

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE FOURTEENTH DAY OF AUGUST
TWO THOUSAND AND EIGHT

PRESENT
THE HON'BLE MR JUSTICE B. SRI ATCHUTANANDA SWAMY
WRIT PETITION NO : 5999 of 1997

Between:

.....
PETITIONER

AND

.....**RESPONDENT**

Petition under Article 226 of the constitution of India
praying that in the circumstances stated in the Affidavit filed
herein the High Court will be pleased to

Counsel for the Petitioner:MR.A.PRABHAKAR SARMA

**Counsel for the Respondent No.: MRT.V.PPRABHAKAR
RAO**

The Court made the following :

THE HON'BLE SRI JUSTICE RAMESH

RANGANATHAN
WRIT PETITION No.5999 OF 1997

ORDER:

Questioning the notification issued under Section 4 of the Land Acquisition Act dated 22.01.1999 proposing to acquire the petitioner's land of an extent of Ac.2.85 cents in Survey No.199/1C, situated in Tadepalligudem, West Godavari District, the presenting writ petition is filed.

Section 4 (1) notification was issued on 22.01.1999 and Section 6 declaration was issued on 10.02.1999. It was published in the newspapers on 21.02.1999 and in the Gazette on 22.02.1999. This Court, by order in W.P.M.P.No.7517 of 1999 dated 24.03.1999, granted status-quo as on the date of the order for a period of one month. The interim order of status-quo was not extended thereafter. Curiously, even though there was no stay in operation, the respondents on the erroneous premise that there was a stay order filed a petition to vacate the stay on 18.05.2000. However, no orders were passed on the vacate petition.

Sri V.V.L.N.Sarma, learned Counsel for the petitioner, would submit that since an award has not been passed till date the entire proceedings stand lapsed. While admitting that the interim order of status-quo, in the present Writ Petition, was only for a period of one month, and had not been extended thereafter, Learned Government Pleader for Land Acquisition would bring to

the notice of this Court that in a connected Writ Petition (W.P.No.8349 of 1999 which this Court dismissed for default on 12.08.2008), there was an interim order of status-quo pending further orders. Learned Government Pleader would submit that, since the land for which the impugned Section 4 (1) notification was issued is the same in both the writ petitions, the respondents were precluded from passing an award in view of the interim order of status-quo passed in W.P.No.8349 of 1999. Learned Government Pleader would further point out that what the petitioners had sought for in the said writ petition was grant of stay of further proceedings including passing of award, and taking into consideration the interim order of status-quo, it was evident that the respondents were precluded from passing an award. It is not in dispute that Section 4 (1) notification, impugned in the present writ petition, relates to the very same land and was the subject matter of challenge in W.P.No.8349 of 1999 also. The mere fact that the interim order in the present writ petition expired one month after the date it was passed i.e. 23.04.1999 did not enable the respondents to pass an award since there was an interim order of status-quo pending further orders in the other writ petition. The contention that in view of Section 11-A the proceedings lapsed, must, therefore, fail.

Sri V.V.L.N.Sarma, learned Counsel for the petitioner would further contend that, in view of long lapse of time and the very fact that the interim order was continued for

more than a decade would show that there was no urgency in acquiring the said land and that the respondents should be directed to conduct an enquiry under Section 5-A of the Act. The mere fact that the respondents were not able to get the stay vacated does not necessitate the conclusion that there was any lack of urgency on their part. As to whether there is urgency to acquire the land or not is for the Government to decide and not for this Court to evaluate.

Sri V.V.L.N.Sarma, learned Counsel for the petitioner, would further contend that the land in the present case was sought to be acquired for allotment of house sites to weaker sections and, since the respondents have already allotted house sites to weaker sections elsewhere, there is no need to acquire the petitioner's land. Learned Counsel would further point out that the very basis for grant of recognition for petitioner's schools is on the ground that he possessed this extent of nearly 3 acres of land, and acquisition of this land would result in cancellation of the recognition granted to the petitioner's schools. While the petitioner's grievance, as espoused by the learned Counsel, may indeed be genuine, the scope of interference in land acquisition matters is limited. Acquisition of land is in exercise of the power of eminent domain and, in almost every case of acquisition, the livelihood of persons owning the land is invariably affected. Right to property is no longer a fundamental right. The only protection conferred is under Article 300-A

of the Constitution of India which prohibits deprivation of property except in accordance with law. As long as the authorities concerned act in accordance with law viz., the provisions of the Land Acquisition Act, deprivation of property cannot be said to be illegal.

With regards the contention that the respondents have allotted houses to weaker sections elsewhere, these are facts not borne out by the record before this Court. All that the Court is now upholding is the Section 4 (1) notification issued by the respondents. This order does not mandate that an award should be passed. It is for the respondents to consider whether they need the said land and whether an award should be passed pursuant to the Section 4 (1) notification issued earlier. These are all matters which is in the executive realm and not for Courts to go into. The challenge to the notification issued under Section 4 (1) of the Act must fail. The writ petition is, accordingly, dismissed. However, in the circumstances, without costs.

14.08.2008

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