

THE HON'BLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.3160 of 2007

ORDER:

1. This writ petition is filed seeking to declare the action of the respondents in interfering with the petitioner's peaceful possession and enjoyment of the land admeasuring Ac.1.55 cents in Sy.No.108/01 and Ac.0.61 cents in Sy.No.108/8 of P.E. Chinnayyapalem in Thondangi Mandal, East Godavari District, under the guise of Award No.2/2001 dated 4.9.2001 passed under Ref.No.E.3898/98 by the 3rd respondent under the Land Acquisition Act, as illegal and arbitrary and consequently, to set aside the Award No.2/2001 dated 4.9.2001.

2. Brief facts of the case are as follows:

On issuing notification under Section 4 (1) of the Land Acquisition Act, in respect of the acquisition of the land in question, the husband of the petitioner, who was the owner of the land, submitted his objections. But however, the award impugned was passed by dispensing with Section 5-A enquiry and by invoking urgency clause under Section 17(4) of the Land Acquisition Act. Subsequently, the husband of the petitioner died. No compensation was paid either to the husband of the petitioner during his life time or to the petitioner after the death of her husband. Further, neither the market value of the land was deposited nor the dispute with regard to the passing of award was referred to the Civil Court. Thus, the respondents have not followed due process of law and therefore, they are not entitled to interfere with the peaceful possession and enjoyment of the petitioner over the land in question.

3. Heard and perused the material available on record.

4. Admittedly, the award was passed in the year 2001. In view of the nature of the proceedings, it is relevant to refer to Section 24 (2) of the amended Act 30 of 2013, which runs as follows:

“Notwithstanding anything contained in sub-section(1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.”

In the instant case, even though the award was passed in the year 2001 and possession was also taken by the respondents as admitted by them, but, the fact that remains undisputed is that they have not deposited the money in favour of the persons concerned in the Civil Court.

5. In a case of this nature, after passing the award, it is the primary duty of the respondents to take possession and also deposit the amount before the Civil Court. On failure of deposit of the market value of the land, the entire acquisition proceedings would become vitiated in view of Section 24 (2) of the amended Act.

6. The above provision viz., Section 24(2) of the Amended Act was also discussed by the Apex Court in **Union of India and others Vs. Shiv Raj and others**^[1] and **Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others**^[2]. In the decision 2nd cited supra, their lordships observed the expression “paid” as follows:

“Paid” used in Section 24(2) of the Act includes deposit of compensation in court and cannot be limited to mean “offered” or “tendered” to landowners/persons interested and neither can receipt of compensation by landowners/persons interested be

inferred as the only meaning thereof. If literal construction is given to expression “paid”, then it would amount to ignoring the procedure, mode and manner of deposit of compensation in Court as provided in Section 31(2) of 1894 of the Act when the land owners/interested persons refuse to accept compensation.”

7. Now, it is the case of the respondents that the market value of the land in question was already in the Revenue Deposit and therefore, it amounts to payment. But, in the light of Section 24 (2) of the amended Act coupled with the principles laid down by the Hon’ble Supreme Court in the above decision, mere deposit of the market value of the land in the Revenue Deposit, cannot be construed as that of “paid” fulfilling the condition precedent of Section 24 (2) of the Amended Act.

8. In view of the procedural irregularities committed by the respondents, this Court is of the view that the proceedings initiated for acquisition of the land in question are vitiated and hence, the award impugned herein is liable to be set aside. At this stage, it is brought to the notice of this Court by the learned Government Pleader that insofar as the land in question is concerned, no construction was made over the same. Therefore, this Court feels that the order of this Court would not cause any prejudice to the respondents herein.

9. Accordingly, the Writ Petition is allowed setting aside the award impugned. However, the respondents are at liberty to proceed with the acquisition as per the provisions of the Section 24(2) of the amended Act, if they so, desire. No order as to costs. Consequently, the miscellaneous petitions pending, if any, shall stand closed.

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RAJA ELANGO, J

Dated:3rd March, 2015

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[\[1\]](#) 2014(5) ALD 83 (SC)

[\[2\]](#) (2014) 3 SCC 183