

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.8087 of 2008

ORDER:

In this writ petition, under Article 226 of the Constitution of India, requesting to issue a Writ of Mandamus, the challenge is to the order in Rc.G.4.1892/2007, dated 21.03.2008, whereby the petitioner was informed that the objections of the petitioner and her request for withdrawal of the subject land of Ac.2.00 cents from the proposed acquisition are over ruled & rejected and that the land will be acquired as proposed.

2. I have heard the submissions of the learned counsel appearing for the petitioner and of the learned Government Pleader for Acquisition appearing for the respondents. I have perused the material record.

3. Learned counsel for the petitioner submitted as follows:

The petitioner is the absolute owner and possessor of Ac.2.00 cents of land in Sy.No.544/1 (part) of Dokiparru Village, Gudlavalleru Mandal, Krishna District, which is a cultivable land. When a notification, dated 25.04.2007, in Form-2A under Section 4(1) of the Land Acquisition Act, 1894, was published in the newspaper, dated 03.05.2007, notifying that the said land would be acquired, the petitioner filed W.PNo.10945 of 2007 challenging the said notification. The said writ petition was disposed of giving liberty to the petitioner to raise all her legally sustainable objections before the 2nd respondent and participate in the enquiry to be held under Section 5-A of the said Act; and, the 2nd respondent was also directed to give an opportunity of personal hearing to the petitioner in respect of the land proposed for

acquisition. Later, a notice was received by the petitioner stating that the enquiry would be conducted, on 14.02.2008. On that date, the 2nd respondent directed the petitioner to give written objections and stated that he would inform the date for personal hearing. However, without giving a date for personal hearing, the impugned order has come to be passed. Hence, the writ petition is filed.

4. This writ petition was admitted, on 17.03.2009, but, no interim order is granted.

5. The 2nd respondent filed a counter reiterating the chronology of events which lead to the 5-A enquiry stage and asserted that the petitioner attended, on 20.05.2007, before the Land Acquisition Officer for 5-A enquiry and that she had submitted her written objections and hence, the question of providing personal hearing does not arise and that an enquiry was already conducted and the objections of the petitioner are over ruled and that the order impugned is passed in accordance with the procedure established by law. In the counter, it is also stated that till date no Award has been passed. It is further stated that there are eighty eligible applicants for allotment of house site pattas in the village and that the said aspirants applied for allotment of pattas in the Janmabhoomi meeting and that, therefore, the land of the petitioner is required for acquisition for the said purpose and that the petitioner approached this Court when the matter is at the stage of fixation of market value and passing of the Award.

6. During the course of hearing, it is fairly stated that in view of the provision of Section 24(1)(a) of the Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [Act 30/2013] if the land acquisition proceedings which were initiated under the Land Acquisition Act, 1894, do not culminate in the Award under Section 11 of the said Act, within the statutory time, all the provisions of the Act 30 of 2013 relating to the determination of the compensation shall apply. In that view of the matter, it is also stated that the subject notification issued under Section 4(1) of the Act of 1894 stood lapsed and that it is for the respondents to issue a fresh notification under the provisions of the Act 30 of 2013 and hence, the writ petition can be disposed of accordingly. Be that as it may.

7. It is pertinent to note that Sub-Section (2) of Section 5A of the Act makes it obligatory on the Collector to give an objector or the land owner an opportunity of being heard and that after the hearing of the objections and making further inquiry, he has to make a report to the appropriate Government containing his recommendations on the objections. The hearing contemplated under the said provision of law is necessary to enable the Collector to effectively deal with the objections raised against the proposed acquisition and to make a report. The enquiry and the report of the Collector are not empty formalities, as the Collector is required, by his report, to notify the appropriate Government his recommendations. It is only upon receipt of the said report that the Government can take a final decision on the objections and make a declaration under Section 6 of the Act. At the hearing, the objector can make an effort to convince the Land Acquisition Officer to make recommendations against the acquisition; and, the objector can produce evidence to show that his land is not suited or is liable for acquisition and that a suitable piece of Government land is available in the village or in the vicinity and that the same

can be utilized for the desired project or scheme. Therefore, the Collector is required to give an opportunity of hearing to the objectors and objectively consider their pleas against the acquisition of their lands. Only thereafter, the Collector should make recommendations supported by brief reasons as to whether the land proposed should be acquired or not and whether or not the plea put forward by the objectors merits acceptance or not. Thus, the right to file objections is an important right; and, the hearing contemplated under the provision of law must be effective; and, it is not an empty formality. Any recommendation made by the Collector, without duly providing an opportunity to file objections and without providing an opportunity of effective hearing will denude the decision of the appropriate Government of statutory finality, is the settled legal position. Since it is obvious that in the case on hand no opportunity of personal hearing was afforded, the writ petitioners are entitled to the reliefs claimed in the writ petition.

8. In the result, the Writ Petition is allowed. It is needless to observe that if the Government are still desirous of acquiring the subject land of the petitioner, in future, either for the originally intended purpose or for any other purpose, this order shall not preclude the Government from doing so by following the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

20.08.2018

Vjl