

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

**WRIT PETITION No.15312 of 2016**

**ORDER:**

Vide the present petition, the petitioners seek mandamus declaring the action of the respondents in resorting to acquisition of lands in Bardipur and surrounding villages in Jharasangam Mandal, Medak District in the name of procurement through G.O.Ms.No.123, Revenue (JA & LA) Department, dated 30.07.2015, without following the procedure mandated in the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), without conducting social impact assessment and without providing rehabilitation and resettlement to the project affected families.

Learned Counsel appearing on behalf of the petitioners submits that the action of the respondents is illegal, arbitrary, without jurisdiction and authority of law. Thus, it violates the provisions of Act 30 of 2013 and is unconstitutional. Therefore, he has prayed to struck down G.O.Ms.No.123 dated 30.07.2015 by directing the respondents that no lands would be taken or purchased or acquired in any manner without following Act 30 of 2013. Consequently, to pay appropriate compensation and also provide rehabilitation and resettlement provisions as mandated in Act 30 of 2013.

Learned Counsel further submits that Section 3(c) of Act 30 of 2013 defines 'affected family'. Sub-clause(ii) thereof provides that a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be

working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land.

As per Second Schedule of Act 30 of 2013, Sl.No.4 deals with Choice of Annuity or Employment as under:-

The appropriate Government shall ensure that the affected families are provided with the following options:

- (a) where jobs are created through the project, after providing suitable training and skill development in the required field, make provision for employment at a rate not lower than the minimum wages provided for in any other law for the time being in force, to at least one member per affected family in the project or arrange for a job in such other project as may be required; or
- (b) one time payment of five lakh rupees per affected family; or
- (c) annuity policies that shall pay not less than two thousand rupees per month per family for twenty years, with appropriate indexation to the Consumer Price Index for Agricultural Labourers.

Learned counsel for the petitioners further submitted that the petitioners are landless agricultural labourers and, out of them, only four have marginal holding i.e. less than half to one acre of dry land and fallow. 6<sup>th</sup> petitioner has Ac.0.25 cents; 7<sup>th</sup> petitioner has Ac.1.00; 11<sup>th</sup> petitioner has Ac.0.75 cents; 18<sup>th</sup> petitioner has Ac.0.50 cents; and 20<sup>th</sup> petitioner has Ac.0.45 cents of land. The petitioners livelihood is totally dependant upon the agricultural lands in their village and neighbouring villages. When there are adequate rains, the petitioners get work for most of the year except two to three months in summer season. In lean period and during drought years, work provided under **National Rural Employment Guarantee Scheme** helps them to survive and fulfill their basic needs as they are all **job**

**card holders.** Copies of job cards of some of the petitioners are also enclosed.

Learned counsel for the petitioners further submitted that if most of the agricultural lands in Bardipur and neighbouring villages are acquired and diverted from agriculture, work opportunities would disappear and the livelihood and income would be severely affected forcing the agricultural labourers to migrate or starve to death. Petitioners have been working as agricultural labourers for several decades and they do not have adequate skills and aptitude to adapt to any other skilled work.

Learned counsel further submitted that the petitioners came to know that National Investment and Manufacturing Zone (NIMZ) has to be developed by respondent No.10 (Telangana State Industrial Infrastructure Corporation Limited (TSIIC)). Petitioners state that they do not know much details as officials are talking to the land owners and never conducted any meeting with the landless agricultural workers. They generally said that if industries come up in the area, lot of job opportunities would be created for their children, and had not stated anything regarding the loss of their livelihood.

In the months of September/October, 2015, the District Officials viz. Collector and Joint Collector visited the village and asked the land owners to sell their lands to the government on the price fixed by the government. When some of the land owners refused to part with their lands, the officials threatened that no compensation would be paid to them and the same would be deposited in Courts.

On a query by the petitioners to the officials whether they would get anything from the Government in lieu of their parting with their lands, the reply of the officials was in negative. When

the petitioners asked the officials as to whether they are entitled to benefits under Act 30 of 2013, the officials stated that since the government has not invoked Act 30 of 2013 and are directly purchasing the lands from the land owners, they would not be entitled to the benefits under Act 30 of 2013. Accordingly, the lands of the petitioners are being directly purchased under G.O.Ms.No.123 dated 30.07.2015 under which the Collector has powers to negotiate and directly purchase lands from the land owners.

Learned counsel for the petitioners further submitted that, based on the information provided, G.O.Ms.No.123 dated 30.07.2015 deprives the petitioners of everything provided under Act 30 of 2013 passed by the highest legislative body viz. Parliament of India. The State of Telangana adopted Act 30 of 2013 by formulating Telangana State, Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Rules, 2014 (for short 'the Rules') vide G.O.Ms.No.50, dated 19.12.2014.

Learned counsel for the petitioners argued that Section 2(1) of the Rules specifically provides that *'the provisions of this Act relating to land acquisition compensation, rehabilitation and resettlement shall apply, when the appropriate government acquires land for its own use, hold and control, including for public sector undertaking and for public purpose.....'*. He submits that the appropriate government i.e. State Government is acquiring land for public purpose i.e. establishing NIMZ under TSIIIC but not applying the provisions of Act 30 of 2013. Section 107 of Act 30 of 2013 only allows the States to formulate any law that provides higher compensation and higher R & R

benefits to the land owners and project affected families which is more beneficial than provided under Act 30 of 2013. As per Section 108 of Act 30 of 2013, it is at the option of the affected families to avail compensation and R&R benefits as per law or policy or Act 30 of 2013. However, it is also binding upon the government to follow the procedure for acquisition as mandated in Act 30 of 2013, in terms of conducting Social Impact Assessment, issuing preliminary notification and declarations under Section 11(1) and 19(1) of the Act whether compensation, rehabilitation and resettlement entitlements are paid as per Act 30 of 2013 or State policy.

Learned counsel for the petitioners further submitted that as G.O.Ms.No.123 dated 30.07.2015 does not contain anything about R&R benefits, it cannot provide higher R&R benefits than provided under Act 30 of 2013. Therefore, insofar as project affected persons like petitioners, G.O.Ms.No.123 dated 30.07.2015 is in clear violation of Act 30 of 2013 and needs to be quashed.

Learned counsel submits that G.O.Ms.No.123 dated 30.07.2015 is depriving the petitioners totally of their reliable source of livelihood without providing any assured alternative employment opportunities and without any rehabilitation. Thus, it is a clear case of arbitrary action and in violation of their right to life and livelihood as guaranteed by Articles 14 and 21 of the Constitution of India.

While concluding the arguments, learned counsel for the petitioners argued that the authorities issued notification No.G1/1148/2013 dated 12.12.2015 procuring Ac.147.12½ cents in Bardipur Village, notification No.G1/1145/2013 dated 12.12.2015 procuring Ac.328.10 cents in neighbouring

Chilepally Village invoking G.O.Ms.No.123 dated 30.07.2015. Copies of the notifications are attached herewith. Learned counsel submits that the assigned lands of around Ac.1000 in three villages viz. Yelgoi, Chilepally and Bardipur were also taken over by the government without proper notice, procedure and adequate compensation. The apprehension of the petitioners is that the government may purchase land of more than Ac.3000 in Yelgoi, Chilepally and Bardipur and those villages will be diverted from agriculture and they would be deprived of their livelihood and would not get any work.

Sri T.Sarath, learned Additional Advocate General appearing for the State of Telangana submits that the present Writ Petition is vague as no specific survey number of land acquired by the government has been mentioned in the petition.

It is stated in para 3 of the Writ affidavit that petitioners are landless agricultural labourers and 6<sup>th</sup> petitioner has Ac.0.25 cents; 7<sup>th</sup> petitioner has Ac.1.00; 11<sup>th</sup> petitioner has Ac.0.75 cents; 18<sup>th</sup> petitioner has Ac.0.50 cents; and 20<sup>th</sup> petitioner has Ac.0.45 cents of land.

Learned Additional Advocate General submits that it is not in dispute that the petitioners are job card holders under NIMZ Scheme, however, the petitioners did not specify which land has been purchased by the Government by G.O.Ms.No.123 dated 30.07.2015. He further submits that G.O.Ms.No.123 dated 30.07.2015 was issued in respect of farmers who come forward voluntarily to sell their lands to the government and it has nothing to do with the Land Acquisition Act. Therefore, the petitioners cannot seek any relief that the Government is by-passing the benefits provided under the Land Acquisition Act.

He further submitted that, pursuant to G.O.Ms.No.123 dated 30.07.2015, the lands of the petitioners have not been acquired.

Respondent No.8 (Revenue Divisional Officer, Sangareddy Division, Sangareddy, Medak District) filed his counter affidavit, wherein it is stated that respondent No.6 is unable to give concrete reply to para 3 of the affidavit in the Writ Petition, and unless the petitioners specifically mention the survey number and the village in which their lands are located, it may not be possible for him to definitely state whether their lands are under acquisition or not. It is further stated that, in verification of acquaintance register, the names of the petitioners have not been found and, hence, it cannot be construed that the lands of the petitioners are being acquired under G.O.Ms.No.123 dated 30.07.2015.

Learned Additional Advocate General for State of Telangana submits that the State Government has absolute freedom even under Section 107 of Act 30 of 2013 to adopt any other method for acquisition of land by mutual negotiation and ensure a higher compensation. G.O.Ms.No.123 dated 30.07.2015 is not just to circumvent the provisions of the Land Acquisition Act. However, it is alternative arrangement in respect of those farmers who willingly come forward to sell their agricultural lands to the government.

I heard the learned counsel for the parties.

It is pertinent to mention here that the Counter affidavit filed by respondent No.8 shows that he could not understand the issue raised in the Writ Petition. However, respondent No.8 stated that unless the petitioners specifically mention the survey number and the village in which their lands are located, it may not be possible to definitely state whether their lands are

under acquisition or not. But this is not the issue raised in the Writ Petition.

The grievance of the petitioners is under Second Schedule to Act 30 of 2013. Section 3(c) of Act 30 of 2013 defines 'affected family'. Sub-clause (ii) thereof provides that a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers or artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land.

As per Second Schedule of Act 30 of 2013, Sl.No.4 deals with Choice of Annuity or Employment.

The appropriate Government shall ensure that the affected families are provided with the following options:

- a) where jobs are created through the project, after providing suitable training and skill development in the required field, make provision for employment at a rate not lower than the minimum wages provided for in any other law for the time being in force, to at least one member per affected family in the project or arrange for a job in such other project as may be required; or
- b) one time payment of five lakh rupees per affected family; or
- c) annuity policies that shall pay not less than two thousand rupees per month per family for twenty years, with appropriate indexation to the Consumer Price Index for Agricultural Labourers.

Sl.No.10 deals with One-Time Resettlement Allowance which reads as under:

Each affected family shall be given a one-time "Resettlement Allowance" of fifty thousand rupees only.

Moreover, Section 107 of Act 30 of 2013 reads as under:

Power of State Legislatures to enact any law more beneficial to affected families:



Nothing in this Act shall prevent any State from enacting any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act.

It cannot be disputed that the State Government can enact any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under this Act

G.O.Ms.No.123 dated 30.07.2015, provides that, in order to expeditiously procure land for public projects, Government deem it fit to come out with a framework that allows the land owners to participate in the development process by willingly sell their land and properties thereon, for a consideration on the basis of an agreement between land owners and the user department/undertaking /society/authority, here-in-after called as Procuring Agency, as approved by the District Level Land Procurement Committee (DLLPC).

Clause 2(viii) of the G.O. provides that the consideration as agreed by the individual land owner/owners and Procuring Agency before the District Level Land Procurement Committee shall inter-alia, include the value of land and property, perceived loss of livelihood, equivalent costs required for rehabilitation and resettlement of will land owners and others. G.O.Ms.No.123 dated 30.07.2015 was further amended by issuing G.O.Ms.No.214 dated 28.11.2015 whereby, the words *“equivalent costs required for rehabilitation and resettlement of willing land owners and others”* occurring in para 2(viii) of G.O.Ms.No.123 dated 30.07.2015 have been deleted.

Thus, the meaning of the Government Orders, as stated by the learned Additional Advocate General, is that the Government is free to purchase agricultural lands if the farmers come forward willingly. Thus, without adopting land acquisition procedure, the government has power to purchase land.

The ground reality is that the rates of the government and the market rates are different. Generally, market rates are higher than government rates. I fail to understand why the farmers would approach the government to sell their lands. However, respondents failed to produce any representation or request made by the farmers to sell their agricultural lands to the government. Moreover, Act 30 of 2013 is meant to acquire land by the government. The government is not a private property dealer who can go into the market and purchase lands from anyone. They have to issue a notification under the Land Acquisition Act, invite objections, and thereafter acquire land. In case of emergency, the government has to invoke emergency provisions but cannot purchase land in this fashion.

Moreover, the government has given slight benefits by mentioning the word 'others' under G.O.Ms.No.123 dated 30.07.2015, but has taken away the same vide G.O.Ms.No.214 dated 28.11.2015 so that the agricultural labourer shall not get benefit of the same in any manner. Thus, the agricultural labourer will not even get a single penny if the land is acquired or allegedly purchased by the government under G.O.Ms.No.123 dated 30.07.2015. In this fashion, the State Government has bypassed the provisions of the Act made by the highest legislative authority i.e. Parliament of India, which are mandatory for all the States.

The State Government of Telangana has adopted G.O.Ms.No.50, Revenue (JA & LA) Department, dated 19.12.2014. Telangana State Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014 were framed vide G.O.Ms.No.50, dated 19.12.2014.

G.O.Ms.No.50, dated 19.12.2014 reads as under:

Revenue Department – Land Acquisition – The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013) - Telangana State Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014 - Notification – Orders – Issued.  
[G.O.Ms.No.50, Revenue (JA&LA) Department, dated 19.12.2014.]

1. The Gazette of India No.40, Dt.27.09.2013 of Ministry of Law and Justice, New Delhi.
2. The Gazette of India, Notification No.2839, Dt.19.12.2013.
3. G.O.Rt.No.115, GA (Cabinet) Dept., dated 23.06.2014.
4. G.O.Ms.No.41, Rev (JA&LA) Dept., dt. 13.11.2014.

**ORDER:**

The following Notification will be published in the Telangana State Extraordinary Gazette, Dt.20.12.2014.

**NOTIFICATION**

Whereas, the draft rules namely “Telangana State Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014” were published as required under Section 112 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013) vide Telangana State Extraordinary Gazette, Part-I Dt.13.11.2014 inviting objections/suggestions from all the persons likely to be affected thereby before the expiry of a period of 15 (fifteen) days from the date on which the copies of the Gazette containing the Notification were made available to the public.

2. And whereas, the copies of the Gazette containing the said Notification were made available to the public on the 13<sup>th</sup> November, 2014.

3. And whereas, the appropriate objections and the feasible suggestions have been considered by the Government of Telangana.

4. Now, therefore, in exercise of the powers conferred by Section 109 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No.30 of 2013), the Government of Telangana hereby makes the following rules

called “Telangana State Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014” as required under Section 112 of the said Act.

The country and the lands though were in the control of the mighty and powerful rulers. In India it is only during the time of British Rule, the system of land control and administration and also the ownership, tax collection have started to take a shape. The East India Company acquired lands around Madras known as Jagir from the Nawab of Mysore and took charge of revenue collection; and in 1765, the East India Company has acquired parts of Andhra Area. After the areas came under the British Administration, they employed Zamindars and other middlemen to collect revenue from ryots.

Prior to the inclusion of Telangana Area in Andhra Pradesh, Telangana was part of the Hyderabad State. In Telangana Area, the land revenue system was dealt by the book titled “Survey and Settlement Manual of Hyderabad”. Under the Muslim rule, the tax assessment was based on Ryotwari System and the revenue collection was either in cash or in grain.

In Telangana Area, the two most important statutory enactments are the Hyderabad Land Revenue Act, 1317 Fasli and the Hyderabad Record of Rights in Land Regulation, 1358 Fasli. The 1317 Fasli Act was a comprehensive enactment intended to govern the entire revenue administration in the erstwhile Hyderabad State. It provided for appointment of Revenue Officers and Section 34 thereof declared that all roads, lanes, paths, rivers, streams, tanks, etc., except those belonging to persons or class legally capable of holding property and those in respect of which any other order under any law

may have been given, are the property of the Government. The Act provided for granting pattas / assignments of khalsa lands. It also provided for succession in case of death of pattadars.

These two above mentioned Acts i.e., 1317 Fasli and 1358 Fasli are comprehensive pieces of legislation dealing with the rights and obligations of pattadars/owners of land and the duties of Revenue Officers appointed by the Government. The 1358 Fasli governed the preparation and maintenance of record of rights in land.

After Independence, land revenue was no longer the source of revenue to the Government as it used to be and maintenance of land records lost its significance. The Government has reduced village accounts from 40 to 22 in Telangana Area and from 38 to 23 in Andhra Area vide G.O.Ms.No.599, Revenue (N) Department, dated 1-7-1976 and G.O.Ms.No.1474, Revenue (N) Department, dated 15-12-1979, respectively. Account No.2 adangal in Andhra Area and Account No.3 (pahani) in Telangana Area have been integrated vide g.O.Ms.No.734 Revenue (N) Department, dated 27-4-1983 and G.O.Ms.No.1070 Revenue (N) Department, dated 6-8-1983. The Estimates Committee of 1985-86 has recommended in its third report, appointment of Specialists Committee for introduction of common village accounts for both the regions in view of the evolution of institution of Village Officers. The Specialists Committee was appointed by the Government under the Chairmanship of Commissioner of Land Revenue vide G.O.Ms.No.115 Revenue (N) Department, dated 8-2-1989. Based on the recommendation of the Specialists Committee, 11 village accounts common to both the regions were introduced vide G.O.Ms.No.265, Revenue (LR-II) Department, dated

10.3.1992.

Therefore, the so-called land owners became the owners by default because of influence in the system and the rest became the landless who are called as agricultural labourers. Their rights are not less in any sense than the rights of the land owners. But situation prevalent in this Country is different.

The ground reality of the agricultural labourer is that, earlier days in harvesting season, they used to have work continuously for atleast a month and during that period the family of the agricultural labourer altogether used to earn grains atleast for a period of 6 to 7 months. However, after the advent of advanced technology by way of agricultural equipments, the harvesting season has gone. All seasonal crops are packed up within a week. Technological advancement is always welcome; however, advancement in the agricultural equipment has badly affected the agricultural labourer because no one thought about them. During those days, apart from earning during harvesting season, they used to attend the call as labourer atleast 3 to 4 months in a year, which was almost sufficient for their survival and feeding their families. But in the new era, because of no harvesting season, neither they earn grains nor get any labour work for the whole year; therefore, their living standard has gone down from bad to worse, and therefore majority of them are migrating to cities. As a result, the burden on the cities is increasing more and more, resultantly, the cities are unable to manage the increasing population trend.

As per Land Acquisition Act 1894, the legislator did not think about the future of the landless agricultural labourers, however a thought came in someone's mind and the legislators

brought a new Act called The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Unfortunately, the State Government, by way of issuing G.O.Ms.No.123 dated 30.07.2015 and G.O.Ms.No.214 dated 28.11.2015, has taken away whatever was given by the legislators under Act 30 of 2013.

It is clear from Section 107 of Act 30 of 2013 that the State Government has power to enact any law to enhance or add to the entitlements enumerated under this Act which confers higher compensation than payable under this Act or make provisions for rehabilitation and resettlement which is more beneficial than provided under the Act. However, vide G.O.Ms.No.123 dated 30.07.2015 and G.O.Ms.No.214 dated 28.11.2015 instead of giving any enhancement of compensation or making any provisions for rehabilitation and resettlement for agricultural labourer, the rights provided under Act 30 of 2013 have been taken away despite the fact, the State Government has no power to make any provision of law contrary to Act 30 of 2013.

Therefore, keeping in view the rights of the agricultural labourers who are in lower strata of the society and who have no other source of income, I hereby, under Article 226 of the Constitution of India, quash G.O.Ms.No.123 dated 30.07.2015 and G.O.Ms.No.214 dated 28.11.2015 as illegal, arbitrary, unconstitutional and against the concept of welfare State.

The Writ Petition is, accordingly, allowed. Miscellaneous Petition pending, if any, shall also stand disposed of. However, in the circumstances, without costs.

**SURESH KUMAR KAIT, J**

Dt: 03.08.2016  
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