HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.36015 & 31491 of 2017

ORDER :

The grievance of the petitioners in these writ petitions is common. The petitioners' case is that they are all landowners of different extents and small farmers dependent on agriculture and their lands are situate in Mamidyala village in Mulugu mandal, Siddipet district. Petitioners state that the storing capacity of the Pamulaparthy reservoir is raised from 7.0 TMC to 15 TMC without even giving any information and making any sort of local consultation with them, with regard to need to increase the capacity of the reservoir, extent of submergence, displacement from their lands and houses, and such a decision taken is arbitrary and in view of the decision to increase the capacity of the reservoir, their lands in Mamidyala village and other three villages *viz.,* Bailampur, Thanedarpally and Thanedarpally tanda would be completely submerged. The petitioners, therefore, challenge the action of the respondents in issuing preliminary notification under Section 11 (1) and the declaration under Section 19 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, (for short, 'the Act') in

seeking to acquire their lands in question and in proceeding to conduct award enquiry and pass awards in respect of the said lands as contrary to the provisions of the Act and the State Rules made thereunder.

2. In the counter filed by the 7th respondent-RDO, Gajwel, it is stated that notifications vide D/170/2017 & D/171/2017 was issued on 30-01-2017 under Section 11 (1) of the Act and Grama sabha was conducted on 29-07-2017 under Section 11 (2) of the Act. That petitioners though filed objections on 24-03-2017, did not clearly mentioned their names and addresses, but simply affixed their signatures and by reason of that personal hearing could not be afforded to the petitioners under Section 15 (2) of the Act. However, the objections of the petitioners would be considered at the time of passing the awards. That earlier the Government proposed Konda Pochamma Sagar reservoir with a capacity of 7 TMC, however considering future requirement of Singur and supply of water to Hyderabad, storage requirements and integrated irrigation plans, increased the capacity from 7 TMC to 15 TMC. It is stated that Government has issued administrative sanction and then only the Irrigation department has given requisition to the

District Collector, Siddipet, for acquisition of land. That the Government issued orders vide GO Ms.No.35, dated 30-06-2017, exempting the Kaleshwaram project from the application of provisions of Chapter-II and III of the Act. It is denied that the authorities have not disposed of the objections filed by the petitioners, but the petitioners could not heard personally only because they did not mention their correct addresses. That the entire process of acquisition is being conducted in a fair manner and most of the lands were acquired by consent under Section 30-A of the Act and the petitioners would be heard and given opportunity at the time of passing the awards. That out of Ac.1834.33 guntas of land an extent of Ac.1630.21 guntas of land is acquired by consent under Section 30-A of the Act and balance land of Ac.204.12 ½ guntas of land declarations are issued and lands of the petitioners is only to the extent of Ac.30.27 guntas and their objections would also be considered as per the provisions of the Act.

3. Sri KS Murthy, learned counsel for the petitioners contended that pursuant to the preliminary notification dated 30–01–2017 issued under Section 11 (1) of the Act, petitioners filed objections, but no Gram sabha is conducted which is mandatory, under

Section 11 (2) of the Act, to explain about the details of the proposed project, extent and necessity of land acquisition. It is further contended that no notice was given to the petitioners and no personal hearing as required under Section 15 (2) of the Act was given and, therefore, the entire acquisition proceedings are liable to be quashed. It is also contended that Rule 3 of the Rules framed under the Act is not followed.

4. Learned Advocate General appearing for the respondents submitted that though a preliminary notification is issued under Section 11 (1) of the Act, later on proceedings were initiated under Section 30A the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Telangana Amendment) Act, 2016, to acquire the lands in question through negotiations by way of voluntary agreements and majority of the land owners in the vicinity opted for the same. That for such of the land owners including the petitioners, who have not come forward for negotiations, declaration under Section 19 (1) of the Act was issued. Opportunity under Section 15 (2) of the Act could not be given as the petitioners, in the objections filed, only mentioned their names, but not addresses and in fact Gram sabha was conducted

on 29-07-2017, as required under Section 11 (2) of the Act. It is submitted that the objections of the petitioners would be considered during the course of award enquiry.

5. It is borne out from the record that an extent of Ac.1630.21 guntas of land, out of Ac.1834.33 guntas of total land required for the project was acquired by resorting to the mode under Section 30-A of Act 21 of 2016 and the balance land for an extent of Ac.204.12 ½ guntas was left over as on 20-08-2017. The petitioners have not availed off the mode of dispensing with their lands in question by way of negotiations which is brought in by way of Telangana Amendment Act, 2016. It may be true that by way of increase in the reservoir capacity from 7.0 TMC to 15 TMC, the lands and houses of the petitioners are submerged resulting in displacement of the petitioners of their lands and houses, but the purpose and object for such an increase is stated in GO Rt. No.658, dated 14-07-2017 and also in the light of GO Ms.No.35, dated 30-06-2017, wherein the Kaleshwaram Project is exempted from the application of provisions of Chapter-II and III of the Act, the petitioners cannot have any grievance with the decision to increase the reservoir capacity from 7.0 TMC to 15 TMC and determination of social

impact of such an acquisition. It is also a matter of record that some of the land owners challenged the validity of the acquiring the lands by way of negotiations under Section 30A of the Telangana Amendment Act, 2016. However, this Court permitted the authorities to enter into agreements with the willing land owners and purchase their lands, at any stage of the proceedings and the respondents need not wait till a declaration is issued under 19 (1) of the Act.

6. It is stated by learned Advocate General that Gram sabha was conducted on 29-07-2017 in the village by giving prior notice to the Sarpanch and Panchayat Secretary of the Gram Panchayat, as required under Section 11 (2) of the Act and explained the purpose of land acquisition and the reasons for necessitating displacement of affected persons and also the details of the Administrator appointed for taking steps under the provisions of the Act. But the case of the petitioners is that no opportunity was given to them to put forth their grievance with respect to the acquisition of their lands. It is their case that Section 11 (1) notification itself is issued without administrative sanction of the Government.

7. It is to be seen that preliminary notification is issued on 30-01-2017 under Section 11 (1) of the Act. In GO Ms.No.608, dated 30-06-2016, the Government has approved the modified scope of work of package 14 i.e. Konda Pochamma Sagar to 7 TMC. Through GO Ms.No.658, dated 14-07-2017, the Government extended the capacity of the reservoir from 7 TMC to 15 TMC, which is after issuance of notification under Section 11 (1) of the Act. But that itself will not invalidate the notification issued under Section 11 (1) as there is no change in the project and the earlier administrative sanction obtained holds good. What is modified vide GO Ms.No.658, dated 14-07-2017, which is after issuance of Section 11 (1) notification is only increase in the capacity from 7 TMC to 15 TMC.

8. It is to be seen that objections were filed by the petitioners under Section 15 (1) of the Act, but, even according to 7th respondent-RDO, the petitioners who filed objections could not be heard by giving personal hearing, as their addresses could not be located. Non-compliance of Section 15 (2) of the Act is admitted by the 7th respondent-RDO. Requirement of compliance Section 11 (2) and Section 15 (2) is mandatory, as is understood from the

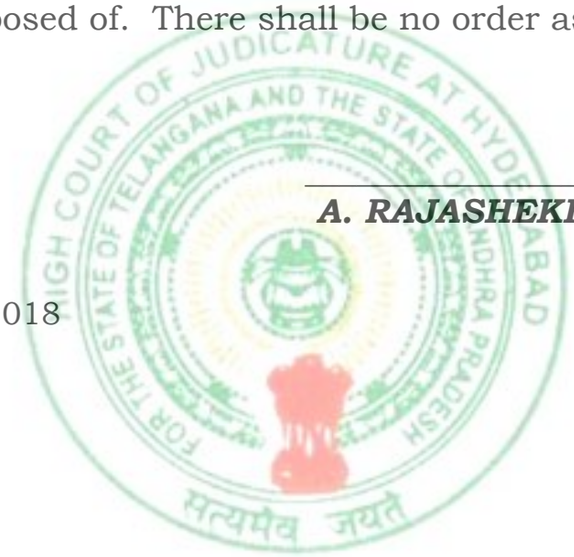
preamble, the new Act sought to achieve, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post–acquisition social and economic status and for matters connected therewith or incidental thereto. As such from the right from the stage of issuance of notification under Section 11 (1) of the Act every other step is germane. Petitioners state that no Gram sabha was conducted under Section 11 (2). Though a list of signatures of some of the villagers who attended the Gram sabha is filed, the petitioners state those signatures were taken from the villagers during site inspection by the officials. Conduct of Gram sabha at the village level is contemplated in

Chapter IV of the Act. The purpose of conducting Gram sabha is to avoid needless litigation for want of knowledge of the publication of the preliminary notification and also to inform the members of the affected families, the nature of the public purpose involved, reasons necessitating the displacement of affected persons. Even according to the counter affidavit averments, no personal hearing was afforded to the petitioners under Section 15 (1) of the Act. In the light GO Ms.No.35, dated 30-06-2017, wherein the Kaleshwaram Project is exempted from the application of provisions of Chapter-II and III of the Act, the petitioners cannot make a grievance as to social impact of such an acquisition and in the light of GO Ms.No.658, dated 14-0702017 to the decision of the Government to increase the reservoir capacity from 7.0 TMC to 15 TMC. Non compliance of Rule 3 of the Rules is not raised in pleadings of the writ petitions, in the absence of pleadings to that effect, this Court is not inclined to examine the same.

9. In the circumstances of the case, to secure the ends of justice, the declaration issued under 19 (1) of the Act by the respondent-authorities, in so far as the petitioners' lands in question is set aside and respondent-authorities are directed to follow the

procedure from the stage of Section 11 (2) of the Act *i.e.* conducting Gram sabha and take further action in the matter in accordance with the provisions of the Act. Till this exercise is completed, no awards be passed in respect of the lands in question of the petitioners.

10. In the result, the writ petitions are allowed to the extent indicated above. Miscellaneous petitions, if any pending in this case shall stand disposed of. There shall be no order as to costs.



A. RAJASHEKER REDDY, J

Dated: 06-02-2018
NRG

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.36015 & 31491 of 2017

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Dated: 06-02-2018

NRG

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH
सत्यमेव जयते