

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.33013 of 2012

ORDER :

This writ petition is filed for writ of Mandamus directing the respondent to pay the compensation of the land acquired admeasuring 320 Square yards @ 7,274/- par with the award along with 12% enhanced valued from the date of notification along with 30% solatium and along with interest @ 18% P.A., from the date of taking possession i.e., from 04.07.2005 till the date of payment on the value of the land.

2. The case of the petitioner is that he is the owner and possessor of premises bearing No.19-3-1075/1, Shamsheergunj, Hyderabad. The petitioner is running Rice and Oil Mills under the name and style of M/s.Bharat Rice and Oil Mills. He further alleges that the respondent has informed the petitioner vide its letter as well as notification that about 320 Square yards of his property is effected under road widening scheme from Himmatpura to Falakhnuma, for the proposed 80 feet road and vide letter dated 10.06.2003 the respondent requested for private negotiations for acquisition and handing over the affected area to the respondent-Corporation. The petitioner made a representation on 20.06.2003 and on 17.07.2003 the respondent requested the petitioner to hand over the possession of land effected and to give consent for acquisition. He also alleges that the parties whose properties are affected under the road widening scheme were contesting before the land acquisition officer, Greater Hyderabad Municipal Corporation (G.H.M.C.) and in so far as the petitioner is concerned, the petitioner gave consent and handed over possession vide letter dated 04.07.2005 subject to condition of payment of compensation for land as well as super structure.

3. After taking possession of the affected portion of land an amount of Rs.8,07,328/- was paid on 21.07.2005 to the petitioner. Thereafter, the respondent wanted the petitioner to accept the benefit of giving additional F.S.I as per G.O.Ms.No.483 Municipal Administration dated 24.05.1998 and G.O.Ms.No.423 M.S., dated 31.07.1998. But the petitioner informed that he is not interested to avail the benefit arising out of such G.Os., and the petitioner gave number of representations and reminders dated 28.03.2008, 16.04.2008, 15.05.2008 and 03.12.2008, seeking for payment of compensation. As there was no response, the petitioner also got issued legal notice dated 20.01.2011. It is also alleged that the neighbouring properties were also acquired and the land acquisition officer passed award in F.No.A/795/2005 and compensation @

7,274/-, as well as other statutory benefits were paid to them. Aggrieved by the action of the respondent in not paying the compensation, and alleging violation of Article 14 of the Constitution of India, the present writ petition is filed.

4. Though Notice before admission was ordered on 19.10.2012, counter was not filed and only when a conditional order was passed, counter is filed.

5. The defence of the respondent in the counter is that the petitioner has voluntarily consented for acquiring his property and possession was also delivered on his own and he agreed to take the benefit of additional relaxation and additional F.S.I., as per G.O.Ms.No.483 Municipal Administration dated 24.05.1998 and G.O.Ms.No.423 M.S., dated 31.07.1998 and compensation to the structures has already been paid and the petitioner has accepted without any objection. Having accepted the compensation, the petitioner cannot file this writ petition. As far as title and handing over of possession is concerned, it is not disputed by the respondent in the counter. The respondent has also relied on an irrevocable General Power of Attorney and also affidavit filed by the petitioner, before the GHMC.

6. Learned counsel for the petitioner states that the petitioner never agreed for taking the benefit under relaxation of structures and also additional F.S.I., as per G.O.Ms.No.483 Municipal Administration dated 24.05.1998 and G.O.Ms.No.423 M.S., dated 31.07.1998. He also submits that what he agreed was only receipt of payment of compensation regarding super structures. The petitioner surrendered the property and handed over possession only with a fond hope that he will be paid compensation as paid to other land owners. The petitioner has not agreed for receipt of compensation and the respondent has to follow the procedure as envisaged under Section 147 of the G.H.M.C. Act, by initiating Land acquisition proceedings.

7. It is an admitted fact that the property of the petitioner bearing No.19-3-1075/1, Shamsheergunj, Hyderabad has been taken possession by the respondent-Corporation for the purpose of road widening. It is also admitted fact that the petitioner has been paid compensation for super structures. Now, the stand taken by the respondent in the counter is that the petitioner has consented for taking the benefit under the above G.Os. and for that purpose an irrevocable General Power of Attorney is said to have been executed by the petitioner. It is not even dated and it is not mentioned in whose favour it is executed. Clause 5 of the irrevocable General Power of Attorney, reads as follows :

"I am fully satisfied with the compensation amount of Rs.8,07328.00 (Rupees.....) awarded to me as per mutual agreement towards

Superstructure Standing on the site of schedule mentioned property and I am prepared to receive the said amount in full quit of all my claims to the market value of the superstructure on the said property.”

8. The above clause does not indicate that the petitioner has consented for taking benefit under the said G.Os., foregoing his right for compensation for the land. The said document pertains to super structures.

9. The schedule of property annexed to the affidavit filed before the Special Officer, Municipal Corporation, Hyderabad, reads as under :

“All that part and parcel of Structure, situated at H.No..... and bounded as follows :-

A) North :

B) East :

C) South :

D) West : ”

10. The so called affidavit executed by the petitioner also does not indicate the house number and so also the schedule to the said affidavit which is not even dated also says about structures only. This goes to show that the plea taken by the respondent-Corporation in the counter is false and it wants to evade payment of compensation to the petitioner who voluntarily handed over possession. This attitude of the respondent is deprecated. The respondent-Corporation is bound to protect the rights of the citizens and it cannot take away the properties of the citizens by making them believe that compensation will be paid.

11. Having regard to the above discussion, the writ petition is allowed with costs of Rs.20,000/-, and the respondent-Corporation is directed to pay compensation to the petitioner in respect of 320 Square yards by following the procedure under Section 147 of the G.H.M.C. Act.

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

A. RAJASHEKER REDDY,J

11th September, 2015
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