

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.14168 OF 2014

ORDER:

The petitioner prays for Mandamus declaring the action of 2nd respondent in not referring the dispute on the apportionment of compensation amount awarded in respect of acquired land admeasuring 3,157 square metres in Survey No.73/2A of Gollapudi Village, Vijayawada Rural Mandal, Krishna District to competent civil Court and in trying to disburse compensation amount to respondent Nos. 3 and 4 without considering the objections of petitioner dated 28.09.2012 as violative of Section 3H(4) of National Highways Act, 1956 (for short 'the Act'), illegal and unconstitutional. The petitioner prays for a consequential direction to refer the dispute of apportionment of compensation by considering the representation dated 28.09.2012 to civil Court.

The admitted circumstances of the case are as follows:

At the instance of 1st respondent, land acquisition proceedings under the Act are taken up by the 2nd respondent. The subject matter of the writ petition is acquisition of land in Survey No.73/2A of Gollapudi Village, Vijayawada Rural Mandal. Notification under Section 3-A of the Act was published in the official gazette notification 1) EO No.1395 dated 20.07.2011 in S.O.No.1668 (E) dated 20.07.2011 and (2) E.O.No.958 dated 1.05.2013 in S.O.No.1090 (E) dated 01.05.2013. Notification dated 25.11.2011 under Section 3-A of the Act was published through gazette of India EO No.2228 dated 25.11.2011 in S.O.2651 (E) Ministry of Road Transport and Highways and the newspapers on 13.01.2012 inviting objections from the interested persons under Section 3 C(1) of the Act,1956. Pusapati Durga d/o. P. Rama Rao and Pillutla Padmavathi w/o. Rama Rao filed objections on acquisition of land in Survey No.73/2A of Gollapudi Village, Vijayawada Rural Mandal, Krishna District. The objections were overruled by the 2nd respondent. On 22.11.2012, notification under Section 3-D (1) and paper publication 3-G(3) were published in daily newspapers on 20.01.2013 inviting claims from persons interested in the land to appear before the 2nd respondent on 04.02.2013 with their claims for receipt of compensation. No objections were received by the 2nd respondent and 2nd

respondent passed award No.17/2013 dated 28.12.2013 determined compensation as Rs.4,186/- per square metre for the land acquired in R.S.No.73/2A. The amount awarded for acquisition of land in R.S.No.73/2A of Gollapudi Village is kept in the joint account of 1st respondent and the 2nd respondent.

In the above factual background, the case of petitioner is that the petitioner along with her brother and sister as minors filed O.S.No.251 of 1984 on the file of I Additional Senior Civil Judge, Vijayawada for declaration that the registered relinquishment deed bearing document No. 2162/1972 dated 23.05.1972 alleged to have been executed by their father Nuthalapati Sambasiva Rao in favour of the petitioner's grandfather Nuthalapati Narayana Rao as sham and nominal and for declaration that the sale deeds No.12658 and 12659 dated 26.12.1981 as invalid etc. The petitioner prayed for partition of plaint schedule properties in O.S.No.251 of 1984. On 30.10.2000, O.S. No.251 of 1984 was dismissed. A.S. No.1 of 2001 is pending in this Court.

Respondent No. 3 purchased from Nuthalapati Satyavathi the property in Survey No.73/2A, Gollapudi Village through registered document No.936 of 1992 dated 28.05.1992. Through gift deed dated 26.04.2003, respondent No.3 gifted an extent of 2,129.6 square yards in favour of respondent No.4. It is alleged that respondents 3 and 4 are *pendentelite* purchasers. The petitioner further alleges that respondent Nos. 3 and 4 are impleaded as respondents in A.S.M.P.No.1730 of 2010 filed against the judgment and decree in O.S.No.251 of 1984. The legal objection of petitioner is that the 3rd and 4th respondents are *pendentelite* purchasers of property in R.S.No.73/2A from Nuthalapati Satyavathi. R.S.No.73/2A is one of the items included in the plaint schedule in O.S.No.251 of 1984 for declaration/partition etc. The 3rd and 4th respondents being *pendentelite* purchasers are not alone exclusively entitled to the compensation awarded by 2nd respondent through award dated 17/2013 dated 28.12.2013 but also the petitioner and her brother and sister. The petitioner claims to have filed representation dated 28.09.2012 for consideration by the 2nd respondent to refer the dispute to competent civil court for deciding the issue of apportionment of compensation awarded by the 2nd respondent. This is complete inaction. Hence, the writ petition.

Sri Chakravarthy, learned counsel for the petitioner submits that there is a dispute on the entitlement or apportionment of compensation for acquisition of land

in R.S.No.73/2A of Gollapudi Village. Once objection is received from the petitioner, the 2nd respondent in terms of section 3H (4) of the Act has no option except to remit the matter to civil Court for a decision as the 2nd respondent cannot consider the serious issues of fact and law and decide the apportionment of compensation. The learned counsel alternatively submits that even assuming without admitting that respondent Nos.3 and 4 at best are entitled to receive the compensation covered by the shares falling of their predecessor-in-interest still and 3rd and 4th respondents cannot receive and take away the share of compensation claimed by the petitioner, in such an event, the petitioner will be put to irreparable loss and hardship. Therefore, the learned counsel requests the Court to protect the interest of petitioner.

3rd and 4th respondents filed detailed counter affidavit opposing the writ petition in all fours. Briefly stated the case of 3rd and 4th respondents is that R.S.No.73/2A of Gollapudi Village was the Stridhana property of Nuthalapati Satyavathi and being the absolute owner Nuthalapati Satyavathi has sold the property through registered sale deed in favour of 3rd respondent. There is no prayer assailing the legality of sale deed in favour of respondent No.3 and further that respondent No.3 purchased an extent of Ac.1-42 cents out of Ac.2-27cents in R.S.No.73/2A and claim of petitioner against respondent Nos. 3 and 4 is not maintainable and vexatious. The learned counsel prays for summary dismissal of the writ petition. On the alternative submission of the petitioner, Sri V.S.R.Anjaneyulu, learned counsel representing 3rd and 4th respondents contends that restricting the 3rd and 4th respondents from receiving the compensation and enjoying the fruits after deprivation of enjoyment in acquired property should be for just and valid reasons. The petitioner in pursuit of her alleged claim for 1/8th share out of 80 shares is not justified in preventing the 3rd and 4th respondents from receiving the total compensation. If the amount is allowed to remain with 1st and 2nd respondents it is contended that the 3rd and 4th respondent will suffer irreparable loss and injury. The loss cannot be remedied by the petitioner after the appeal suit is decided against petitioner.

As is evident from the material available on record and also the submissions of learned counsel appearing for the petitioner, the petitioner filed the suit for declaration and partition in O.S. No.,251 of 1984. The suit was dismissed through

judgment and decree dated 30.10.2000. The case of petitioner is that against the judgment and decree dated 30.10.2000, A.S.No.1 of 2001 is pending before this Court. An order of injunction prohibiting alienation of land was also obtained in C.M.P. No.60 of 2001. Therefore, the substantive issue between the petitioner and 3rd and 4th respondents is already *sub-judice* in A.S.No.1 of 2001. Therefore, there is no further need to refer the alleged dispute of apportionment of compensation to the competent civil Court by the 2nd respondent. The inaction complained is untenable and no exception can be taken to the non-consideration of representation. The 3rd and 4th respondents if are prevented from receiving the compensation at the instance of petitioner's objection, in the facts and circumstances of this case such step would be erroneous and would cause great hardship to 3rd and 4th respondents. Therefore, without expressing any view on the alleged dispute presented by the petitioner for reference to the civil Court, the ends of justice would be met by permitting respondent Nos. 3 and 4 to withdraw compensation awarded through award No 17/2013 dated 28.12.2013, except an amount of Rs.13,00,000/- (rupees thirteen lakhs only) towards alleged claim of petitioner. The 2nd respondent, therefore, is directed to retain a sum of Rs.13,00,000/- (rupees thirteen lakhs only) and deposit the retained amount in a fixed deposit account to be released together with interest in accordance with the out come of A.S.No.1 of 2001.

The direction to deposit Rs.13,00,000/-(rupees thirteen lakhs only) in Fixed Deposit Account shall not be construed as this Court accepting the case of petitioner in any way. The present arrangement is directed to avoid further litigation and preservation of amount so far as petitioner's claim is concerned and nothing more.

With the above direction, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions, if any, pending in the writ petition shall stand closed.

S.V.BHATT, J

Date: 07.04.2015

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