

DRAFT SUBJECT TO VUDA BOARD.

RC. NO. 3457/76/33.

subject No. ~~108~~ 142

Subject: L.A.VUDA-Acquisition of lands in T.S.No.83/1 of Waltair Ward-Request for Cancellation of G.O.Ms.No.121 MA of 27.2.90-Reg.

AGENDA NOTE:

An extent of Acs.7.69 cts.in T.S.No.85/1 of Waltair ward was acquired in Award No.9/66 Dt.21.09.1966 and developed in to commercial and official complexes by VUDA. (Bose complex in which VUDA Office buildings are also situated). Adjacent to the above land, there is an old building with an appurtenant site covering to an extent of Acs. 2.36 cts. in T.S.No.83/1 of Waltair Ward. This land is earmarked for a Zonal Centre in the sanctioned Master plan. This is a prime land suitable for development in to a beautiful commercial complex as per the lines indicated in the Master plan. In addition to the commercial development, part of the land is also required for widening of road. This land is essential for VUDA for comprehensive development of the area around existing VUDA Office.

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The erstwhile Town Planning Trust in its Resolution No.30, dated 24.05.1975 has approved proposals for acquisition of land measuring Acs.2.36-cs including the old building situated therein for development of the land into a beautiful commercial complex as per the lines indicated in the Master Plan. This land was earmarked for a Zonal Centre in the Master Plan. The Government in G.O.Ms.No.186, M.A., dated 20.03.1978 have approved D.N. proposals under section 4(1) of L.A.Act and the same was published in A.P.Gazettee Part-1, dated 03.08.1978. The Government have also approved by D.O. under section 6 of the L.A.Act Vide G.O.Rt.No.499, M.A., dated 06.05.1980 and the same was published in supplement to A.P.Gazettee part-1, dated 16.05.1980. While the L.A. Proceedings have reached to Award Stage, Sri S.V.Sudarsanam has filed a Writ Petition in W.P.No.3555/80 in the Honourable High Court against the acquisition of the said land and obtained Stay Orders in W.P.M.P.No.5293/80, dated 28.07.1980. At this stage, the Government in their memo No.1791/I(2) 80-2, M.A., dated 22.08.1980 requested the Collector, Visakhapatnam to submit withdrawal Notification for the above land belonging to Sri S.V.Sudarsanam for approval of Government duly denotifying the lands from acquisition. In response to the directions of the Government, the Collector, Visakhapatnam submitted a detailed report dated 12.09.1980 to the Government requesting for orders whether to submit withdrawal proposals under section 49(1) of L.A.Act in view of the pending W.P. in the Honourable High Court. On the said directions of the Government, the Honorable Minister for Municipal Administration & Urban Development Department has been addressed vide this office D.O.Rc.No.3457/78-82, dated 15.09.1980 to reconsider the issue and to issue revised orders to Visakhapatnam Urban Development Authority to proceed ahead with the acquisition of this land.

In the circumstances stated by the Collector, Visakhapatnam in his report dated 12.09.1980, the Government in their Memo No.1791/I(2)/80-5, M.A., Dated 28.01.1981 have issued orders cancelling the orders issued in Government Memo No.1791/I(2)/80-2, M.A. dated 22.08.1980 and stated that the acquisition of land belonging to Sri S.V.Sudarsanam may be proceeded with. The Honourable High Court in its order dated 20.10.1981 in W.P.No.1555/80, dismissed the petition filed by

:: 3 ::

Sri S.V.Sudarsanam against the acquisition of land. The petitioner Sri S.V.Sudarsanam filed Writ Appeal No.707/81, against the orders in W.P.No.3555/80, and the same was dismissed on 03.11.1981. Then a S.L.P.No.62/81 was filed in Honorable High Court to grant leave of approval to go to the Supreme Court. The same was also dismissed on 29.01.1982.

Consequent to the disposal of W.P.No.3555/80, W.A.No.707/81 and S.L.P.No.62/81 filed by Sri S.V.Sudarsanam against acquisition of land and in view of Orders of High Court in favour of Visakhapatnam Urban Development Authority, the Special Deputy Collector passed Award No.3/82, dated 20.02.1982, for the above land measuring Acs. 2.36 cnts., in S.No.83/1 of Waltair Ward. In the said award passed by the Special Deputy collector it was mentioned that he is unable to decide as to who are the real owners possessing valid title to the land and to whom the compensation is rightly payable and as to the apportionment thereof in the absence of documents and the apportionment statement from the reputed owners. Therefore, in the Award it was ordered to deposit the total amount of compensation of Rs.7,82,612.56 (Rupees seven lakhs eighty two thousand six hundred twelve and paise fifty six only) in the Civil Court under Section 30 and 31(2) of the L.A. Act and deposited the compensation in the Court. As possession of the land was not surrendered in compliance of the notices under section 12(2) the L.A.O. has filed petition before the Revenue Divisional Officer and Sub-Divisional Magistrate, Visakhapatnam on 26.02.1982 under Section 47 of the L.A.Act to enforce the surrender of possession of the land.

After passing the Award by Special Deputy Collector, the Government in G.O.Ms.No.156, M.A., dated 25.02.1982 issued orders under section 48(1) of the L.A.1894 that the acquisition of land situated in T.S.No.83/1 of Waltair Ward of Visakhapatnam of Visakhapatnam belonging to the petitioners (1) Smt.S.sai Bramaramba widow of Sri S.L.R.Naidu and (2) Sri S.V.Sudarsanam be withdrawn from the acquisition proceedings subject to the condition of their giving the required land at free of cost for widening the Waltair Ward as agreed to by the petitioners. In para-4 of the said G.O. the Collector, Visakhapatnam was requested to send draft withdrawal notification to Government for its approval.

The Government were addressed in this office D.O.Lr.No.3457/76/B2, dated 05.03.1982 with a request to reconsider their decision and cancel the orders issued under G.O.Ms.No.156 M.A., dated 25.02.1982 as the L.A.Proceedings have been completed after prolonged litigation and considerable loss of time and effort. The Collector, Visakhapatnam has also submitted a detailed report in the matter in His, Rc.No.18491/79-82, dated 23.03.1982 requesting

the Government to kindly reconsider their decision and issue suitable orders.

In G.O.Ms.No.714 M.A., dated 11.01.1983 after careful examination of the matter in greater detail, the Government considered that it would not be appropriate to withdraw the land from L.A.proceedings after the Award was passed and the money was deposited in the Court and also after the party lost his case in the court. The Government, therefore, cancelled the orders issued in G.O.Ms.No.156, M.A., dated 25.02.1982 and in para-4 of the said G.O. the Government requested Visakhapatnam Urban Development Authority to take further action in pursuance of the above decision.

The Special Deputy Collector, (LA), Visakhapatnam Urban Development Authority who made a representation to the Revenue Divisional officer, Visakhapatnam to enforce surrender of land under section 47 of L.A.Act has taken possession of the land from the Tahsildar, Visakhapatnam on 03.12.1983 in pursuance of the Proceedings of Sub-divisional Magistrate and Revenue Divisional Officer, Visakhapatnam in D.Dis No.1725/82-A, dated 13.04.1982 and handedover the land, trees and dilapidated tiled houses and shed to the Estate Officer, Visakhapatnam Urban Development Authority on 03.12.1983. The Visakhapatnam Urban Development Authority has taken up the demolition of old building in the site on 04.12.1983. At this stage Smt. S.Sai Bramaramba & 2 others have filed a W.P.No.11326/83 and obtained stay orders in W.P.M.P.No.15474/83, dated 09.12.1983 against the further demolition of the building and to maintain statusquo as on 09.12.1983. The Hon'ble High Court in its judgement in W.P.No.11326/83, dated 25.04.1984 ordered as follows :

- 1) That the rule Nisi issued pursuant to the order of the High Court dated 09.12.1983 and made herein be and hereby is made absolute.
- 2) That impugned notification in G.O.Ms.No.714 M.A., dated 11.11.1983 passed by the 1st Respondent herein be and hereby quashed.
- 3) that it is open to the Government to consider the matter afresh after giving reasonable opportunity to the parties concerned, and
- 4) That there be no order as to costs in this petition.

Against the orders of the High court in W.P.No.11326/83 the Visakhapatnam Urban Development Authority filed W.A.No.1081/84 in the High Court questioning the order on the following grounds.

:: 5 ::

- 1) The order in G.O.Ms.No.156 is not an order passed under section 48(1) of L.A.Act or cancelled under section 21 of the General Clauses Act since the notification in G.O.Ms.No.156 was not published in the Gazettee.
- 2) It is mandatory on the part of the Government to publish the withdrawal Notification under section 48(1) of the L.A.Act in the Gazette, otherwise it has no validity in the eye of the Law.
- 3) Since the possession was taken on 03.12.1983 the lands are vested in the Government and the Notification cannot be cancelled U/s.21 of the General Clauses, Act nor can the Notification be withdrawn in exercise of the powers U/s. 48 of the L.A.Act since there is no provision under which the land statutorily vested in the Government may revert to the original owner by mere cancellation of the G.O.
- 4) The claimants have no right under the principles of Natural Justice.

The Writ Appeal filed by Visakhapatnam Urban Development Authority was disposed off on 01.02.1989 confirming the orders of the single judge passed in W.P.No.11326/83.

In this connection, Sri B.V.L.Narasimha Rao, Standing Counsel, Visakhapatnam Urban Development Authority at Hyderabad who dealt all the cases in the above matter and Sri K.Pratap Reddy, Addl.Standing Counsel, VUDA., at Hyderabad have been contacted and their Legal Opinions have already been obtained. The Additional Standing Counsel, Sri K.Pratap Reddy has offered sound opinion in this case stating that infact in his view no appeal should have been filed against the judgement of the single judge dated 25.04.1984 in W.P.No.11326/83 in as much as the learned judge did not dispose off the matter on merits, but has allowed the W.P. on the sole ground that the Government ought to have given an opportunity to the Writ Petitioner to show cause as to why the order of withdrawal of acquisition should not be cancelled. It is also found that in pursuance of the said order of the learned single judge, the Government could have been wowed to issue such notice to the Writ Petitioner calling upon them to show-cause as to why the order withdrawal of acquisition of land should not be cancelled and suggested that the Government may be addressed on the said lines. In addition to the above, the Addl.Standing Counsel in his opinion clearly indicated that in the circumstances of the case Viz. the completion of Award proceedings culminating in passing of the Award on 20.02.1982 itself and also taking possession of the land in pursuance thereof, the question of withdrawal of acquisition does not arise.

:: 6 ::

The award was passed on 20.02.1982 and possession of the land was also taken U/s 47 of the L.A.Act on 03.12.1983 after depositing huge amount of compensation of Rs.7,82,612.56 (Rupees Seven lakhs eight two thousand six hundred and twelve and paise fifty six only) in Civil Court, Visakhapatnam on the failure of the land owners in producing clear documents in support of their claims and that land could not be utilised by Visakhapatnam Urban Development Authority for more that 5 years in view of the prolonged litigation. The land in question acquired and taken possession long back is situated in highly potential locality by the side of Waltair Club and Visakhapatnam Urban Development Authority main building and very close to the Circuit house facing Waltair Main Road. Part of this land is also proposed in the road widening which is essential for good approach to the prestigious Gurajada Kalakshetra Auditorium and also Andhra University. If the land in question is passed on into the hands of Private parties, the integrated development of this posh centre will have severe setback.

Now the possession is with the V.U.D.A. The Secretary to Government, Housing, Municipal Administration & Urban Development Department was therefore addressed in this office letter Rc.No.3457/76/84 dated 20.02.1989 to cancel the orders issued in the G.O.Ms.No.136 M.A. dated 25.02.1982 after giving opportunity of being heard to the Writ Petitioner so that VUDA can proceed to utilise the land.

The Government have reexamined the entire matter and decided to drop the acquisition proceedings in respect of the said Acs. 2.36 cts of land vide G.O.Ms.No.121 M.A. dated 27.02.1990, wherein the Collector, Visakhapatnam was directed to take action as per L.A.Act and handover the said land to the owners.

Subsequently, an enquiry was conducted by the then Secretary to Government, Revenue Department, during May & July, 1991 into the whole matter. However, no further instructions have been received from the Government so far.

In this Office Lr.Rc.No.3457/76-84, dated 07.11.1992 the Government were informed that the G.O.Ms.No.121, M.A. dated 27.02.1990 (Upon which G.O. the parties entire claims are based) has itself been issued basing on totally wrong and incorrect facts. The relevant portion of the said G.O.reads in Para No.8 that -

" Government have re-examined the entire matter and have come to the conclusion that in view of the fact that the V.U.D.A. have already acquired Acs.8.00 of land from the party, it may not be fair to acquire the remaining Acs. 2.36 Cents., Government have therefore,

:: 7 ::

decided to drop the acquisition proceedings in respect of the said Acs. 2.36cts. of land".

Government were also further informed that the extent of Acs. 8.00 (Acs. 7.69 cts. to be precise) have not been acquired from the present petitioners and the same has been acquired in Award No. 9/66 for an extent of Acs. 7.69 cts. from 10 persons by names Sarvasri (1) Sundariksha Basu, (2) Ambujaksha Basu, (3) Monajaksha Basu, (4) Jalajaksha Basu, (5) Sravanaksha Basu, (6) Sailajaksha Basu, (7) Uttalksha Basu, (8) Ava Basu (9) Bhimalaksha Basu (10) Sarojaksha Basu.

Further the enhanced compensation awarded in this regard was also paid to the above parties vide D.P. No. 45/67.

Sri S.S. Naidu & 10 others have filed a W.P. No. 12349/92 in High Court of A.P. for implementation of the orders issued in G.O. Ms. No. 121 M.A., dated 27.02.1990. The same was disposed off by the Hon'ble High Court of A.P. on 25.09.1992 with a direction to the petitioners to file a representation to the District Collector, Visakhapatnam for seeking prompt action on the basis of the G.O. Ms. No. 121 M.A., dated 27.02.1990. The High court further directed that if the claimant do not get the relief within 4 months after their representation, they may approach to the High Court by way of filing a Writ Petition.

The Claimants again filed W.A. No. 1246/92, before the High Court for early implementation of the G.O. Ms. No. 121 M.A., dated 27.02.1990. On this the High Court in its orders dated 23.10.1992 in W.A. No. 1246/92 directed the Claimants to file a representation before the concerned Authorities within a week thereafter it should be disposed off with 2 weeks from the date of its receipt.

According to the directions of the High Court Sri S.S. Naidu has put in a representation dated 31.10.1992 to the District Collector, Visakhapatnam for implementation of G.O. Ms. No. 121 M.A. dated 27.02.1990.

According to the synopsis (5) given under section 48(1) of " the L.A. Manual of 1992, compulsory acquisition of land in India " no withdrawal is possible after taking possession of the lands. In this case, the possession was already taken long back as on 03.12.1983 under the provisions of section 47 of L.A. Act. While analysing the circumstances, the Select Committee in Para-11 of the second Report dated 23.03.1983 observed that withdrawal made out any time before possession is taken but not afterwards. It has also been upheld by the Honourable High Court in the case of Rajkumar, Rajendra Singh

:: 6 ::

Vs. State of Himachal Pradesh and another that there can be no withdrawal after the possession has been taken pursuant to the acquisition proceedings.

The Government can withdraw from acquisition only if it has not been taken possession of the land under acquisition. It cannot do so, if it has taken possession thereof :
(1978(1) A n Wr.450).

By Notification U/s.21 of the General Clauses Act., the Government may cancel or rescind the Notification issued U/s.4 & 6 of the L.A.Act. But the powers U/s.21 of the General Clauses Act cannot be exercised, after the land statutorily vested in the State Government. Thus after possession has been taken pursuant to the Notification U/s.17(1) of the said Act, the land is vested in the Government and the Notification cannot be cancelled U/s.21 of the General Clauses Act, nor can the Notification be withdrawn in exercise of the powers under section 48 of L.A.Act. Any other view would enable the State Government to circumvent the specific provisions by relying upon a General Power. There is no provision under which land statutorily vested in the Government may revert to the original owner by mere cancellation of the notification (1970(2) SCJ 735).

In view of the above circumstances the withdrawal of Notification of acquisition of land in T.S.No.83/1 of Waltair Ward of Visakhapatnam town by the Collector U/s.48(1) of L.A.Act is not feasible as ordered by Government issued in G.O.Ms.No.121 M.A., dated 27.02.1990. Sri S.S.Naidu, the applicant was informed accordingly and he was directed to approach the Government for necessary action.

Sri Koganti Krishna Prasad & 4 others have filed a W.P.No.141/93 in Hon'ble High Court against the Government, Collector, Visakhapatnam and V.U.D.A. & 13 others seeking direction to the Respondents 4 to 16 not to alienate the property of 10,959 Sq.Yds. with House therein T.S.No.83/1, Block No.10 of Waltair Ward pending W.P.No.141/93. In this case, the Hon'ble High Court have issued Interim orders in W.P.No.132/93 dated 05.01.1993 directing the respondents 4 to 16 not to alienate the property of 10,959 Sq.Yds. with House therein T.S.No.83/1 block No.10 of Waltair Ward pending further orders on this W.P.No.141/93. The above case is still pending in the Hon'ble High Court.

Sri G.P.L.N.Raju @ Panakala Raju has filed a suit in O.S.No.1243/92 in the Court of II Addl. District Munsif, Visakhapatnam against the action of V.U.D.A., in removing the encroachment in the land in T.S.No.83/1 of Waltair Ward which is under the absolute possession of VUDA. The I.A. was dismissed on 05.04.1993 and the suit was also dismissed for

:: 9 ::

default. Against the above orders of the Lower Court Sri G.P.L.N.Raju carried the matter in C.M.A.No.28/93-, I.A.No.513/93 into the Court of the III A.D.J., Visakhapatnam seeking orders to set aside the orders in O.S.No.1243/92 and obtained orders restraining the respondents from interfering with the possession of the plaint schedule property pending final hearing and disposal of the appeal.

The petitioner has also filed O.P.No.570/93, in the Court of the P.D.C., Visakhapatnam seeking orders for withdrawal of C.M.A.No.28/93 to this Court.

Again the petitioner has filed C.R.P.No.1357/94 in the Hon'ble High Court, Andhra Pradesh and obtained statusquo orders dated 02.04.1994 in C.M.P.No.6625/94 in regard to the property in T.S.No.B3/1 of Waltair Ward pending further orders on this petition.

The possession of the land in question is with V.U.D.A. Since 1983 and it is extremely required for development by VUDA in view of its importance as per the sanctioned Master Plan.

It is also to be decided as to who are the real owners possessing valid title to the land. The above land was taken possession after so many hurdles duly observing the elaborate procedure as laid down in the L.A.Act. The VUDA is not in a position to forego the possession of this land at this stage and it is not possible to pass on this land into the hands of the private parties in view of the importance of the land being situated by the side of V.U.D.A.Office etc.

The interested parties are approaching the Courts and obtaining the statusquo/Stay Orders on the Ground that the Government have issued orders in G.O.Ms.No.121 M.A. dated 27.02.1990 to the Collector, Visakhapatnam to hand over possession of the land to the owners, but the Collector, Visakhapatnam has not implemented the orders of Government, as it is not in conformity with L.A.Act. Therefore, if the Government pleases to issue orders cancelling the earlier orders issued on 27.02.1990, the Courts would dispose off the cases immediately in favour of VUDA. The Chief Secretary of Andhra Pradesh has convened a meeting on 10.08.94 to settle the issue. But no orders have been issued in this regard in view of the pendency of the W.Ps in High Court, Hyderabad.

The above land is under possession of VUDA since 04.12.1988. Recently on 13.12.1994, the High Court has ordered in W.P.No.21764/94 filed by Sri S.V.Ramadas Naidu & Sri G.P.L.N.Raju, directing the V.U.D.A not to interfere with the possession and enjoyment of the land in question pending further orders on the W.P. On the basis of the above order,

:: 10 ::

the petitioners tried to make some constructions of the land on 26.12.1994, but the same was removed by Visakhapatnam Urban Development Authority. A Petition was filed by VUDA in the High Court of Andhra Pradesh, duly indicating that the above land is under physical possession of VUDA. The High Court has ordered to maintain status-quo as on date on the above lands pending further orders on the W.P. and as per the status-quo, the land remains in the possession of VUDA.

The matter is therefore placed before the VUDA Board to address the Government for deletion of the G.O.Ms.No.121/MAY
Dated: 27.2.90.

VUDA RESOLUTION No. 142, dated 4-4-98.

Approved.

K. Gopinath
CHAIRMAN.