

APHC010164122022



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3209]

TUESDAY, THE 18TH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE NINALA JAYASURYA

**WRIT PETITION Nos. 42111 of 2022;1456; 2006, 2536; 10466;10508;
10540 and 10562 of 2023**

W.P.No.42111 of 2022:

Between:-

Maddana Anand and another Petitioners
And

The State of Andhra Pradesh and others Respondents

Counsel for the Petitioners : Mr. P.S.P. Suresh Kumar, learned counsel
along with Mr.Bandi Srihari
Mr.A.K.Kishore Reddy and
Mr.O.Uday Kumar

Counsel for the Respondents : Mr.K.V.Raghuveer, learned Govt. Pleader
representing learned Addl. Advocate General

This Court made the following:

ORDER:

The issue involved in the present batch of writ petitions is with regard
to the acquisition of land for the purpose of construction of Road Over Bridge

(for short “ROB”) and the proceedings in relation to the same under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short “the Act”).

2) The relevant facts as culled out from the material on record, may briefly be narrated for better appreciation of the case:

3) The Government of Andhra Pradesh issued G.O.Ms.No.27 Transport, Roads & Buildings (Roads-II) Department, dated 28.01.2020 granting administrative sanction for construction of two lane ROB in lieu of LC No.2 at Railway Km.1/3-4 of Dharmavaram-Pakala Station on Damajipalli – Tadipatri Road at Km.17/2 in Ananthapuramu District. The Commissioner, R&R Vijayawada, vide proceedings dated 19.11.2020 appointed Social Impact Assessment (for short “SIA”) Agency i.e., Rural Integrated and Social Education Society (RISES) Vijayawada as SIA Team to conduct SIA study with regard to the land acquisition. On 03.12.2020, the SIA Team conducted public consultation meeting as also a survey. Thereafter, on 13.07.2021, the District Collector, Ananthapuramu issued proceeding exempting the provisions of Chapter II & III of the Act, 2013 and authorized the Land Acquisition Officer & Revenue Divisional Officer, Dharmavaram to invite claims from the interested persons for settlement by negotiations. A Gazette Notification dated 18.07.2021 for exemption of Chapter II & III of the Act was published in the Ananthapuramu District Gazette by the District Collector.

4) Subsequently, a Preliminary Notification in Form VI(A) under Section 11 (1) of the Act 2013, dated 19.12.2021, was issued in respect of the lands in Sy.No.23-1B, 23-2B, 24-3B, 27-2, 67-27A, 68-1, 68-2, 396-2A, 401-1A1, 402-1A1, 403-2B to an extent of 1-88 cents for construction of two lane ROB. The said Preliminary Notification was published in Sakshi Telugu Daily Newspaper on 30.12.2021 and the Hindu English Daily Newspaper on 31.12.2021. Thereafter, notices were issued to 130 land losers, who were covered under the above mentioned Preliminary Notification and objections were called for vide RC No.1318/2019(F), dated 05.01.2022 and to attend the enquiry on 16.03.2022. Pursuant to the said Notices, Objections dated 10.02.2022 were submitted and the Land Acquisition Officer was requested to change the location of 'ROB' to other place, since the petitioners' houses will be totally demolished.

5) On 11.07.2022 overruling the objections submitted by the petitioners rejection orders were passed and Declaration under Section 19(1) of the Act r/w Sub Rule 1 of Rule 25 of The Andhra Pradesh Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014 (for short "the Rules, 2014") was published on 13.08.2022. Thereafter, notices dated 17.11.2022 were issued under Section 21(2) of the Act, wherein, it is *inter alia* mentioned that an enquiry would be conducted on 25.11.2022 at 11.30 a.m., in the office of the LAO /

RDO, Dharmavaram and the necessary documents in respect of the lands / constructions of noticees were directed to be submitted.

6) Challenging the said notice dated 17.11.2022 and the preliminary Notification under Section 11 dated __.12.2021, W.P.No.42111 of 2022 was filed and an interim order dated 04.01.2023 was granted. Subsequently, petitioners in W.P.No.42111 of 2022 filed W.P.No.2536 of 2023 challenging the rejection Orders dated 11.07.2022. The other petitioners filed W.P.Nos.1456 and 2006 of 2023 challenging the Notice dated 17.11.2022, Declaration dated 13.08.2022 as also the preliminary Notification under Section 11 dated __.12.2021. While the said Writ Petitions are pending, Award No.1 of 2023 dated 29.03.2023 was passed. Challenging the said Award, W.P.Nos.10466; 10508; 10540 and 10562 of 2023 have been preferred.

7) Heard Mr. P.S.P. Suresh Kumar, learned counsel for the petitioners along with Mr.Bandi Srihari, Advocate. Also heard Mr.K.V.Raghuveer, learned Government Pleader representing the learned Additional Advocate General.

Contentions of the respective counsel:

8) The learned counsel for the petitioners raised several contentions with reference to the factual and legal aspects *inter alia* that the exemption dated 18.07.2021 under Section 10 A of the Act was not issued by the Government

in the Official Gazette, but by the District Collector, that too in the District Gazette as such, the same is without jurisdiction, not in accordance with the statutory provisions and the land acquisition proceedings are therefore vitiated. Referring to Rule 10(a) (2) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Andhra Pradesh) Rules, 2018 (for short "the Rules-2018) issued by the Government vide G.O.Ms.No.562, dated 13.11.2018, he further contends that the Requisitioning Department shall give requisition to the Revenue (Land Acquisition) Department of the State through the District Collector, requesting exemption of Chapter II and III of the Act and further as per Section 3 (e) of the Act , the Government has to issue Notification by declaring that the District Collector will act as an 'Appropriate Government' and he can issue Gazette. He submits that no such Notification was issued in the present case and the Gazette dated 18.07.2021 was published / issued without any authority or jurisdiction by the District Collector and in violation of the Section 10 A of the Act. He also submits that the said Gazette is ante dated.

9) The learned counsel further contends that the Social Impact Assessment may be exempted at the threshold, that too by the Government and the Exemption Notification issued by the District Collector is not sustainable in Law. He submits that as per the Social Impact Assessment

(SIA) Report, alternative road / route is suggested, without examining the said aspect, the subject matter lands were acquired for the purpose of construction of ROB and a copy of the report was also not furnished / filed. He contends that the mandatory provisions of the Act i.e., Sections 15 to 19 etc., have not been adhered to and the land acquisition proceedings are wholly unsustainable. In elaboration, the learned counsel submits that in terms of Section 16 of the Act, the Administrator after conducting a survey prepare a draft Rehabilitation and Resettlement Scheme and thereafter the same has to be notified as per Section 16 (4) of the Act. He submits that after conducting a public hearing, the Administrator shall submit the draft scheme to the Collector, who in turn is required to review the draft scheme as required under Section 17 of the Act and then only the procedure contemplated under Sections 18 and 19 has to be followed. He contends that the respondents without following the procedure in accordance with Law had proceeded in the matter and passed the impugned Award and therefore, the same is liable to be set aside. He also submits that pursuant to the Notice dated 17.11.2022, objections were filed and without conducting any enquiry and affording an opportunity of hearing, the Award dated 29.03.2023 was passed and it is not sustainable on the ground of violation of principles of natural justice.

10) The learned counsel submits that though no Award has been passed in respect of the petitioners in W.P.No.42111 of 2022, determination of compensation when interim stay of all further proceedings with reference to the Notice dated 17.11.2022 is in operation amounts to violation of the orders dated 04.01.2023 and C.C.No.1720 of 2023 filed in this regard is pending. He contends that the proceedings dated 11.07.2022 impugned in W.P.No.2536 of 2023 have been issued with an ante date only to get over the interim order dated 04.01.2023 passed in W.P.No.42111 of 2022 and even the said proceedings are not sustainable as the objections of the petitioners dated 10.02.2022 were not considered in the correct perspective and issued without any opportunity to the petitioners.

11) Referring to Section 31 A of the Act (State Amendment), the learned counsel further contends that even in case of payment of lump sum amount in lieu of Rehabilitation and Resettlement, the respondents are required to follow the Rules prescribed under the Rule 16 of the Rules, 2018. He submits that the respondents have not adhered to the said Rules and no Award as contemplated under the said Rules, has been passed. He contends that the petitioners are not seeking enhancement of the compensation and acceptance of compensation, if any, pursuant to the impugned Award by some of the land owners, other than the writ petitioners would not come in the way of this Court for considering the reliefs sought for

by the petitioners. He contends that principles of natural justice have been violated as the objections of the petitioners were not taken into account and no personal hearing as required under the provisions of the Act has been afforded. He submits that as there is a gross violation of the procedure contemplated under the Act and the relevant Rules, the entire Notification dated ____12-2021 has to be set aside, that in view of the glaring irregularities, the acquisition proceedings pursuant to the said Notification cannot be allowed to be continued. Making the said submissions, the learned counsel for the petitioners urges for allowing the Writ Petitions.

12) In support of the contentions the learned counsel placed reliance on the following decisions:

- (i) Pedamalli Venugopal Reddy & Others v. State of Andhra Pradesh¹
- (ii) Usha Stud & Agricultural Farms Pvt. Ltd., v. State of Haryana²
- (iii) M/s.Tirupathi Developers v. Union Territory of Dadra & Haveli³
- (iv) Sakunthala v. Govt. of Tamilnadu⁴

13) The learned Government Pleader on the other hand, *inter alia* contended that the subject matter land is sought to be acquired for bonafide public purpose and minimum land is sought to be acquired. He submits that

¹ 2021 (6) ALT 466

² 2013 (4) SCC 210

³ Civil Appeal No.4952 of 2023, Supreme Court of India (D.O.J. 07.08.2023)

⁴ AIR 1998 Madras 256

the District Collector being the head of the District issued the Notification for the purpose of the land acquisition. The publication in the District Official Gazette about the acquisition of land is for public information and the Gazette publication was made in the District, wherein the land is situated, the same is valid and in accordance with Law. He submits that the objections to the notices issued under Section 15 of the Act were duly considered after giving an opportunity of hearing and therefore, there is no violation of the provisions of the Act much less, principles of natural justice. He further submits that Notices as required under Section 21 of the Act have been issued to the individual land owners to which some of them have submitted objections and after conducting a joint inspection, the value of the property sought to be acquired was assessed and thereafter Award dated 29.03.2023 has been passed as per Law and the contentions contra are untenable.

14) Insofar as the contentions with reference to the interim orders granted by this Court in W.P.No.42111 of 2022, he submits that the Award proceedings in respect of the subject matter property therein have been deferred and the plea that the interim orders in the said writ petition have been violated is not tenable.

15) The learned Government Pleader further submits that the Government of Andhra Pradesh issued revised administrative sanction for an amount of Rs.3,000 Lakhs vide G.O.Rt.No.47, dated 17.02.2023 and that out of 127

awardees, 93 awardees have claimed the compensation amount voluntarily and submitted stamped Acquaintances along with Bank Account details for payment of compensation for the land and structures acquired and bills were uploaded in CFMS portal. He also states that the amounts were transferred into the Accounts of 65 awardees and in respect of the remaining awardees, the same is under process. He also submits that out of the 33 awardees, who filed the writ petitions, five awardees subsequently furnished their bank details voluntarily for depositing the compensation amount, that the respondents have taken possession of the lands from the owners, who received the compensation and as the construction of 'ROB' is essentially in the interest of public, works have been commenced. While stating that the various contentions about the non-compliance of the provisions of the Act / Rules, violation of principles of natural justice are not tenable, he submits that the authorities acted in compliance with the provisions of the Act / Rules / Law and as seen from the pleadings, the grievance of the petitioners appears to be with regard to the determination of the compensation and the same cannot be adjudicated by this Court in proceedings under Article 226 of the Constitution of India. He also submits that an expert team consisting of R&B officials and Railway authorities has decided that the subject matter land would be suitable for the purpose of construction of 'ROB', more particularly as there is no other land available for perfect alignment of the

'ROB'. He submits that the Courts should be loathed to interfere in the matters which falls within the domain of the experts and the scope of judicial review in such matters is very remote. Making the said submissions, the learned Government Pleader urges for dismissal of the Writ Petitions.

16) This Court has considered the submissions made by the Learned Counsel on both sides and perused the material on record. On due appreciation of the same, the following points arise for adjudication of this Court:

- i) Whether the Gazette dated 18.07.2021 published in Ananthapuramu District Gazette by the District Collector is not sustainable in law?
- ii) Whether the Notification dated __-12-2021 issued under Section 11 of the Act is liable to be set aside?
- iii) Whether the Order dated 11.07.2022, the subsequent Declaration dated 13.08.2022 and the Notice dated 17.11.2022 are liable to be set aside? And
- iv) Whether the Award dated 29.03.2023 is liable to be set aside on the ground of non-compliance of the provisions of the Act or violation of principles of natural justice?

POINT No.1:

17) Learned counsel for the petitioners addressed elaborate arguments and also filed written submissions vide Memo dated 25.01.2024 with reference to the Gazette Notification dated 18.07.2021 exempting Chapter II and III of the Act in respect of the lands in question. Contentions were also raised with reference to the Social Impact Assessment and the report purportedly suggesting alternative route for construction of 'ROB'. Be that as it may. The main emphasis of the Learned Counsel for the Petitioners in so far as the Gazette Notification dated 18.07.2021 is concerned is that the District Collector has no jurisdiction to grant exemption of Chapter II and III of the Act and it is the State Government, which is empowered to grant such exemption in terms of Section 10 A of the Act (State Amendment). In the written submissions, a contention is raised that the said exemption after submitting the SIA Report is null and void and the said Gazette is ante dated. The said contentions though are noteworthy, this Court is not inclined to appreciate the same for more than one reason. Firstly; there is no challenge to the said Gazette Notification dated 18.07.2021 in any of these Writ Petitions and secondly; in the pleadings no specific ground was raised with reference to the issuance of the Gazette Notification dated 18.07.2021, much less the power or jurisdiction of the District Collector, atleast by filing appropriate application seeking amendment of reliefs. In the absence of the

same, the contentions with reference to the Gazettee Notification dated 18.07.2021, much less any declaration about the jurisdiction or otherwise of the District Collector merits no consideration. This view of the Court is fortified by the decision of the learned Judge in ***Pedamalli Venugopal Reddy*** referred to above. In the said case, the petitioners therein raised a contention that the exemption granted under Section 10A of the Act for conducting Social Impact Assessment study is an invalid exemption as it was given by the District Collector, while the Act requires the said exemption to be granted by the State Government. The learned Judge was not inclined to appreciate the said contention and rejected the same, while accepting the plea of the learned Government Pleader for Land Acquisition that the said exemption has not been challenged.

18) In view of the above factual and legal position, point No.1 is answered against the petitioners.

POINT No.2:

19) Some of the petitioners challenged the Notification dated __.12.2021 issued under Section 11(1) of the Act. In the affidavit filed in support of the W.P.No.42111 of 2022, a plea was taken that the said Notification issued under Section 11 of the Act is lapsed in view of the non-compliance of the provisions of Sections 14, 15, 16, 17 and 18 of the Act. Except that, no plea much less with regard to the power or jurisdiction of the District Collector in

issuing the said Notification is raised. Lapsing of Notification under Section 11 of the Act on the purported non-compliance of the steps / procedure contemplated under Sections 15 to 18 of the Act does not arise. Be that as it may. Section 11 of the Act contemplates publication of Preliminary Notification and power of officers thereupon and Section 11 (1) of the Act reads as follows:

“11. Publication of preliminary notification and power of officers.—

(1)Whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (hereinafter referred to as preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas shall be published in the following manner, namely:—

- (a) in the Official Gazette;
- (b) in two daily newspapers circulating in the locality of such area of which one shall be in the regional language;
- (c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil;
- (d) uploaded on the website of the appropriate Government;
- (e) in the affected areas, in such manner as may be prescribed.”

20) As per Rule 2(1)(b) of the Andhra Pradesh Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014 “appropriate Government” means:

“the State Government and includes the District Collector of the concerned District for any extent of land to be acquired for public purpose within the jurisdiction of the revenue district.”

21) In view of the above mentioned statutory provision, this Court is of the considered view that the Notification dated __.12.2021 is valid and legal. At this juncture, it may also be appropriate to reiterate that there is no specific challenge to the exemption Notification. Be that as it may. In view of the said notification exempting the provisions of Chapter II & III of the Act, non-furnishing of the SIA report is of no consequence. Even assuming that the argument advanced by the learned counsel for the petitioners with reference to Section 3(e) of the Act is applicable to the Notification dated __.12.2021, in the light of the above extracted Rule, it has to be concluded that the Notification dated __.12.2021 is well within the statutory competence of the District Collector, in accordance with Law and accordingly Point No.2 is answered against the petitioners.

POINT No.3:

22) As seen from the material on record, pursuant to the Notification dated __.12.2021, the petitioners filed objections dated 10.02.2022 and the same were overruled vide Proceedings dated 11.07.2022 of the 2nd respondent. As seen from the said proceedings, the same were directed to be served through Tahsildar, Dharmavaram. The learned counsel for the petitioners contended that only after the interim orders were granted in W.P.No.42111 of 2022 on 04.01.2023, the Proceedings dated 11.07.2022 were filed along

with the counter and copies of the said proceedings, as is evident from the record, were dispatched through Registered Post on **02.02.2023**. It is his submission that the said proceedings were issued without affording an opportunity of hearing to the petitioners behind their back and without considering the objections, in a proper perspective, as such the same are liable to be set aside and the consequential notice dated 17.11.2022 is liable to be set aside. On the contrary, the learned Government Pleader argued that a meeting was conducted with the land owners and thereafter the proceedings dated 11.07.2022 have been issued, therefore the contentions contra are not tenable. As per the counter affidavit, the petitioners refused to receive the proceedings dated 11.07.2022, therefore the same were placed in the Village Secretariat, Dharmavaram.

23) In the light of the material available on record, this Court is not inclined to appreciate the submissions made by the learned Government Pleader with reference to the service of proceedings dated 11.07.2022 on the petitioners. This Court is at loss to understand as to what made the concerned officers to send the proceedings dated 11.07.2022 through Registered Post dated 02.02.2023 when the petitioners have refused to receive the same, as long back as in the month of July, 2022 and see no justification for communication of the same, after passing of interim orders dated 04.01.2023. This shows the lack of *bona fides* on the part of the

respondents. Be that as it may. On a perusal of the said proceedings dated 11.07.2022, it appears that a meeting was conducted on 16.03.2022 and the same is sought to be projected that in the said meeting, the objections of the petitioners were considered.

24) At this juncture, it may be appropriate to mention that the District Collector vide communication dated __.12.2021 directed the RDO / Land Acquisition Officer, Dharmavaram to conduct an enquiry within 60 days from the date of publication of Notification under Section 11 (1) of the Act, by giving an opportunity of being heard in person. That being the position, conducting of meeting on 16.03.2022 with 130 land losers would not, in the opinion of this Court, amount to affording an opportunity of being heard in person or satisfy the principles of Law. There is no mention in the order that such an opportunity of hearing was afforded to the land losers, either.

25) In ***Usha Stud and Agricultural Farms Pvt Ltd and others v State of Haryana and Others***⁵, while dealing with Sections 5A and 6(1) of the Land Acquisition Act, 1894 and allowing the Appeals filed against the order of the Punjab and Haryana High Court, the Hon'ble Supreme Court of India in the light of the ratio laid down in various judgments held that Section 5A(2) of the Land Acquisition Act, 1894, which represents statutory impediment of the

⁵ (2013) 4 SCC 210

rule of *audi alteram partem*, gives an opportunity to the objector to make an endeavour to convince the Collector that his land is not required for the public purpose specified in the Notification issued under Section 4(1) or that there are other valid reasons for not acquiring the same. In ***M/s Tirupati Developers v The Union Territory of Dadra and Nagar Haveli & Ors.***, the Hon'ble Supreme Court of India in the context of determination of fair and just compensation within the statutory scheme of the Act, *inter alia*, held that *"It is imperative that a fair opportunity of hearing is given to the person whose rights are affected. This requires that the interested person is given an effective opportunity to put forth his or her claim. Any deviation to the prescribed procedure, especially when it has seemingly affected the interested person, would militate with the very object of legislative mandate."*

26) The above said decisions in the opinion of this Court, applies in all fours to the proceedings under Section 15 of the Act, 2013. The opportunity of hearing should be effective, but not a mere eyewash. In the present case, in the considered opinion of this Court, no such effective opportunity of hearing was afforded to the petitioners and the proceedings dated 11.07.2022 are therefore not sustainable. In such view of the matter, the Declaration dated 13.08.2022 and the consequential notice dated 17.11.2022, are also not sustainable. The point No.3 is answered in favour of the petitioners, accordingly.

POINT No.4:

27) With reference to the Award dated 29.03.2023, it is the contention of the learned counsel for the petitioners that in view of the non-compliance with the procedure contemplated under Sections 15, 16, 17 and 18 of the Act, the Award is vitiated. Section 16 of the Act deals with preparation of Rehabilitation and Resettlement scheme by the Administrator as per the procedure contemplated. Sections 17 and 18 of the Act contemplates a review of the Rehabilitation and Resettlement scheme and approval of such scheme, respectively. No material is placed before this Court with regard to the compliance of the above provisions of Law relating to the Rehabilitation and Resettlement scheme. No Notification providing for payment of lump sum amount in terms of Section 31 (A) (State amendment) is placed on record. The specific pleas raised in the writ affidavit with regard to the non-compliance of the above mentioned provisions, have not been specifically traversed in the counter affidavits. In the aforesaid circumstances, this Court finds merits / in the submissions made by the learned counsel for the petitioners that the impugned Award dated 29.03.2023 is vitiated on the ground of non-compliance with the above mentioned statutory provisions. Therefore, the Award dated 29.03.2023 is set aside and the Point No.4 is answered in favour of the petitioners.

28) In the result, the proceedings dated 11.07.2022, the notice dated 17.11.2022, Declaration dated 13.08.2022 and the Award dated 29.03.2023 are set aside, in so far as the writ petitioners alone are concerned. The concerned authority shall issue notices afresh to the writ petitioners and after affording opportunity to them, proceed in the matter in tune with the provisions of Law and complete the acquisition proceedings, as expeditiously as possible.

29) Accordingly, W.P.No.42111 of 2022 and W.P.Nos.1456, 2006 of 2023 are allowed in part and W.P.Nos.2536, 10466, 10508, 10540, 10562 of 2023 are allowed. No order as to costs.

30) Consequently, Miscellaneous Applications pending, if any, shall stand closed.

JUSTICE NINALA JAYASURYA

Date: 18.06.2024

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THE HON'BLE SRI JUSTICE NINALA JAYASURYA

**WRIT PETITION Nos. 42111 of 2022;1456; 2006, 2536; 10466;10508;
10540 and 10562 of 2023**

Date: 18.06.2024

BLV