

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 20045 of 2012

ORDER:

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Heard learned counsel for the petitioners, learned Government Pleader for Revenue and learned counsel appearing for respondent Nos.4 to 12. With the consent of all the parties, the main writ petition itself is heard at the admission stage.

The present writ petition came to be filed seeking issuance of writ of mandamus directing respondent Nos.1 to 3 to refer the dispute between the petitioner and respondent Nos.4 to 9, as regards the apportionment of lands in Sy.Nos.2, 3/a, 532, 533, 538, 539, 540, 541, 546, 547, 554/a, 556, 557/a and 562 totally admeasuring Ac.18.19 gts., situated at Uppal Bhagath Village, within the limits of Greater Hyderabad Municipal Limits, Ranga Reddy District, under Section 30 of the Land Acquisition Act, pursuant to the objections filed by the petitioner on 09.05.2012 and 10.05.2012; and consequently direct respondent Nos.1 to 3 not to make any allotment of lands to respondent Nos.4 to 12 in lieu of compensation till final adjudication of the reference.

The averments in the affidavit filed in support of the writ petition would show that the petitioner herein is the daughter of one late Giri Yadi Reddy, while respondent Nos.4, 5, 7 to 9 are her brothers. Respondent No.6 is her sister-in-law (widow of her deceased brother) and respondent Nos.10 to 12 were impleaded as legal representatives of deceased respondent No.4, who died pending the writ petition. The lands referred to above are ancestral and joint family properties. The father of the petitioner

inherited the same after the death of his father by name Venkat Reddy. The father of the writ petitioner died in the year 2005 leaving behind the petitioner herein and respondent Nos.4 to 9 as his legal heirs. As the lands are ancestral properties, the petitioner being one of the co-parceners, after the amendment of Hindu Succession Act, 2005, claimed share along with her brothers in the said property. It is further averred that the petitioner is entitled to 1/7th share in the said lands. The averments in the affidavit further show that even during life time of his father land in Sy.No.556 was transferred in the name of the petitioner and since then she is in exclusive possession of the land in the said survey number. It is stated that the petitioner alone is eligible to get compensation insofar as the acquisition of land in Sy.No.556 is concerned.

It is alleged that the brothers of the petitioner got their names fraudulently entered in the revenue records and later filed Writ Petition No.17012 of 2006 questioning the land acquisition proceedings initiated by the third respondent without impleading the petitioner herein. By an order dated 08.08.2006 this Court granted stay of all further proceedings of acquisition, but later the matter was compromised in view of the offer made by the government wherein it offered to give 1000 square yards of developed land for each acre of the acquired land.

It is stated that as the request of the petitioner for partition was not agreed upon, the petitioner filed O.S.No.485 of 2010 on the file of the Additional District Judge, Ranga Reddy, seeking partition and allotment of 1/7th share in the said lands. The said suit is still pending. Apprehending that her claim will not be considered, the petitioner filed W.P.No.6147 of 2011 before this

Court. By an order dated 17.11.2011, this Court while disposing of the writ petition directed the third respondent to take a decision in terms of provisions of Sections 30 and 31 of the Land Acquisition Act. But the third respondent referred the dispute only to an extent of 1/7th share claimed by the petitioner and passed the award. As the brothers of the petitioner also claimed land in Sy.No.556, which is in the name of the petitioner, the dispute was referred to civil Court under Section 30 of the Land Acquisition Act. Being aggrieved by the award passed by the third respondent, the petitioner made representations dated 09.05.2012 and 10.05.2012 to refer the entire dispute to the civil Court, but till date the respondents have not taken any action. It is stated that pursuant to the awards, the third respondent is trying to disburse the compensation amount. It is averred that if it is allowed, the petitioner will suffer irreparable loss. Hence the present writ petition.

Respondent No.3 filed his counter stating that the land admeasuring Ac.733.08 gts., situated at Uppal Bhagath Village was acquired for the purpose of Musi River Conservation and River Front Development. After publication of Draft Declaration under Section 6 of the Land Acquisition Act, some of the land holders filed writ petitions and obtained stay orders. Respondent Nos.4 to 9 filed W.P.Nos. 17005, 17011 and 17012 of 2006, wherein this Court initially granted stay covering three different notifications for the land admeasuring Ac.17.13 gts., in Sy.Nos. 2,3,532, 533, 538, 539, 540, 541, 546, 547, 554, 556, 557 and 562. After having several deliberations with the landholders, HMDA submitted proposals to the Government to provide 1000 square yards of developed per each acre of land acquired by the government in lieu of monetary compensation. After careful

examination, the government issued G.O.Ms.No.36, dated 22.01.2011. In view of the said G.O. and as the land holders accepted the offer made by the Government, this Court disposed of the said writ petitions. Respondent Nos.4 to 6 and others claimed the entire extents of Ac.17.13 gts for payment of compensation in the shape of developed land to an extent of 1000 square yards per every one acre and have submitted copies of pattadar pass books to that effect, whereas the petitioner filed claim for 1/7th share of the said land. It is said that the dispute arose with regard to 1/7th share and the same was referred to the Civil Court under Section 30 of the Land Acquisition Act.

Respondent Nos.5,6, 8 and 9 filed their counter stating that the claim of petitioner for a share in all the properties cannot be accepted. It is averred that all the properties were partitioned and house bearing No. 8-106 situated at Ramanthapur, which was constructed over two plots from out of the joint family funds, was allotted to the petitioner and she is residing in the said house. Apart from that, land admeasuring Ac.1.18 gts. in Sy.No.556 of Uppal Bhagath Village was also allotted towards the share of the petitioner. The father of the petitioner also clarified the oral partition which took place in the year 1989 wherein it has been clearly mentioned about the oral partition and allotment of shares in favour of the petitioner. It is said that in order to meet the marriage expenses of the daughter of the petitioner, land in Sy.No.556 was alienated in favour of the respondents under an agreement of sale dated 09.11.1995. It is stated that the third respondent has rightly referred the disputed portion to the civil Court. Therefore, it is contended that the award passed by the third respondent is legal and valid and that the present writ

petition is filed only to drag the litigation with a view to blackmail and delay the legitimate entitlement of the respondents.

Relying upon the judgment of the Apex Court in ***Sharda Devi v. State of Bihar and another***^[1] the learned counsel for the petitioner submits that as per Section 30 of the Land Acquisition Act, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the court. The petitioner is the sister of un-official respondents and since the father died intestate, the petitioner is entitled to 1/7th share in the properties left by her father. Even earlier to passing of the award, the petitioner made a representation to the Collector but the same was not considered. The only argument advanced by the counsel for the petitioner is that the petitioner would be put to loss if the lands are allotted by way of draws without including the name of the petitioner as she may not be in a position to get a better plot if she wins the case before the civil Court.

Learned counsel for respondent Nos.4 to 12 would submit that the land was acquired for the purpose of Musi River Conservation and River Front Development and the Government agreed to give developed land of 1000 square yards per each one acre of the land acquired by the Government, which will be decided by draw of lots. He submits that as there is no guarantee that the petitioner would be allotted a plot, the question of including her name in the lottery/draw would not arise.

As seen from the record, the family consisting of six brothers and one sister claimed compensation pursuant to an

acquisition made by the Government. Since a dispute came to be raised with regard to the share of the writ petitioner, the matter was referred to the civil Court under Section 30 of the Act. At that stage, the present writ petition came to be filed. Initially, the writ petitioner questioned the reference only to the extent of 1/7th share and later the prayer came to be altered by directing respondent Nos.1 to 3 not to make any allotment of land to the un-official respondents. The judgment of the Apex Court in Sharda Devi case (1 supra), wherein the Apex Court held that if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the court, will not apply to the case on hand as the facts are totally different.

In the instant case, pursuant to a compromise arrived at between the parties, the Government agreed to give 1000 square yards of developed land per each acre of land acquired by the Government in different survey numbers in Uppal Bhagath Village. Till date the government has not finalized as to which of the plots the un-official respondents would get. As stated earlier, even the petitioner is not aware as to where she would get plot since everything is done by draw of plots. Even all the respondents may not get plots at the same place.

Though various grounds are raised in the writ petition, the learned counsel for the petitioner restricts his prayer seeking a direction to respondent Nos.1 to 3 either not to allot any plot to un-official respondent or include the name of the petitioner in the draw of plots while allotting the plots. As stated earlier the petitioner is not aware as to whether she would get a plot and if so

the place of its location. Even the respondents are un-aware as to the location of their plot. Since sections 29 to 31 of the Land Acquisition Act does not contemplate depositing any documents or title deeds by the District Collector after passing the award, restraining allotment of plots to un-official respondents will not cause any prejudice to the petitioner, more so when the scheme does not contemplate allotment of any particular plot and as there is no guarantee that the petitioner would get a plot. Since the issue as to whether the petitioner is entitled for a plot or not, is pending adjudication, it would be appropriate to include her name in the draw of lots.

Having regard to the said aspect, the writ petition is disposed of, directing the respondents to proceed with the draw of plots by including the name of the petitioner. But the petitioner would be entitled to allotment of plot only if she succeeds in the reference made under Section 30 of the Land Acquisition Act. If it is held that the petitioner is not entitled to the share claimed, the same shall vest with the unofficial respondents herein. No order as to costs.

Miscellaneous petitions, if any, pending, shall stand dismissed.

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**JUSTICE C. PRAVEEN
KUMAR**

10.09.2015
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[\[1\]](#) 2003 (3) SCC 128