

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18461 OF 2006

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ORDER:

The case of the petitioner is that her husband late Sri Narra Chandra Sekhar Rao, during his life time had purchased agricultural landed property to an extent of 5.16 cents through a registered sale deed vide document No.2586 of 1915, dated 12.05.1950 and that after the death of her husband, herself and other family members succeeded the estate of her husband. It is also stated that the Government issued a notification under Section 4(1) of Land Acquisition Act on 26.11.1974 to acquire the said land initially to an extent of Ac.3.07 cents and later reduced to Ac.2.00 in respect of the aforesaid land. Subsequently, though enquiry was held no award was passed and no compensation is paid to the petitioner. As such, the petitioner filed WP.No.7848/1992. It is further stated that the authorities under Urban Land (ceiling and Regulation) Act, 1976 passed orders initially declaring the subject land to an extent of 19957 Sq.Mtrs. as surplus vide order dated 04.10.1983. Aggrieved by the same, petitioner preferred appeal before the Commissioner of Appeal and the same was also rejected vide orders dated 03.05.1993. Thereafter, the petitioner filed WP.No.11252 of 1993 against the same and this Court allowed both the writ petition Nos.7848 of 1992 and 11252 of 1993 on 19.04.2005, by a common Judgment. In pursuance to the common order in the above writ petitions, the Special Officer and Competent Authority, Urban Land Ceilings, Vijayawada, has undertaken fresh determination and passed orders afresh on 20.03.2006 holding that the land admeasuring 20841 Sq.Mts in NTS.No.368/3 of Mogalrajpuram Village, as Agriculture land and excluded from the holding of the declarant and that the Urban vacant land held by the declarant is below statutory ceiling limit and declared as non surplus holder. It is also stated that when the above writ petitions are pending the 1st respondent has undertaken some beautification work such as land scaping and putting some animal and bird statues in the above said lands, though petitioner raised objection; that the petitioner made representation dated 27.04.2006 to remove

animal and birds statues in the subject land in N.T.S.No.368/3A; that inspite of the said representation, the 1st respondent vide proceedings dated 12.06.2006, directed the petitioner to produce certain documents and that on receipt of the same, the petitioner made another representation dated 15.06.2003 enclosing the said documents required by the 1st respondent, but still as there was no response, again petitioner got issued legal notice dated 01.07.2006 through registered post, and that inspite of the same no action has been taken. The petitioner filed the present writ petition seeking direction to remove the animal and bird statutes in the subject land situated in NTS.No.368/3A (Old Rs.No.368/3) of Mogulrajapuram, beside Kanakadurgamma Varadhi, Vijayawada, Krishna District, in pursuance of the order of the Special Officer and Competent Authority, Urban Land Ceiling, Vijayawada in F.Dis.No.B4/2762/83, dated 20.03.2006 declaring the said land as Non Surplus and order of this Court in WP.No.7848 of 1992 and 11252 of 1993.

The 1st respondent filed counter admitting that at the instance of the Executive Engineer, APSRTC, Vijayawada, the subject lands were proposed for acquisition for the purpose of construction of APSRTC Bus Stand and Depot in Vijayawada; that the subject land of petitioner admeasuring Ac.2.87 cents is also included; that Draft Notification (D.N) under Section 4(1) of the L.A.Act was approved by the government in G.O.Ms.No.1551, dated 26.11.1974 and published in the A.P.Gazette dated 09.01.1975; that the Sub-Collector, Vijayawada conducted enquiry under Section 5 A of the Act; and that the Draft Declaration (D.D) under Section 6 of the Act was also approved in G.O.Ms.no.371, dated 21.05.1977 and published in the A.P.Gazette, dated 30.06.1977. It is further stated that while the acquisition proposals are in progress, the requisition department i.e., the executive Engineer, APSRTC, Vijayawada took advance possession of the land admeasuring Ac.17.52 cents under private negotiations from the landholders on 18.06.1978 with the consent of the landowners including the petitioner; and that the Deputy Area Manager of APSRTC in turn handed over the said land to the Commissioner & Special Officer, Vijayawada Municipality on 18.06.1978 in exchange for some other lands in which lands of petitioner were also included and awards were also passed. In pursuance of the order dated 24.04.1986 passed by this Court,

fresh award was passed. In view of the amended land Acquisition Act, the award should be passed on or before 24.09.1986 for which Draft Declaration was published on 30.06.1977 for an extent of Ac.17.52 cents. Hence, proceedings were lapsed and fresh notification was issued on 07.09.1989 for acquisition of Ac.6.125 cents of land. But Draft Declaration was published for an extent of Ac.4.325 cents as the requisition department i.e. N.H.Circle did not require the remaining extent of Ac.1.80 cents. However, award could not be passed on or before 02.11.1992 in view of pendency of the case before Urban Land Ceiling. It is submitted that keeping in view of the ground position fresh acquisition proceedings were taken up for an extent of Ac.2.885 cents and thereafter the Sub Collector, Vijayawada passed award No.22/93 dated 10.06.93 excluding Ac.2.00 out of Ac.4.885 cents which belongs to the petitioner for which the petitioner is entitled for compensation under ULC Act. In pursuance of the orders of the High Court on 19.04.05 in WP.Nos.7848/1992 & 11252/93, the Sub Collector, Vijayawada passed award No.12/06, dated 13.10.2006 and awarded an amount of Rs.1,13,56,468/- for acquisition of the land of Ac.2.00 belonging to the petitioner. It is submitted that after taking possession of Ac.17.52 cents on 18.06.1978 from the Executive Engineer, APSRTC, Vijayawada, the Commissioner and Special Officer Municipality had handed over the said extent with some other contiguous blocks of extents to the Amaravathi Seema Urban Development Authority, Vijayawada on 05.07.1979 and 10.08.1979 for implementation of rehabilitation scheme and construction of houses to the slum dwellers and fire victims of the Bhaskararaopet of Vijayawada town. Out of it, awards were passed to an extent of Ac.14.52 cents as required by the requisition department and no award was passed for the land claimed by the petitioner i.e., Ac.2.87 cents. The requisition department, N.H.Circle, Vijayawada, earlier stated this portion of land was not required. Hence the petitioner's land of Ac.2.87 is in possession of the Government, as surplus under ULC Act and covered by the acquisition proceedings taken up in the year 1974 till the Special Officer, ULC issued orders dated 20.03.2006 as non-surplus. It is also stated that though the land belonging to the petitioner was non-surplus land but the same was categorized as agriculture use in the master plan approved by the Government. It is also stated that the subject land is developed by the 1st respondent has been ear marked for Park and it has already been approved by

the government vide G.O. Rt. No. 958, dated: 16-12-1969, much prior to the operation of ULC Act. It is submitted that the classification of "Horticulture" in the Revenue Records with respect to the land belongs to the petitioner in survey number 368/3 may not be taken into consideration for the purpose of deciding whether the petitioner is a surplus holder or non-surplus holder since the Master Plan Land use for the site under reference has been earmarked for Park and it has already been approved by the government vide G.O. Rt. No. 958, dated: 16-12-1969, much prior to the operation of ULC Act. The S.O., ULC did not consider the facts that advance possession of the entire land of Ac. 17.52 was taken over in the year 1978 and this Authority was handed over possession of from the Municipal Corporation, Vijayawada. Awards were passed for an extent of Ac. 14.52, which is required by N.H. Circle for formation of approach road to Kanakadurgamma Varadhi on N.H-5. The S.O., ULC also not considered the fact that this Authority is in possession of the land ever since and developed as park in the interest of public. It is submitted in that in view of the above possession of the land with this authority, the proceedings issued by the Special officer, ULC, Vijayawada vide proceedings dated 20.03.2006, declaring the petitioner as non-surplus holder of Urban Vacant Land under ULC Act requires to be reconsidered and that this respondent is going to initiate appropriate steps against the order of the Special Officer, ULC.

Petitioner filed reply affidavit reiterating the contents in the writ affidavit. It is stated that the 1st respondent never made any requisition to acquire the petitioner's land, particularly the second part of land to an extent of Ac.2.87 cents in NTS.No.368/3A1A2; that similarly the said land was never handed over to the 1st respondent authorities; that in fact during 1993 the land to an extent of Ac.2.87 cents was reconveyed by making demarcation and it is there with the petitioner; and that by virtue of orders of ULC authorities dated 20.03.2006, it shall be treated that the land to an extent of Ac.2.87 cents is the petitioner's absolute property.

In this case admittedly the respondents were put in possession of the petitioner's land to an extent of Ac.2.87 cents, even before notification issued under the Land Acquisition Act. Later, since the requisition department did not require the said land, the said land was continued to be in possession of the

respondents and the requisition department has handed over the same to the Commissioner, Vijayawada Municipality and later the Commissioner, Vijayawada Municipality handed over this land to the 1st respondent. Though the requisition department stated that the land belonging to the petitioner to an extent of Ac.2.80 cents in Survey No.368/3 is not required, the respondent instead of redelivering possession to the petitioner kept the same in their possession. When the petitioner filed declaration under the Urban Land Ceiling Act, the Special Officer, Urban Land Ceiling declared the petitioner as excess holder vide orders dated 04.10.1983. Aggrieved by the same, the petitioner filed appeal before the Commissioner of Appeals, and the same was also rejected vide orders dated 03.05.1993. Against the orders of the Special Officer and appellate authority the petitioner filed WP.No.11252 of 1993 and this Court allowed the writ petition along with WP.No.7848/92 which was filed for passing of award, by common order dated 19.04.2005 setting aside the orders passed by the Special officer as well as Appellate Authority and remitted the matter to the Special Officer and Competent Authority, Urban Land Ceilings, Vijayawada and in pursuance to the same, the Special officer, Urban Land Ceiling, declared the petitioner as non surplus holder vide orders dated 20.03.2006. The writ petition No.7848/92 filed for passing of award was allowed by this Court. In pursuance to the orders in WP.7848/1992, Award No.12/2006, dated 13.10.2006 is passed to an extent of Ac.2.00 cents. But the balance land of Ac.2.87 cents is with the respondents. Though it is argued in the counter affidavit that the 1st respondent is not a party to the aforesaid writ petitions as well as the proceedings issued by the Special Officer, the fact remains that the 1st respondent came into possession through the Commissioner, Vijayawada Municipality who was handed over possession by the APSRTC which requires property for acquisition, as such it cannot be said that the orders in the writ petition are not binding. More so, the proceedings initiated against the petitioner ended in favour of the petitioner goes to show that the petitioner is the owner of the land to an extent of 2.87 cents, as such, it cannot be said that the proceedings initiated by the Special Officer, Urban Land Ceiling and the acquisition made by the Government in respect of 2 acres is not binding on the 1st respondent. Having come into possession through the 2nd respondent, the 1st respondent cannot say that the orders passed in the writ petitions and the

Urban Land Ceiling proceedings are not binding on it. The award in respect of 2 acres of land also goes to show that the petitioner is the owner of the remaining land of Ac.2.87 cents. The public authorities instead of handing over possession on their own made the petitioners to file the present writ petition. Now it is not open for the 1st respondent authority to state that it is not bound by the orders passed by this court as well as the proceedings of the Special Officer, Urban Land Ceiling.

The 1st and 2nd respondents come within the meaning of the article 12 of the Constitution of India, and they are expected to protect the properties of the citizens but without authority of law they cannot squat on the property of the petitioner.

Since the learned Advocate General stated that the 1st respondent wants to utilize the land of petitioners for public park or for any other purpose and that the Government intends to initiate proceedings under Land Acquisition Act or to provide alternate land if petitioner agrees for taking of alternate land, the respondents are directed to initiate Land Acquisition Proceedings if petitioner does not agree for taking alternate land, within a period of six months from the date of receipt of a copy of this order. Failing which the respondents shall remove the animal and bird statues from the subject land and handover the same to the petitioner.

Accordingly, the writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

30.09.2015

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