

HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.38184 OF 2012

ORDER:

The petitioner prays for Mandamus declaring the inaction of respondents in not paying the compensation of Rs.3,21,000/- towards acquired 150 fruit bearing mango trees in an extent of Ac.2-00 belonging to the petitioner situated in Survey No.31 of Rachapalli Village, Manthani Mandal, Karimnagar District in spite of proceedings No.B1/597/2009 dated 16.10.2012 issued by 2nd respondent for payment of the same, as illegal arbitrary and unconstitutional.

Heard learned counsel appearing for the parties.

The admitted circumstances are that draft notification under Section 4(1) of the Land Acquisition Act (for short 'the Act') was issued in A.P. Gazette No.76 dated 27.11.2010 proposing to acquire an extent Ac.267-26 gts. within the limits of Rachapalli Village, Manthani Mandal, for ancillary purposes of mining operations. The draft declaration was issued through A.P. Gazette No.79 dated 17.12.2010 by the 2nd respondent. The consent award was passed and compensation was also paid pursuant to award dated 30.06.2012 for acquiring an extent of Ac.9-36gts. The petitioner was admittedly paid a sum of Rs.10,35,423/-. The grievance in the writ petition is against the alleged non-payment of a sum of Rs.3,21,000/- towards acquisition of fruit bearing Mango trees in an extent of Ac.2-00 in R.S.No.31.

The case of petitioner is that on 25.08.2012, a representation was made to the 2nd respondent to consider payment of compensation for acquiring Mango trees in R.S.No.31 of Rachapalli. Through letter No.LA/MMR/296/2006 dated 11.04.2011, the Assistant Director of Horticulture, Karimnagar recommended payment of compensation towards acquisition of Mango trees. The recommendation is reiterated in the joint inspection report dated 14.09.2010. Hence the petitioner complains against the non-payment of compensation towards acquisition of trees in spite of positive recommendations as illegal and unconstitutional. The petitioner places strong reliance upon letter No.B1/597/2009 dated 16.10.2012. The relevant portion relied upon by the petitioner is as follows:

"On verification of record it is found that at the time of preparation of Draft Notification and Draft Declaration proposals (150) mango trees in Sy.No.31 have been included and published in Draft Notification and Draft Declaration Gazette Nos.76, dt.27.11.2010 and 87, dt.16-12-2010 respectively. For which the Assistant Director, Horticulture, Karimnagar has furnished the estimated value an amount of Rs.3,21,000/- vide his Lr.No.LA/MMR/296/2006, dt.11-04.2011. In the meantime another person Sri J.Papa Rao has submitted an application stating that at the time of preparation of D.N. & D.D. Proposals (40) Mango trees in Sy.No.46 have not been shown in paper publication and requested to inspect the land and included in D.N. & D.D. schedules. Accordingly I have proceeded to village and inspected the land of applicant and found that there are (40) Mango trees. At the same time I came to know that there are no (150) mango trees on the ground in Sy.No.31 already published in D.N. & D.D. schedules. Immediately I have inspected the land in Sy.No.31 and not found the (150) mango trees on the ground in Sy.No.31. Hence the deletion proposals for same (150) mango trees have been submitted to the Collector, Karimnagar and approved by the Collector, Karimnagar vide proceeding No.G1/4814/2010 dt:01.02.2012. Hence the value of (150) mango trees has not been included in P.V. and Award. The Collector, Karimnagar has approved the consent Award U/s. 11(2) of the L.A. Act without value of (150) mango trees and the request of the petitioner is genuine.

But at the time of preparation of P.V. proposals and Draft Award inclusion of the value of (150) mango trees has been missed oversight. As per P.V. proposals and Draft Award submitted by this office. The Collector, Karimnagar has been approved and this office passed the consent award U/s.11(2) of the L.A. Act without value of (150) mango trees and request of the petitioner is genuine.

Accordingly the missing trees value for (150) mango trees as per the estimate furnished by the assistant Director, Horticulture, Karimnagar the proposals for Rs.3,21,000/- for his prepared for payment to the concerned

awardee in shape of exgratia and submitted to the Collector, Karimnagar for approval.”

Hence, the writ petition.

The 2nd respondent filed counter affidavit opposing the writ prayer for grant of any or further compensation towards acquiring Mango trees pursuant to Section 4(1) notification dated 26.11.2010. The case of 2nd respondent is that Section 4(1) notification dated 26.11.2010 was issued for acquiring Ac.267.26gts. within the limits of Rachapally village. The notification under Section 4(1) dated 26.11.2010 and the draft declaration dated 16.12.2010, it is shown that there are 150 Mango trees in R.S.No.31. The 2nd respondent basing upon the joint inspection report dated 03.01.2012 issued through A.P. Gazette No.14 dated 20.03.2012 amendment to Section 4(1) notification dated 26.11.2010 and draft declaration dated 16.12.2010. With the amendment, the property and other details in Survey No.31 are shown as follows:

31	Dry patta	9-36	T w o pipelines from Vagu Trees: Mango-150 Vepatrees-2- lppa-1	31	Dry patta	9-36	2-Pipelines from Vagu with current motors Vepa-2 (Big) lppa-1 (Big)
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It is further stated that the petitioner did not join issue with the amended draft declaration. Through the consent award dated 30.06.2012, the petitioner received compensation of Rs.10,35,423/-. The then Special Deputy Collector just before his retirement, has communicated the letter dated 16.10.2012 for approval by the 1st respondent. The said communication is without proper basis and cannot give right to the petitioner to claim compensation for the trees. Therefore, the 2nd respondent prays for dismissal of the writ petition.

As directed by this Court, the learned Government Pleader has produced the record in Land Acquisition Proceedings No.B1/597/2009 and the same is made available for the inspection of the Court.

Now the point for consideration is:

From the material available on record, whether this Court can direct the respondents to consider the payment of compensation to petitioner for acquiring 150 Mango trees in R.S.No.31 of Rachapalli?

The petitioner relies upon the letter dated 16.10.2012 for claiming compensation towards loss of Mango trees acquired by respondents in Survey No.31 of Rachapalli. The reply of 2nd respondent is that the inclusion of Mango trees at the first instance was on account of mistake in verification and the same was corrected through fresh inspection and the report dated 03.01.2012. With the receipt of joint inspection report dated 03.01.2012, the respondents claim to have issued amendment to draft notification dated 26.11.2010 and draft declaration dated 16.12.2010. As already excerpted, the property declared for acquisition through A.P. Gazette No.14 dated 20.03.2012 has specifically excluded the Mango trees shown through the draft declaration dated 16.12.2010. The petitioner participated in the award enquiry and consented to receive compensation amounting to Rs.10,35,423/- for acquisition of the property detailed in the draft declaration. Had it been a case where the consent as contended by the learned counsel for petitioner, was given only for acquiring the land and the petitioner reserves his right to pursue the remedy against non-payment of compensation for trees, this right ought to have been by properly reserved by petitioner. In the case on hand, such step was not followed by the petitioner. On the other hand, after receiving the compensation, a representation is filed before the then Special Deputy Collector, Land Acquisition/2nd respondent who in turn recommended through letter dated 16.10.2012 for payment of compensation to trees. After perusing the

material available on record and the reasons stated by the Collector against the report dated 16.10.2012, this Court is unable to accept the report dated 16.10.2012 could be the basis for giving a direction to respondents to pay compensation for acquiring 150 Mango trees. To claim compensation for the trees, the burden is on petitioner to *prima facie* to show the existence of Mango trees and the trees continued to be in existence till the date of issuance of 4(1) notification and the respondents have taken possession of acquired land together with trees. In the absence of such material and having regard to the stand taken by the District Collector through letter dated 15.01.2013, the writ prayer cannot be considered. The writ petition is dismissed. No order as to costs.

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

S.V.BHATT, J

Date: 08.04.2015

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