emergency, the Government has no power to dispense with the formalities of the normal statutory procedure prescribed by the Act. It is only in sudden and grave emergency that the Government can take possession of the land by abridging and curtailing the ordinary procedure. Learned counsel also placed reliance in **Uppalapati Brahmamma vs. State of Andhra Pradesh**⁴ wherein it is held that the power of eminent domain has

² AIR 1961 AP 98

³ AIR 1982 Delhi 462

⁴ 2011 (5) ALD 447

to be used in a fair and just manner. To confer benefit on one section of people, another section of equally disadvantaged people cannot be deprived of their property and eventually their livelihood. The counsel would further contend that whole approach of the second respondent in acquiring the petitioners land for resettlement and rehabilitation of the project displaced persons by invoking urgency clause under Section 17 of the Act and dispensing with 5A enquiry is unjust and the only right available to the petitioners to submit their objections to the acquisition is denied and thereby the respondents violated constitutional rights guaranteed under the provisions of the Constitution of India and therefore, the impugned land acquisition proceedings are liable to be set aside.

6. Per contra, the learned Government Pleader stoutly denied the contentions of the learned counsel for the petitioners while reiterating the averments of the counter of the second respondent. He would contend that the petitioners' lands along with other lands were proposed to be acquired for the purpose of formation of re-settlement zone for the project displaced people, for which, the petitioners' lands along with other lands were identified to be suitable for acquisition. The proposal for draft notification under Section 4 (1) and draft declaration under Section 6 of the Act were submitted to the District Collector, Karimnagar, by the Land Acquisition Officer/Revenue Divisional Officer, Siricilla, on 04.06.2007. The District Collector has approved the draft notification and draft declaration on 07.06.2007 and the same were published in gazette No.33 dated 08.06.2007 and No.37 dated 04.08.2007 respectively invoking urgency clause under Section

17 (4) of the Act and dispensing with enquiry under Section 5A of the Act. The learned Government Pleader would contend that the invoking of urgency clause is subjective satisfaction of the District Collector and relied on the judgment reported in **Delhi Airtech Services Private Limited vs. State of Uttar Pradesh**⁵. Hence, there is no infringement of provisions of the Act as contended by the learned counsel for the petitioners and there is no simultaneous publication of 4(1) notification and 6 declaration provided under the Act. The 4(1) notification was locally published on 25.06.2007 and draft declaration was published locally on 19.07.2007 even though they are gazetted on 04.07.2006 and approved on 07.06.2007. Hence, it cannot be said that the authorities have not applied their minds properly. The second respondent has followed G.O.Ms.No.68 dated 08.04.2005 during the impugned acquisition proceedings. However, the other government orders issued in Memo dated 27.12.1976 and 12.06.1978 are the self government memos and are not issued exercising the power under the provisions of the Act. Hence, they have no statutory force.

7. The learned counsel for the petitioners, in reply, would submit that since the GOs were issued exercising power under Article 162 of the Constitution of India, they have binding force on the authorities to implement them and they are only guiding factors to lessen the grievances of the land owners while acquiring their land for public purpose. In this regard, reliance is placed on the judgment rendered by a Full Bench of this Court in **K.Yadaiah**

⁵ (2011) 9 SCC 354

vs. Government of A.P.⁶ wherein it has been held that the instructions given by the Government cannot be disregarded by the authorities. In fact, in the counter filed it is not contended by the State that these instructions are not intended to be implemented and they are free to disregard them. Similarly in **Achhelal Singh vs. State of Patna**⁷ it was held that where the circulars issued by the government reflecting need for striking balance between injury, annoyance and inconvenience that would be caused to persons whose lands are proposed to be acquired and the good that may do to those for whose benefit they were acquired, are violated the proceedings are set aside. However, it is made clear that these instructions are conditional and the petitioners cannot invoke the benefit of these instructions unless those conditions are fulfilled. For example, in the instructions it is directed that the lands of marginal farmers should not be acquired unless and otherwise inevitable for the purpose of maintaining proximity and vicinity to the main villages and contiguity of the lands.

8. In the facts and circumstances of the case and in considered view of this Court, the first respondent acquired the petitioners' lands for the purpose of formation of Re-settlement Zone for the project displaced people proposing to acquire the lands by issuing notification under Section 4 (1) of the Act and the same was approved by the District Collector on 07.06.2007, published in gazette on 08.06.2007, in news paper on 13.06.2007, locally at Nampally (V) on 25.06.2007 and simultaneously urgency clause under Section 17 (4) of the Act was invoked dispensing with 5A enquiry and draft declaration was made on 07.06.2007,

⁶ 1983 ALT (F.B.) 233

⁷ AIR 1980 Patna 49

gazetted on 04.07.2007, published in news paper on 10.07.2007, locally at Nampally (V) on 19.07.2007, but the respondent authorities without application of mind even before publication of notification under Section 4 (1) of the Act, as required under the provisions of the Act, locally published on 25.06.2007, a draft declaration was made on 07.06.2007 itself contrary to Section 6 of the Act and law laid down by this Court and Apex Court, which clearly shows that the authorities have not applied their mind.

9. In ***Katari Satyanarayana and others vs. The District Collector, Krishna at Machilipatnam***⁸ in paras 15 to 17, this Court held as follows:

“15. From perusal of sub-section (4) of S.17 of the Act as amended by the Land Acquisition (A.P. Amendment and Validation) Act, 9 of 1983 (for short “the State Amending Act”), it is clear that the declaration under sub-section (2) of S.6 could have made only after causing public notice under S.4, sub-section (1). Therefore, having regard to the provisions of sub-section (4) of S.17 of the Act as amended by the State Amending Act, a declaration made under S.6 (1) of the Act could have been published in Official Gazette under S.6(2) of the Act only after public notice under S.4(1). A declaration published simultaneously which would naturally be before causing the public notice would, be in violation of the provisions of sub-section (4) of S.17 and therefore illegal. This was the view taken by a learned single Judge of this Court in *Smt.Komala Devi v. State of A.P.* (1984) 1 APLJ 80.

15-A. However after the aforementioned State amendment the Parliament also amended the Land Acquisition Act by the Land Acquisition (Amendment) Act (Act 68 of 1984) (for short “the Central amending Act”s.) After the said amendment sub-section (4) of S.17 reads as follows:-

“..... the appropriate Government may direct that the provisions of S.5-A shall not apply, and, if it does so direct, a declaration may be made under S.6 in respect of the land at

⁸ AIR 1990 AP 326

any time after the date of publication of the notification under Sec.5, sub-section (1).”

To understand the import of the phrase “after the date of publication of the notification”, it would be useful to refer to S.4(1) of the Act as it stands after amendment.

“4. Publication of preliminary notification and powers of officers thereupon.

(1) Whenever it appears to the appropriate Government or the District Collector that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, or the District Gazette and in two daily newspapers circulating in that locality of which at least one shall be in the regional language and the Collector shall within forty days from the date of publication of such notification cause public notices of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of the publication of the notification.”

16. A reading of these two sub-sections makes it clear that ‘the date of publication of the notification’ would be the last of the dates of publication of S.4(1) notification in the Gazette, publication of the said notification in two daily newspapers circulating in the locality and the date of publication of substance of such notification in the locality. Obviously last of the dates of the publication of the notification above referred to can only be after publication of the draft notification in the Gazette. Therefore, declaration under S.6 (1) can validly be published only after the date of publication of the notification referred to in sub-section (1) of S.4. As such, simultaneous publication of declaration under S.6(2) and draft notification under S.4(1) would be in violation of sub-section (1) and would, therefore, render the publication of the declaration under S.6(2) invalid and illegal. We are supported in our view by a recent judgment of the Supreme Court in State of U.P. v. Radhey Shyam Nigam, AIR 1989 SC 682. In that case for purposes of different housing schemes, notifications were issued for acquiring lands. The draft notification under S.4(1) and the declaration under S.6 in question were published simultaneously on 6th May, 1985. A Division Bench of the High Court of Allahabad before which the validity of the

acquisition proceedings was challenged, upheld the objection that simultaneous publication of declaration under Sec.6 with the draft notification under S.4(1) was illegal, and quashed the declaration under S.6 of the Act. On appeal to the Supreme Court, the judgment of the High Court was confirmed and it was observed:

“The words have to be understood in their usual and most known signification. If that be so, then the legislature must have had some intention in choosing the expression ‘after’ before ‘date of publication of the notification’ in sub-section (4) of S.17 of the Act while making amendment by Amending Act No.68 of 1984. It is true that there were some changes giving the meaning of the date of the publication in S.4 (1) and (2) as well as S.6 (2) of the Act. But for that, there was no need for the use of the expression ‘after the date’. If that be the position, then we must accept the interpretation put upon the amended clause by the High Court in the judgment under appeal.”

17. From the above discussion it follows that the declaration under S.6 of the Act published in the Gazette on 9-11-1973, is illegal and invalid and it is accordingly quashed. It would be open to the authorities to issue fresh declaration under S.6 of the Act in accordance with law keeping in view the period of limitation mentioned in Section 6 of the Act.”

10. In view of the ratio laid down by this Court in **Katari Satyanarayana (8 supra)**, the impugned acquisition proceedings are liable to be set aside for the reason that notification under Section 4 (1) and declaration under Section 6 of the Act were issued contrary to the provisions of Section 4(1) and 6 of the Act.

11. Further, there is no urgency to invoke the provision under Section 17 (4) of the Act. When urgency clause is invoked, dispensing with enquiry under Section 5A of the Act, being drastic provision in an expropriatory law, reasonableness in law is required. Failure to show the urgency in issuing proceedings and notifications, invocation of urgency clause under Section 17 and

dispensing with 5A enquiry is illegal. The authorities have failed to take into consideration the executive instructions issued in respect of the acquisition of the lands of the small and marginal farmers for housing purposes and the same is also in violation of the government instructions issued exercising power under Article 162 of the Constitution of India.

12. For the above said reasons and in view of the judgments of this Court and Apex Court, the impugned notifications are liable to be set aside. Accordingly, the Writ Petition is allowed by setting aside the impugned land acquisition proceedings.

13. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

23rd March, 2018
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(M.GANGA RAO, J)