

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION No.14831 OF 2008

Between:

Smt. N.Madhavi

...Petitioner

AND

1. Hyderabad Urban Development Authority and another

...Respondents

ORDER PRONOUNCED ON: 15.04.2024:

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

JUSTICE K.SARATH

+WRIT PETITION NO.14831 of 2008

%Dated 15.04.2024

Smt.N.Madhavi

...Petitioner

AND

\$ Hyderabad Urban Development Authority and another

...Respondents

! Counsel for Petitioner : Sri Ghanta Rama Rao
Learned Senior Counsel

^ Counsel for Respondents : 1. Govt. Pleader for Land Acquisition
2. Smt.D.Madhavi,
Learned Standing Counsel for HMDA

< GIST :

> HEAD NOTE :

? **Cases referred :**

(2014) 6 SCC 564

THE HONOURABLE SRI JUSTICE K.SARATH

WRIT PETITION No.14831 of 2008

ORDER:

Heard Sri Ghanta Rama Rao, learned Senior Counsel appearing for the petitioner and learned Government Pleader for Land Acquisition and Smt. D.Madhavi, learned Standing Counsel for the HMDA.

2. Learned Senior Counsel submits that the petitioner is the owner and possessor of land admeasuring 575 Square Yards in Sy.No.43 to 47 and 49 Part, situated at Madhapur village of Serilingampally Mandal of Ranga Reddy District having purchased the same through registered sale deed No.9688/2000 dated 25.10.2000. While it being so, the respondent No.2 issued Notification under Section 4(1) of the Land Acquisition Act, 1894 (for brevity 'the Act') on 28.02.2005 proposing to acquire certain lands at Madhapur for formation of road. Thereafter, the respondent No.2 issued Draft declaration under Section 6 of the Act 25.03.2006 mentioning the Survey No.43, however, the

said survey number was not mentioned in the earlier Notification issued under Section 4(1) of the Act. On coming to know that the part of the subject house of the petitioner going to be affected in the widening of the road, the petitioner filed a representation along with the copy of sale deed before the Land Acquisition Officer. Thereafter, the Land Acquisition Officer issued letter on 06.02.2008 stating that the land in Sy.No.43, to an extent of Ac.0.16 guntas is notified for the purpose of acquisition for formation of the road from Madhapur Hitech City to Western side of Durgam Chervu Road and the land in Sy.No.43 has been declared as surplus and the case at the stage of 10 (6), and asked to submit the required document on or before 14.03.2008. Thereafter, Award has been passed on 25.03.2008, without there being any reference of amendment to 4(1) of the Act.

3. The learned Senior Counsel further submits that Land Acquisition Officer issued notice of Award in Form-9 under Section 12 (2) of the Act, 1894 to the petitioner

stating that award has been passed and part area of in Sy.No.43 is covered under the park, road, part was declared as surplus and hence no compensation was awarded. As the subject property was notified under Section 4(1) of the Act, the petitioner had no occasion to participate in the enquiry under Section 5-A of the Act and consequent to the draft declaration under Section 6 of the Act is contrary to the procedure and Nil Award in respect of the subject property is arbitrary and illegal and requested this Court to set aside the same by allowing the Writ Petition.

4. The learned Standing Counsel for HMDA basing on the counter filed by the respondent No.2 submits that after completion of the Award enquiry, the petitioner has filed the representation on 08.10.2007 for payment of compensation in respect of the land in Sy.No.43, Plot No.15, and hence it is not possible to restart the award enquiry. As the Special Officer and Competent Authority, ULC, has informed that the land in No.43, plot Nos.14, 15,

16 and 17 were declared as surplus land and on humanitarian grounds only a General Notice No.LA/723/004 dated 07.03.2008 was issued to the petitioner to submit any order of the Government whether her land is regularized for payment of compensation, but she did not do so and hence the Land Acquisition Officer passed Nil Award as the said plot was not regularized.

5. The learned Standing Counsel further submits that the amendment was given to the 4(1) Notification vide Gazette RR No.7 dated 06.03.2006 and in the said amendment notice it was clearly mentioned that an extent of Ac.0.16 guntas in Sy.No.43 was intended for acquisition. The Land Acquisition authorities have followed due procedure and award has been passed by the then Land Acquisition Officer and Land Acquisition Proceedings have been completed and there are no merits in the writ petition and requested to dismiss the Writ Petition.

6. After hearing both sides and on perusing the record, this Court is of the considered view that admittedly the part of the subject plot in No.43 of the petitioner was acquired by the Respondent No.2 for formation of road. The specific contention of the petitioner is that subject plot was not notified in Notification issued Section 4(1) Notification on 26.02.2005. But it was notified in the Draft Declaration dated 25.03.2006 issued under Section 6 of the Act and therefore the petitioner filed representation before the Land Acquisition Officer. However, the respondents have passed Nil award stating that plot Nos.14,15,16 and 17 in Sy.No.43 was declared as surplus land and since subject plot No.15 is situated in Sy.No.43, no compensation was awarded to the petitioner and not considered the representation of the petitioner. There is no dispute about acquisition of subject plot for the purpose of formation of road. The contention of the petitioner is that as she is not aware of amendment to Section 4(1) Notification, she had no occasion to participate in the

Award Enquiry under Section 5-A of the Act and to file objections, if any.

7. The respondents filed counter and along with the material papers, which shows that amendment to Section 4(1) of the Act was issued on 04.03.2006 and draft declaration under Section 6 of the Act was issued on 25.03.2023. As per Section 5-A of the Act, within thirty (30) days from the date of Publication of 4(1) Notification, objections should be heard from the interested persons.

The Section 5-A of the Act reads as follows:

Hearing of objections: *(1) Any person interested in any land which has been notified under section 5 as being needed for a public purpose or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, as the case may be".*

8. Admittedly, in the instant case, the amendment to Section 4(1) Notice of the Act was issued on 04.03.2006 and even before expiry of 30 days as mandated under Section 5-A of the Act, Draft Declaration under Section 6 of

the Act was issued on 25.03.2006 i.e. within 21 days from the date of amendment notice and thereby the petitioner lost her substantive right under Section 5-A of the Act,

9. The Hon'ble Supreme Court in ***Union of India v. Shiv Raj***¹ in similar circumstances held that the limited right given to an owner/person interest under Section 5-A of the 1894 Act to object to the acquisition proceedings is not an empty formality and is a substantive right and the relevant portion of the said Judgment is as follows:

“15. Therefore, Section 5-A of the 1894 Act confers a valuable right in favour of a person whose lands are sought to be acquired. It is trite that hearing given to a person must be an effective one and not a mere formality. Formation of opinion as regard the public purpose as also suitability thereof must be preceded by application of mind having due regard to the relevant factors and rejection of irrelevant ones. The State in its decision-making process must not commit any misdirection in law. It is also not in dispute that Section 5-A of the 1894 Act confers a valuable important right and having regard to the provisions, contained in Article 300-A of the Constitution of India has been held to be akin to a fundamental right. Thus, the

¹ (2014) 6 SCC 564

limited right given to an owner/person interested under Section 5-A of the 1894 Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away only for good and valid reason and within the limitations prescribed under Section 17(4) of the 1894 Act.

16. *The Land Acquisition Collector is duty-bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Land Acquisition Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons.”*

(Emphasis added)

10. The Hon’ble Supreme Court in the above Judgment categorically held that the Land Acquisition Officer must have to give opportunity to the interested person for personal hearing and thereafter, they have to proceed further in the land acquisition proceedings. The above said finding squarely apply to the instant case.

11. Therefore, the Award passed by the Land Acquisition Officer in respect of the subject plot is liable to be set aside. The respondents have to conduct Land Acquisition enquiry from the Stage of Section 5-A of the Act.

12. In view of the above findings, this writ petition is disposed of by setting aside the award proceedings in No.5/2008 (Proc.No.LA/723/2004 dated 25.03.2008) in so far as the subject plot i.e. H.No.1-98/12/7, admeasuring 300 Sq.yards out of S.No.575 Sq.,Yards constructed in Plot No.15, Suy.No.43 to 47 and 49 situated at Madhapur village of Serilingampally Mandal of Ranga Reddy District. Further, the respondents are directed to conduct de novo enquiry from the stage of Section 5(A) of the Land Acquisition Act, 1894 for the subject property and pass appropriate Award after giving opportunity of personal hearing to the petitioner. There shall be no order as to costs.

13. Miscellaneous applications pending, if any, in this Writ Petition, shall stand closed.

JUSTICE K.SARATH

Date: 15.04.2024

Note:

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