

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.16729 of 2008

ORDER:

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This writ petition is filed to declare the proceedings initiated by the respondents under Land Acquisition Act including the Award Proceedings No.A/391/2007, dated 03-09-2007 as illegal and arbitrary.

The case of the petitioner is that the petitioner is the owner of part of Commercial Complex bearing Municipal Nos.22-5-98, 22-5-99, 22-5-100, 22-5-101, 22-5-102, 22-5-102/1, 22-5-103, 22-5-110, 22-5-111, 22-5-112, 22-5-113, 22-5-114, 22-5-115, 22-5-116, 22-5-117, 22-5-117/1, 22-5-117/2, 22-5-117/3, 22-5-117/4, 22-5-117/5, 22-5-117/6, 22-5-117/7, 22-5-117/8, 22-5-117/9, 22-5-119/10 and 22-5-119/12 situated at Sooraj Market, Gulzar House, Hyderabad. The Sooraj Market originally belongs to his father Sri Mahavir Pershad and his brothers viz., Sri Jagadish Pershad and Sri Ganesh Pershad. All the three brothers have constructed the said Sooraj complex and divided the property to their respective shares vide partition deed dated 30-04-2005. Schedule-F of the property fell to his share which comprises of Ground + 2 floors.

It is further stated that the Land Acquisition Officer has issued a notice in letter dated 03-08-2007 fixing the enquiry on 07-08-2007. On 07-08-2007, a representation was made on behalf of the petitioner. The petitioner also submitted another representation dated 16-08-2007 stating that the property is jointly owned by three brothers and he is not in a position to submit required documents and sought time. Again he made another representation dated 30-08-2007 in the Office of the Special Deputy Collector seeking further time (15) days for submission of required documents. While so, the Municipal authorities have come to inspection of the site stating that the front portion of the building is

sought to be demolished to an extent of 5” feet for road widening purpose. The Cousin of petitioner by name Jagadish Pershad filed W.P.No.14416 of 2008 challenging the award passed by the Land Acquisition Officer dated 03-09-2007. The petitioner came to know that the petitioner’s property was also part of the award proceedings. The petitioner states that premises bearing door NO.22-5-119/10 is not on the road side. As such, acquiring of the said property for road widening is misconceived and the entire proceedings initiated are without application of mind and the petitioner also states that though award has been published and no notice is issued to the petitioner in that regard.

It is further stated that the Land Acquisition Officer received the representation made on 16-08-2007, but the same was not reflected in the award proceedings. Aggrieved by the action of respondents in trying to interfere with the property of the petitioner, which is not forming part of the award and trying to demolish the front portion of the building, which do not belong to premises bearing No.22-5-119/10, the present writ petition is filed.

This Court granted interim order at the stage of admission staying demolition on 26-08-2008 and the same was extended until further orders on 23-09-2008.

Counter is filed by the 3rd respondent-
Land Acquisition Officer stating that
A.C.P. Circle-I, MCH, Hyderabad placed
a requisition vide Lr.No.205/C1/CP/RW/LA/MCH/2006,
dated 10-05-2006 for acquisition of seven properties including
premises bearing No.22-5-119/10 admeasuring an extent of 49.59
square yards. The Draft Notification under Section 4 (1) and Draft
Declaration under Section 6 of Land Acquisition Act, 1894 (for short
“the Act”) is also issued and approved by the District Collector,
Hyderabad and dispensing with the enquiry under Section 5-A of the

Act. Thereafter, notice under Section 9(3) and 10 of the Act was issued inviting claims of interest and fixing enquiry into such claims. It is stated that as the title documents were not filed by the awardee and in the absence of the claim, the compensation could not be awarded or apportioned and the matter was referred under Section 30 of the Act for adjudication and the compensation amount was remitted in the Court for disbursement of the compensation to the rightful owners. It is denied in the counter that the award was erroneously passed and the premises bearing No.22-5-119/10 was not affected under road widening from Gulzar House to Royal Function Hall.

It is also stated that the petitioner himself submitted a representation on 16-08-2007 stating that the property i.e. Suraj Bhan Market, Gulzar House, Hyderabad was jointly owned and possessed by three brothers. He also submitted that he could not produce the documents. As such sought for dismissal of the writ petition.

Heard Sri B. Shiv Kumar, learned counsel for the petitioner, who states that the petitioner's premises is not constituted abutting the road. As such, the inclusion of petitioner's property for road widening does not arise and the said action is totally without application of mind. Though the petitioner submitted representations, the same were not considered and the award was passed.

On the other hand, the learned Government Pleader for Land Acquisition submits that basing on the requisition filed by the Revenue Department, Notification under Section 4(1) of the Act and Draft Declaration under Section 6 of the Act were issued including the property bearing No.22-5-119/10 and the petitioner never questioned the same. He also participated in the award enquiry, but could not produce the documents. Once the notification under Section 4 (1) and Section 6 Declaration seeking to acquire above property was published is not challenged, the petitioner cannot challenge the award proceedings.

Heard Sri P.Krishna Reddy for 1st respondent-Corporation.

It is to be seen that the only grievance of the petitioner is the subject property is not abutting the road and it will not affect the road widening proposed by the respondent-Corporation. But admittedly, the property of the petitioner forms part of the notification issued under Section 4 (1) of the Act and Declaration issued under Section 6 of the Act. Even the requisition proceedings, which was extracted in the counter goes to show that the property i.e. premises No.22-5-119/10 was included in the requisition and as such, the specific allegation of the petitioner that it cannot form part of the award is denied by the Land Acquisition Officer in the counter affidavit filed by the 3rd respondent.

Since the petitioner has not questioned the notification issued under Section 4 (1) of the Act, the Land Acquisition Officer is bound to pass the award in terms of the Act and it cannot be said that the award passed by him is erroneous and illegal. As rightly pointed out by the learned Government Pleader that after issuing Notification under Section 4 (1) of the Act and Declaration under Section 6 of the Act is issued, the award was passed. Hence, I do not see any merit in the writ petition.

Accordingly, the Writ Petition is dismissed. Since, it is stated that the matter was referred to the Court under Section 31 of the Act, it is open for the petitioner to agitate his rights for claiming compensation.

As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

A.RAJASHEKER REDDY,J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITON No.17618 of 2014

Date: 02.07.2014

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