

**HON'BLE THE CHIEF JUSTICE
THOTTATHIL B. RADHAKRISHNAN**

AND

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION Nos.43180, 28101 & 41201 OF 2018

COMMON ORDER (ORAL): (Per Hon'ble The Chief Justice Thottathil B. Radhakrishnan)

These Writ Petitions are filed challenging the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Andhra Pradesh) Rules, 2018 (for short 'the Rules'). The limited challenge levied by the petitioners is that though the Rules were subjected to the requirement of previous publication in terms of Section 112 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act'), the objections or suggestions given by the petitioners were not considered inasmuch as a reply was given by the department concerned that the objections are not eligible for being considered since it related to a Rule or Act, reference to which was not made appropriately.

2. We have heard the learned counsel for the petitioners and the learned Advocate General. The original record on the subject matter is produced for our consideration.

3. The learned counsel for the petitioners referred to the requirement in Section 112 of the Act, which provides that the power to make Rules under the Act shall be subject to the publication of the

Rules being made after previous publication. The concept of previous publication and the modalities of carrying out the process of previous publication as would apply to such situations are pointed out to be those contained in Section 23 of the General Clauses Act, 1897, which, *inter alia*, provides for consideration of objections and suggestions that may be received by the authority having the power to make the Rules or bye-laws from any person with respect to the draft which is to be published. Mr.K.S.Murthy clarifies his submission by stating that the petitioners when object the decision making process, such objection is not grounded on the requirement that the consideration of objections and the outcome need be in the same manner in which the objections are considered in an enquiry under the Land Acquisition Act. Therefore, the ground of challenge is that there is no consideration of any of the objections raised by the petitioners before the Rules are finally notified.

4. Having heard the learned counsel for the petitioners and the learned Advocate General, we see that, while it may be quite right for the petitioners to point out that the reply dated 31.10.2018 given by respondents did not indicate non-consideration of objections on a reason which may not be available, we are of the view that the Rules, by themselves being pieces of subordinate legislation, have to be examined on their constitutional validity on well settled norms which provide for judicial review of subordinate legislative action. The requirement to consider objections and suggestions in Clause (4)

of Section 23 of the General Clauses Act, 1897 cannot be equated to the role of hearing while making executive decisions. The purpose of Clause (4) of Section 23 of the General Clauses Act, 1897 is to ensure that relevant objections and suggestions as may be received by the authority would also be available with that authority for being considered while confirming the proposal to make subordinate legislations in the form of Rules or bye-laws for which the proposal is made. This means that once the Rules are actually made after undertaking the process of previous publication, it becomes susceptible to judicial review only on well settled grounds of source of power, whether procedure is followed or not etc. That is to say that Rules becoming contradictory or impermissible within the framework of the primary legislation within which it stands. So, primarily, the judicial review, in the case on hand, is confined to finding out from the record whether the objections raised by the petitioners are merely received and shelved without consideration in the process of finalizing the Rules. The failure to effectively consider or completely consider or failure to even consider on a wrong premise of objections and suggestions which may be placed before the rule-making authority, does not, by itself, become the ground available to stultify the Rule that is made, leading to a state of nullity. May be that, such a situation would buttress in favour of unsustainability of the Rule when taken along with other grounds on which the subordinate legislation which is impeached is found required to be declared void and inoperative. The record discloses consideration or reference to objections in the

note file dated 29.10.2018 and thereafter along with other objections raised, a decision is taken to finalize the Rules. We do not find any ground in these writ petitions to interfere with the impugned Rule. Therefore, the mere fact that the authority which was to consider the objections or suggestions had taken a particular view that the objections or suggestions are not worth considering in the manner in which they were placed, does not, by itself, call for interfering with the continued sustenance of the main Rules. As already noted, the ground of challenge is that the objections are not considered at all and that contention appears to be factually incorrect. Having taken the above view, we are of the view that the decision on which Mr.K.S.Murthy relied need not be considered or applied to the fact situation of the case.

5. For the aforesaid reasons, the writ petitions fail and are dismissed. No order as to costs.

6. Learned counsel for the petitioners has pointed out that these Writ Petitions are limited to the challenge of non-conformity to the Rule of previous publication and consideration of objections and the other issues are specifically reserved for further litigation. We are of the view that this is impermissible since piece-meal litigation, including on the validity of the Rules will be against the interest of progression of law and justice. This probably can also be founded on doctrines relatable to public policy as well as those emanated from Order II Rule 2 and Section 11 of the Code of Civil Procedure, 1908,

the principles of which ought to be treated as guiding beacons even in writ jurisprudence.

As a sequel, miscellaneous petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

S.V. BHATT, J

15th December, 2018
MRR

