THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL Nos.944 and 948 of 2018

COMMON JUDGMENT: (Per the Hon'ble Sri Justice Ramesh Ranganathan)

These two appeals are preferred, under Clause 15 of the Letters Patent, by the tenants of shops and owners of buildings in Badichowdi, Koti, Hyderabad aggrieved by the orders passed by the Learned Single Judge in I.A.No.1 of 2018 in W.P.No.19263 of 2018 and in I.A.No.1 of 2018 in W.P.No.19271 of 2018 dated 12.06.2018.

Both W.P.Nos.19263 and 19271 of 2018 were filed questioning the notifications dated 21.12.2017 issued under Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter called the "2013 Act"), the orders passed by the respondent-Special Deputy Collector, Land Acquisition Wing, Hyderabad, vide proceedings dated 09.04.2018 and 18.04.2018, rejecting the objections put forth by the appellants-writ petitioners under Section 15 of the 2013 Act, and the notification dated 04.05.2018 issued by the respondents under Section 19(1) of the 2013 Act, as illegal and arbitrary. In I.A.No.1 of 2018, in both the Writ Petitions, the appellants-writ petitioners sought stay of all further proceedings pursuant to the notification issued under Section 11(1) of the 2013 Act. By the orders under appeal, the Learned Single Judge granted stay of dispossession of the petitioners till an award was passed by the competent authority under the 2013 Act. Aggrieved thereby, the present Appeals.

Sri B.Vijaysen Reddy, Learned Counsel for the appellants-writ petitioners, would submit that Badichowdi market is of historical importance, and has been in existence for the past more than 100 years; apart from several business establishments, there are several hundreds of street vendors selling their wares in the Badichowdi market area; the existing road in front of Badichowdi market, starting from the Veer Sawarkar Centre till Sulthan Bazaar circle, has a width of about 50 feet; the Hyderabad Metro Rail authorities have laid pillars and via-ducts in the middle of the said road, without acquiring the land; the notifications, issued under the Land Acquisition Act, 1894 more than 7 years ago, lapsed; new notifications, under Section 11(1) of the 2013 Act, were issued in the year 2017, more than three years after the 2013 Act came into force on 01.01.2014; the road leading from Badichowdi to Sulthan bazaar/Koti is restricted to one-way traffic; this road, after excluding the road median, is of 50 feet; as the flow of traffic on this road is only one-way, it would suffice if the width of the road is extended from 50 feet to 65 feet; if extension of the road is restricted to a width of 65 feet, instead of the proposed 80 feet, extensive damage to the existing shops can be avoided, and the future of several persons, eking out their livelihood, can be protected; as a 65 feet road is sufficient; it is unnecessary to acquire land for the purpose of laying an 80 feet road; the appellants-writ petitioners had filed detailed objections under Section 15(1) of the 2013 Act; they had brought to the notice of the respondents the expert report covering several important aspects, both factual and technical, to substantiate their claim that it would suffice if the width of the road is confined only to 65 feet;

their objections, made under Section 15 of the 2013 Act, were not examined properly; the Learned Single Judge failed to consider the contention that exercise of the power of acquisition, for the alleged public purpose i.e for Metro Rail alignment, is mala-fide and is a colourable exercise; even before the process of acquisition commenced, the authorities had high-handedly and illegally proceeded with the metro rail alignment by raising pillars and via-ducts, thereby rendering the subsequent acquisition of land a fait accompli; if the purpose of acquisition was really genuine, the authorities would not have proceeded with the construction of pillars and via-ducts even before commencement of the acquisition process; and it is evident that the authorities had a pre-meditated plan of acquiring the subject lands even before the preliminary notification, under Section 11(1) of the 2013 Act, was issued. Sri B.Vijaysen Reddy, Learned Counsel for the appellants-writ petitioners, would rely on **Union of India v. Shiv Raj**[1].

Bearing in mind that the main Writ Petitions are still pending adjudication before the Learned Single Judge, these Appeals are preferred only against the ad-interim orders passed therein, and the respondents herein are yet to file their counter-affidavits in reply to the allegations in the Writ Petitions, let us now examine the contentions urged on behalf of the appellants-writ petitioners, and determine whether they justify interim orders as prayed for, in I.A.No.1 of 2018 in both the Writ Petitions, being granted.

The historical significance of the Badichowdi market not withstands, it is only if thereis any law which prohibits such

[1] (2014) 6 SCC 564

buildings from acquisition, can the preliminary notification issued under Section 11(1) of the 2013 Act be interdicted. As no statutory provision, either plenary or subordinate, which disables the appropriate Government from exercising its power of eminent domain to acquire such buildings has been brought to our notice, we see no reason to interfere with the acquisition proceedings on this ground.

The Notifications, issued under Section 11(1) of the 2013 Act, make it clear that the Government of Telangana/Collector, Hyderabad District proposed to acquire various extents of lands and buildings in Thotaguda (Badichowdi) Village, Nampally, Hyderabad District as they were ***"properties affected"*** under the metro rail alignment of the Hyderabad Metro Rail Project. It is evident therefrom that the subject lands and buildings were being acquired not for the purpose of raising pillars and viaducts, but because they would be affected as a result of the metro rail alignment. Public roads and pavements, in the city of Hyderabad, vest with the GHMC under Section 373 of the GHMC Act, and the pillars and via-ducts, for the metro rail project, were erected and laid over these roads. The appellants-writ petitioners cannot, therefore, be heard to contend that erection of pillars and viaducts on GHMC roads, prior to issuance of the notifications under Section 11(1) of the 2013 Act, is illegal. A preliminary notification is issued under Section 11(1) of the 2013 Act whenever it appears to the appropriate Government that the land or structures in any area are required, or are likely to be required, for any public purpose, and its acquisition is therefore necessary. The proposed acquisition of the subject properties, pursuant to the notification issued under Section 11(1) of the 2013 Act, is because they would be affected by the metro rail alignment (i.e the existing 50 feet road is required to be expanded to an eighty feet road), and not for the purpose of raising pillars or constructing via-ducts for the Hyderabad Metro Rail Project.

The mere fact that the earlier notifications issued under Section 4(1) of the Land Acquisition Act, 1894, for acquisition of these and other lands in Badichowdi area, had lapsed, would not by itself disable the appropriate Government from issuing fresh notifications under Section 11(1) of the 2013 Act for acquisition of the subject lands and buildings. As long as it is for a public purpose, the appropriate Government is entitled to exercise its power of eminent domain to acquire lands and buildings in accordance with law. As the earlier acquisition proceedings instituted under the 1894 Act had lapsed, a fresh notification was required to be issued, under Section 11(1) of the 2013 Act, to recommence land acquisition proceedings. Any right which the street vendors or tenants of shops in Badichowdi area may have for compensation or other benefits is not taken away on acquisition of these lands and buildings under the 2013 Act.

Failure of the respondents to issue notifications, under Section 11(1) of the 2013 Act, before pillars and viaducts of the Hyderabad Metro Rail Project were raised in the middle of the public road, would not render the subsequent Section 11(1) Notifications arbitrary and illegal, as no private properties were acquired, or required to be acquired, at that stage. It is only after a the notification was issued under Section 11(1) of the 2013 Act, are the subject properties now sought to be acquired. Allegations of malafides, and the exercise of power to be colourable, are easily made. A very high degree of proof is required for such allegations to be established. (**E.P.Royappa v. State of Tamil Nadu**[2]). As vague allegations would not suffice, we see no reason to interdict these acquisition proceedings on this score. In any event, these allegations can only be examined after the respondents are given an opportunity to rebut these allegations by way of a counter-affidavit. As the subject lands are required to be acquired only to widen the existing 50 feet road to 80 feet, we find it difficult to agree with the contention that the decision to acquire these lands is premeditated.

With regards the appellants-writ petitioners contention of their being denied their right to have their objections effectively considered, it is necessary to note that, under Section 15(1), any person interested in any land which has been notified under Section 11(1), as being required or as likely to be required for a public purpose, may, within 60 days from the date of publication of the said preliminary notification, object to (a) the area and suitability of the land proposed to be acquired; (b) the justification offered for the public purpose; and (c) the findings of the Social Impact Assessment report.

Sri B.Vijaysen Reddy, Learned Counsel for the appellants-writ petitioners, would fairly state that clause (c) of Section 15(1) has no application to the facts and circumstances of the present case. The question which arises for consideration is only whether the appellants-writ petitioners' right to have their objectives

[2] AIR 1974 SC 555

considered effectively, under clauses (b) and (c) of Section 15(1), has been violated.

It is not even contended before us that acquisition of land and buildings, for laying a road on either side of the Hyderabad Metro Rail pillars, is not for a public purpose. The only contention is that, instead of an 80 feet road, it would suffice if a 65 feet road is laid, since the entire road stretch is a one-way traffic. It is debatable whether such a contention would fall within the ambit of clause (a) of Section 15(1), since it would not touch upon the suitability of the land sought to be acquired. The contention, however, is that this objection relates to the area of the land proposed to be acquired, and would fall within the ambit of Section 15(1)(a) of the 2013 Act.

While examining the scope of Section 5-A of the 1894 Act (which is similar to Section 15 of the 2013 Act), the Supreme Court in **Shiv Raj**[1] observed:

"…….Therefore, Section 5-A of the 1894 Act confers a valuable right in favour of a person whose lands are sought to be acquired. **It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the Act, 1894 confers a valuable important right and having regard to the provisions, contained in Article 300A of the Constitution of India has been held to be akin to a fundamental right. Thus, the limited right given to an owner/person interested under Section 5-A of the Act, 1894 to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason, and within the limitations prescribed under Section 17(4) of the, 1894 Act**………"
(emphasis supplied)

As the order of the Special Deputy Collector must be preceded by application of mind, having due regard to relevant factors, and the right given under Section 15 is neither an empty ritual nor can it be taken away save for just and valid reasons, it is necessary to examine, prima-facie, whether this right conferred on the appellants-petitioners has been violated. In his order, passed under Section 15(2) of the 2013 Act, the Special Deputy Collector stated that the proposed road width is as per the road development plan, and as per the reports of the technical experts committee; only the minimum required portions had been acquired; on the request of traders, the Hyderabad Metro Rail Project had already restricted the acquisition to a width of only 80 feet; further reduction of the road width was not possible; the existing road width, at Badichowdi, was more than 65 feet at many places, and certain properties on the road had already been acquired; movement of traffic on Badichowdi is one way, and RTC buses are plying; the minimum carriage width required, for plying buses, would be around 9 meters on each side of the pier; 2.40 metres of land was required to provide a foot path of 2.00 metres on both sides of the road; consequently, the total required width of the road would be around 24.40 meters i.e. 80 feet; the land acquisition process was initiated for acquisition of only a part of shops, and a major portion of the shops would remain even after acquisition/widening; the owners/interested persons could continue their business in the left over area; and the rehabilitation measures, for providing alternate shops at the R & R Complex, would be considered as per norms. The Special Deputy Collector has assigned reasons for rejecting the appellants-writ petitioners contention that it would suffice if a 65 feet road is laid, instead of an 80 feet road.

While reliance is placed by Sri B.Vijaysen Reddy, Learned Counsel, on the report obtained by the appellants-writ petitioners, from an alleged technical expert, to contend that this report was not considered by the respondent-officials, Learned Government Pleader for Land Acquisition would submit that such a report was not even brought to the notice of the Special Deputy Collector, by the appellants herein, in the objections filed by them under Section 15(1) of the 2013 Act. It is wholly unnecessary for us, in an intra-Court appeal under Clause 15 of the Letters Patent that too against an ad-interim order, to examine all these aspects, since the Writ Petitions are still pending consideration before the Learned Single Judge. Whether a 65 feet road would suffice, or whether 80 feet is the minimum required width for a road to be laid at Badichowdi, are all matters in the executive realm and this Court, in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, would ordinarily not sit in appeal over the decision taken by the competent authority on such technical matters, nor would it substitute its views for that of the authorities concerned. In any event these are all matters which necessitate examination, in the Writ Petitions pending consideration before the Learned Single Judge, after the respondents file their counter-affidavits.

The Learned Single Judge has, while prohibiting the respondents from dispossessing the appellants-writ petitioners till an award is passed, sufficiently safeguarded their rights under the 2013 Act. The appellants-writ petitioners' entitlement for grant of relief - interim or final - is only if their rights under the 2013 Act are violated. The contention that it was wholly unnecessary for the Learned Single Judge to pass such an interim order, as such a protection is, in any event, conferred on them under the 2013 Act, does not therefore merit acceptance.

A feeble submission is put forth by Sri B.Vijaysen Reddy, Learned Counsel for the appellants-writ petitioners, that this process is sought to be misused by land owners to have their tenants evicted from the shops only to avoid a decision in the proceedings instituted under the Rent Control enactments. Whether tenants, who claim protection under the Rent Control Acts, are entitled for compensation on acquisition of the subject lands, are again matters which should be considered in the Writ Petition, after the respondents file their counter-affidavits.

Prima-facie, the objections raised by the appellants-writ petitioners, in their applications under Section 15(1) of the 2013 Act, has been considered and dealt with by the Special Deputy Collector, Land Acquisition, in his order made under Section 15(2) of the 2013 Act. Interference, in an intra-Court appeal, would be justified only if the order passed by the Learned Single Judge suffers from a patent illegality. We find no such infirmity in the order under appeal. Suffice it to make it clear that the award passed under the 2013 Act, and any action taken by the respondents pursuant thereto, shall be subject to the result of both W.P.Nos.19263 and 19271 of 2018. The observations made in this order is only our prima-facie opinion on the contentions raised on behalf of the appellants-writ petitioners, and the Writ Petitions shall be finally heard and decided on its merits, uninfluenced by any observations made in this order.

Subject to the aforesaid observations, both the Writ Appeals fail and are, accordingly, dismissed. The miscellaneous petitions pending in this Writ Appeal, if any, shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

RAMESH RANGANATHAN, J

Date:20.07.2018.
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