

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.19604 OF 2007

ORDER:

The case of the petitioners is that they are the owners of the agricultural land over an extent of Ac.21-09 cents in Survey No.92/A situated at Gopularam Kalan Village, Munpally Mandal, Medak District.

2. On earlier occasion, the petitioners filed W.P.No.11513 of 2003, when the respondent authorities were contemplating to construct a minor tank bed (cheruvu) in their agricultural lands, to declare such action as illegal and bad. A counter-affidavit came to be filed stating that the petitioners had approached this court only on mere apprehension. Recording the said submission, the said writ petition came to be disposed of on 30.08.2004.

3. Thereafter, once again, when the respondents tried to take over the possession of the land without issuing any proceedings and apprehending the unauthorised digging of the minor tank bed, the petitioners filed this petition seeking a writ of Mandamus declaring the action of the respondents in constructing a minor tank bed (cheruvu) by taking forcible possession of the petitioners private patta lands to an extent of Acs.21-09 cents in Survey No.92/A, situated at Gopularam Kalan village, Munpally Mandal, Medak District without initiating the Land Acquisition proceedings as contemplated under the Land Acquisition Act, as arbitrary and illegal.

4. This Court, while issuing notice before admission on 14.09.2007, directed the respondents not to dispossess the petitioners from the lands in question. On 06.12.2017, a submission was made before the Court by the learned Assistant Government Pleader that the respondents would follow the due process, if they intend to proceed with the land acquisition. On 12.12.2007, when the matter was taken up for hearing, this court, noticing the averments in the counter, had observed as follows:

“In paragraph 4 of the counter affidavit filed by respondents 1 to 3, it is stated that the Irrigation Department had not filed any requisition with the Revenue Department for acquisition of land in Survey No.92/A admeasuring Ac.21-09 guntas situated at Gopularam Kalan vilalgbe, Munipally Mandal of Medak District, whereas in the next paragraph, it is stated that the Executive Engineer, Irrigation and Command Area Development, IB Division, Sanga Reddy, had submitted a requisition before the Revenue Divisional Officer, Sanga Reddy Division vide letter dated 27.02.20178 requesting to acquire the land in Survey No.92/A admeasuring Ac.21-09 guntas.

As there is inconsistency between paragraphs 4 and 5 of the counter affidavit filed by respondents 1 to 3, learned Government Pleader for Land Acquisition seeks time to get instructions in the matter.”

5. On 13.12.2018, the learned Government Pleader was directed to get instructions from the respondent authorities. It may also be noted that in the initial counter affidavit filed on 03.12.2007, there was no mention with regard to the land acquisition proceedings having been initiated. However, in the additional counter-affidavit filed on 15.02.2018, it was stated that the draft notification was published on 21.08.2008 and draft

declaration was published on 22.08.2008 by invoking the urgency clause under Section 17(4) of the Act while dispensing with 5A enquiry. It was also stated that award enquiry notices were issued on 13.10.2008 under Sections 9(3) and 10 of the Act. However, no award was passed on account of the stay granted by this court.

6. A reply affidavit is filed denying the averments in the counter affidavit and particularly denying any notices having been issued to the petitioners. It was further averred that the proceedings initiated have lapsed, as no award has been passed as stipulated under the law.

7. Heard the learned counsel for the petitioners and learned Government Pleader for Land Acquisition as well as learned Government Pleader for Irrigation.

8. The facts as stated in the respective affidavits are not in dispute except to the effect that there is denial of any notice having been issued to the petitioners at any point of time. The interim direction not to dispossess the petitioners came to be granted by this court on 14.09.2007, admittedly, by which date, no land acquisition proceedings were initiated, as even the draft notification alleged to have been issued was only in August, 2008. It may also be noted that the respondents had stated in the counter affidavit that the draft notification, draft declaration were published in the newspapers. The counter affidavit is silent as to when the said notification and publication were published in official gazette as mandated under the Act (now repealed).

It may also be noted that under Section 11A of the Act, extracted hereunder, an award is required to be passed two years from the date of draft declaration.

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

– (1) 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, 1894, the award shall be made within a period of two years from such commencement.”

9. Admittedly, even as on date, there being no award passed, the land acquisition proceedings, though not challenged before this court, by operation of law stands lapsed. Further, it may also be noted that in terms of Section 24 of the Act, if no award is made with respect to the land acquisition proceedings initiated earlier or possession taken or compensation paid if the land is required it would be open for the authorities to initiate proceedings under the Act.

10. Viewed from any angle, in the present case on hand, the interference with the land of the petitioners, without there being any acquisition proceedings, would be unauthorised and illegal violating the rights of the petitioners under Article 300A of the Constitution of India. The feasible argument advanced on behalf of the respondents that the possession could not be taken on account of the stay granted by this court also would not aid the cause of the respondents as, admittedly, there was no stay

of the land acquisition proceedings initiated, which were much later than the filing of the writ petition and the stay, at best, could be understood as no dispossession can be made without following due process.

In those circumstances, the writ petition deserves to be allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

CHALLA KODANDA RAM, J

December 20, 2018

LMV

