

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

* * *

WRIT PETITION No. 37446 of 2015

BETWEEN

Bejjam Sarajam

... PETITIONER

AND

The State of Andhra Pradesh, rep. by its Principal Secretary and others

...RESPONDENTS

Date of Order pronounced: 18.11.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

1. Whether Reporters of Local newspapers Yes/No
may be allowed to see the Judgments?

2. Whether the copies of judgment may be Yes/No
marked to Law Reporters/Journals?

3. Whether his Lordship wish to see the Yes/No
fair copy of the Judgment?

-

-

ORDER:-

Heard

2. Petitioner herein questions notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for brevity, "the Act") as well as the Award passed under Section 11(1) of the Act. The challenge is based upon the primary contention that there were no notice to the petitioner and that there is a serious contradiction in the counter affidavit filed by the Land Acquisition Officer (LAO) in the earlier writ petition viz., W.P.No.12823 of 2012 filed by the petitioner and the averments in the present Award.

3. Learned counsel for the petitioner also questions the Land Acquisition proceedings as well as the Award on the ground of fraud and statute and contends that neither there is any public purpose existing in view of vast extent of land available in the vicinity of the petitioner's land. Learned counsel also submits that petitioner continues to be in possession of the land and neither any notice of acquisition nor any notice of Award was ever served on the petitioner.

4. After hearing learned counsel for the petitioner at length,

I am unable to see any reason to entertain the writ petition as the challenge to the acquisition is no more maintainable after the Award being passed and possession being taken over by the respondents,

as is evident from the averments of the counter affidavit of the LAO filed in W.P.No.12823 of 2012 relied upon by the petitioner himself. The earlier writ petition was filed by the petitioner alleging that petitioner's land is being acquired without following due process of law and behind the back of the petitioner. It appears that this Court by order dated 27.04.2014 passed an interim order in the said writ petition, which is as follows:

"Notice.

Pending further orders, there shall be interim stay of dispossession except in accordance with law."

5. Though the learned counsel for the petitioner asserts that petitioner continues to be in possession and protected by the aforesaid order, the counter affidavit filed by the LAO in the aforesaid writ petition, relied upon by the learned counsel for the petitioner, however, states that after publication of notification under

Section 4(1), notice under Form-3 under Section 5A was published and issued, but the petitioner refused to receive the said notice and did not file any objections and three other persons have filed objections.

The said objections were considered and rejected on 10.06.2010 and thereafter the notification under Section 6 was published,

in accordance with law followed by notices under Sections 9(1) and 10, and Award enquiry was taken. In the said Award enquiry petitioner gave statement refusing to part with the land and thereafter Award was passed on 09.05.2011 being Award No.3 of 2011 and the entire compensation was deposited in the Court of Principal Senior Civil Judge, Guntur on 28.05.2011 and the notice under Section 12(2) dated 10.06.2011 sent to the petitioner was also refused by him. It is further averred that under a Panchanama dated 30.05.2011, possession was taken over and handed over to the Requisition Department on 01.10.2011. Petitioner's counsel submits that the averments in the said counter affidavit and in the impugned Award clearly show that the Award is fraudulent. Learned counsel, primarily, relies upon the reference in the impugned award that Section 17(4) has been invoked, as recorded in the preamble of the award, while dealing with the claim for interest under the Award. On that basis,

it is contended that whether the Enquiry was conducted itself is doubtful as Section 17(4) is stated to have been invoked and thereby, questions the award as a paper Award.

6. I am unable to see any such contradiction as contended by the learned counsel inasmuch as the Award itself specifically mentions that while referring to the draft declaration, enquiry under Section 5A,

was conducted on 08.01.2010 at the office of the Tahsildar, Rajapalem Mandal. The counter affidavit also states the same and as such there does not appear any contradiction. No doubt at some place in the counter affidavit reference to Section 17(4) is made. But,

however,

in fact enquiry having been conducted under Section 5A, reference to Section 17(4) is superfluous. I, therefore, do not see any fraud as alleged by the learned counsel and at this length of time i.e., after lapse of four years, it is not open for the petitioner to question the acquisition proceedings and the Award all over again as per the ratio of the Supreme Court in ***Swaika Properties Pvt. Ltd. V. State of Rajasthan***

Writ petition is, accordingly, dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

November 18, 2015

LMV