

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.8647 OF 2007

ORDER:

This Writ Petition is filed to declare the land acquisition notification in ROC No.F5/SW/225/2006 dated 08.06.2006 issued by the 1st respondent seeking to acquire the land in R.S.No.709/5 of an extent of Ac.0.80 cents of Malavanitippala, Kalla Mandal, West Godavari District, and also the declaration under Section 6 of the Land Acquisition Act vide Notification No.F5/SW/255/2006 dated 02.11.2006 and also the notices dated 19.02.2007 issued under Sections 9 (1) and 10 of the Land Acquisition Act (for short 'the Act') as illegal and arbitrary.

2. Case of the petitioner, in brief, is that he is having an extent of Acs.10.00 cents fish tank in R.S.No.709/5, 709/6, 709/7 and 709/8 in the Malavarnitippa, H/o.Kalavapudi Village, Kalla Mandal. As the said land is not useful for cultivation, he converted the land into 'fish tank' about 20 years back and paying land revenue to Government. A notification under Section 4 (1) of the Act was issued proposing to acquire the petitioner's land to an extent of Ac.0.80 cents in R.S.No.709/5 situated in Malavanitippa, Kalla Mandal, vide proceedings in ROC No.F5/SW/225/06 dated 08.06.2006 for providing house sites to the poor sections of the people under 'Indiramma Housing Scheme'. The second respondent had issued notice in Form-3 vide ROC No.B/749/2006 dated 12.06.2006 under Section 5 of the Act calling for objections for acquisition of the lands duly fixing the date as 28.06.2006 for filing objections. It is stated that the petitioner filed objections stating that the proposed land is part and parcel of the fish tank and the land cannot be separated from fish tank and the same is

not fit for houses and government poramboke land is available nearby the village for providing house sites. Without passing any orders on the objections of the petitioner submitted under Section 5-A of the Act, the first respondent issued declaration under Section 6 of the Act on 02.11.2006. Petitioners received the notices under Sections 9 (1) and 10 of the Act on 19.02.2007, which were served on the farm servant of the petitioners on 07.03.2007. Thus, questioning the land acquisition proceedings, the present Writ Petition is filed.

3. This Court while admitting the writ petition on 24.04.2007, granted stay of all further proceedings pursuant to the land acquisition proceedings in ROC No.F5/SW/225/2006 dated 08.06.2006. In view of the interim stay, the respondents could not proceed further with the land acquisition proceedings.

4. The respondent filed a counter affidavit accepting the acquisition of the land and issuance of notification under Section 4 (1) and declaration under Section 6 of the Act. Further, the respondents passed Award No.25/2006-07 dated 19.03.2007 under Section 11 (1) of the Act and notice under Section 12 (2) of the Act was also issued on 10.04.2007 directing the petitioner to receive the compensation amount of Rs.1,83,689/-. At that point of time, the petitioner filed the present writ petition and obtained interim stay.

5. Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition. Both the counsel would state that no possession was taken by the respondents.

6. During pendency of the writ petition, the new Act i.e. The Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act 30 of 2013') came into force w.e.f.01.01.2014. As per Section 24 (2) of Act 30 of 2013, if the land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid, the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of the new Act.

7. Thus, in the facts and circumstances of the case, the writ petition is allowed by holding that the land acquisition proceedings impugned in this writ petition shall be deemed to be lapsed. It is needless to observe that allowing of the Writ Petition will not preclude the Government from acquiring the aforementioned land of the petitioner, afresh under the provisions of Act 30 of 2013, in future either for original purpose or for any other purpose.

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

(M.GANGA RAO, J)

5th February, 2018
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