

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION Nos.7056 OF 2020 AND 37643 OF 2018

COMMON ORDER: (ORAL)

In both these writ petitions, the subject property is same and issues involved are interrelated, as such, they are being disposed of by this common order.

W.P. No.7056 of 2020:

2.1. The petitioner is owner of the Flat No.315 of the apartment (residential complex) bearing No.2-2-1089/315 situated at Golnaka, Amberpet, Hyderabad. The apartment comprises of ground + 5 upper floors consisting of 18 flats. The petitioner has purchased the flat in the year 2006. The Greater Hyderabad Municipal Corporation (GHMC) intended to acquire portion of the apartment complex for the purpose of road widening to construct a flyover. The petitioner contended that he was not issued any notice as prescribed under Section 146 of the Hyderabad Municipal Corporation Act 1955 (for short 'HMC Act'). None of the flat owners have given consent for acquisition of the land under Section 146 of the HMC Act. As consent was not given, the

acquisition should have been done by the respondents under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition and Rehabilitation and Resettlement Act 2013 (for short 'LARR Act 2013').

2.2. It is contended by the petitioner that there is violation of Section 12 of the LARR Act 2013. The respondents have neither conducted survey nor revised the value of the affected land and structures as required under the provisions of the LARR Act 2013. The petitioner's flat is a double bedroom accommodation admeasuring 1100 square feet. According to the petitioner, approximately about 50% of the flat area along with the land admeasuring 13.97 square yards is coming under acquisition.

2.3. W.P. No.37643 of 2018 has been filed by the petitioner challenging acquisition proceedings wherein interim orders were passed on 12.10.2018. Public Notice vide Ref.No.AA/60/2016 dated 20.02.2019 was issued inviting claims and interest from the concerned persons and date of award enquiry was fixed on 20.03.2019. It is stated that the petitioner and others attended the

meeting, however, the officials concerned were absent on that date. Subsequently award enquiry was conducted. Grievance of the petitioner is that if only a portion of the flat is acquired, the remaining portion would become useless, as such, directions may be issued to the respondents to acquire the entire flat area of 1100 square feet. Compensation of Rs.22,24,625/- was determined towards structures and land (part of the petitioner's flat). The land value is fixed at Rs.38,000/-per square yard which comes to Rs.5,30,860/- (Rs.38,000/- per square yard x 13.97 square yards), structures are valued at Rs.5,10,681/-, solatium is determined at the rate of 100% (Rs.10,41,541/-) and 12% additional market value (Rs.1,41,543-27 paise). The petitioner was issued notice under Section 38(1) of the LARR Act 2013 demanding that he should handover possession of the land with structures attached to it by the evening of 22.02.2020. Hence, this writ petition.

3. Heard Mrs. J. Sumathi, learned counsel for the petitioner, learned Government Pleader for Municipal Administration and Urban Development, and Mr. Pasham Krishna Reddy, learned Standing Counsel for GHMC, and perused the material on record.

4.1. The learned counsel for the petitioner has submitted that though several grounds / objections have been raised challenging acquisition proceedings, in case, this Court grants relief in terms of Section 94 of the LARR Act 2013, the petitioner would not press for the other grounds:

4.2. Section 94 of the LARR Act 2013 reads as under:

“94. Acquisition of part of house or building.–

(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired:

Provided that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Authority concerned and shall not be taken possession of such land until after the question has been determined.

(2) In deciding on such a reference made under the proviso to sub-section (1), the Authority concerned shall have regard to the question whether the land proposed to be taken, is reasonably required for the

full and unimpaired use of the house, manufactory or building.

(3) If, in the case of any claim under this Act, by a person interested, on account of the severing of the land to be acquired from his other land, the appropriate Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(4) In the case of any acquisition of land so required no fresh declaration or other proceedings under sections 11 to 19, (both inclusive) shall be necessary; but the Collector shall without delay furnish a copy of the order of the appropriate Government to the person interested, and shall thereafter proceed to make his award under section 23.”

4.3. The learned counsel for the petitioner has submitted that as per Section 94 of the LARR Act 2013, even if a portion of flat is acquired, the authorities, at the option of the flat owner have to necessarily acquire remaining portion of the flat. The meaning of house or building under Section 94 of the LARR Act 2013 cannot be construed in a narrow manner and it includes “flat” also or a portion of a building and house.

5. On the other hand, the learned standing counsel for GHMC submits that house or building does not include flat. The procedure as contemplated under the provisions of the LARR Act 2013 was duly followed and reasonable compensation was paid to the petitioner. The petitioner should have taken steps to file application under Section 64 of the LARR Act 2013 for enhancement of compensation or for damages caused due to severance of flat. If any land or property is acquired by the authorities, it should be for public purpose. However, in the instant case, if the direction is issued to the respondents to acquire remaining portion of the subject flat, it will cause burden on the State exchequer and the respondents cannot put such flat to any use.

6. Section 94 of the LARR Act 2013 corresponds to Section 49 of the Land Acquisition Act 1894. With the rapid urban development and housing necessity of the people, the urban landscape has undergone enormous changes. The ever rising prices of real estate and increase in the cost of living resulted in multiple residential units (flats) being constructed in compact blocks which

were previously used for construction of stand-alone buildings. The expression “house” as it existed in Section 49 of the Land Acquisition Act 1894 is retained in Section 94 of the LARR Act. There cannot be any controversy regarding meaning of the “house” which would also include a “flat.” House means a residential accommodation. It has to be presumed that the Law Makers while enacting the LARR Act 2013 had kept in their mind the changes in the urban development and multiple independent residential units/flats being constructed in a single parcel of land, over a period of time. If expression of the “house” is to be given a narrow and restricted meaning, it would amount to doing violence to the intention of the Law Makers. If the expression “building” or “house” were to be treated as stand-alone structures, then the Law Makers would have certainly made appropriate changes to Section 94 of the LARR Act 2013 corresponding to Section 49 of the Land Acquisition Act 1894. However, in their wisdom, the Law Makers chose to continue the same provision and it has to be presumed that the Law Makers were well aware of the changes in the urban landscape.

7. The learned standing counsel for GHMC submits that other flat owners have not objected for acquisition and many other owners whose part / portions of flats were acquired have agreed to demolish the affected portions and it is only the petitioner who has come forward challenging the acquisition. Merely because other flat owners have not come forward to challenge the acquisition of part of their flats, the same cannot be a ground to deprive the petitioner of his rights under the provisions of the Act, more particularly, Section 94 of the LARR Act 2013. It is settled law that the Land Acquisition laws are ex-proprietary legislations and the provisions therein are mandatory in nature. According to the learned standing counsel for the GHMC, only 48% of the flat of the petitioner is affected under acquisition.

8. The object of Section 94 of the LARR Act 2013 is to see that if a house or building is partly acquired, at the option of the land owner, remaining portion of the house or building shall also have to be acquired. The provision is meant to ensure that hardship is not caused to the house/building owner on account of severance of impairment to the material or value or utility of the property.

While option is given to the house or building owner, there are no conditions prescribed in Section 94 of the LARR Act 2013, at the same time, there is no option available to the respondents. It is the choice of the house/building owner only. As the petitioner has exercised his option under Section 94 of the LARR Act 2013, the contention of the learned standing counsel for the GHMC that if remaining portion of the subject flat is acquired, it cannot be put to any use is without any substance. Further, when a law prescribes an act to be done in a particular manner, it has to be done in that manner only. As to for what purpose remaining portion of the flat is to be used is neither an issue in this case nor can be a point for consideration. Thus, the respondents cannot escape from rigor of Section 94 of the LARR Act 2013.

9. In view of the above observations, the writ petition is allowed. The respondents are directed to initiate acquisition proceedings for remaining portion of the subject flat under the provisions of the LARR Act 2013 and pay compensation to the petitioner within a period of two (2) months from the date of receipt of a copy of this order. The petitioner shall not be

dispossessed from the subject flat until award is passed for the remaining portion of the subject flat as directed above. No order as to costs.

W.P. No.37643 of 2018

In view of the orders in WP No.7056 of 2020 allowing the writ petition, no orders are required to be passed in this writ petition. Hence, the writ petition is closed. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in both these writ petitions stand closed.

B. VIJAYSEN REDDY, J

August 16, 2022.

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