

*** HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR**

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+ W.P.Nos.23030 and 23923 of 2015

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% 10.12.2015

G.V.Mohan and another.

....Petitioners

v.

\$ The State of Telangana and others

.... Respondents

! Counsel for the Petitioners: Sri K.Goverdhan Reddy

P.Ananth Nageswar Rao

Counsel for Respondents: Government Pleader for Land Acquisition

Government Pleader for Revenue

Learned Advocate General

Sri K.Vivek Reddy

<Gist :

>Head Note:

? Cases referred:

(1) (2008) 4 SCC 695

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.Nos.23030 and 23923 of 2015

COMMON ORDER:

1. Both these writ petitions relate to the same property and while the petitioners in the former writ petition i.e., W.P.No.23030 of 2015 are owners and the petitioner in the latter writ petition i.e., W.P.No.23923 of 2015 claims to be an agreement holder from the owners and had filed a suit in O.S.No.118 of 2003 on the file of the Additional Chief Judge, City Civil Court, Hyderabad, for specific performance of the agreement of sale and the same is stated to be pending.

2. The petitioners in the former writ petition question the notice, dated 16-07-2015 issued by the 3rd respondent under Section 37(2) of the Central Act 30/13 notifying the award and further notice, dated 16-07-2015 for taking possession of the land in question.

3. In the latter writ petition, the petitioner questions the action of the respondents in acquiring the land in question on the ground that the description of the affected land was different in the preliminary notification issued by the 3rd respondent and hence, the acquisition proceedings are vitiated and unenforceable.

4. The facts in brief are as follows:-

(a) The petitioners in the former writ petition claim to be the owners of the lands admeasuring Ac.16-23 gts., and 115 sq. yards including House bearing No.8-3-228 in T.S.No.16/1 and 16/2 situated at Yousufguda Village, Khairatabad Mandal, Hyderabad, popularly known as Janakamma Thota. The petitioners claim title based on registered documents of the year 1960. It is stated that the Urban Land Ceiling proceedings were initiated under Section 6 (1) of the Urban Land Ceiling Act (for short 'the Act'), which ultimately resulted in determination of surplus extent of 23,930.38 sq. meters. Aggrieved thereby, the petitioners preferred an appeal before the appellate authority. While the said appeal was pending, the Special Officer issued notice under Section 10(5) of the Act for taking possession of the land in question. Questioning the said notice, the petitioners have filed W.P.No.3878 of 2001 and the same was disposed of on 07-03-2001 directing the respondent authorities to maintain status-quo pending disposal of the appeal. Thereafter, the appellate authority has dismissed the appeal on 28-04-2001. Aggrieved by the same, the petitioners filed W.P.No.9198 of 2001 and the same was allowed since the Urban Land Ceiling Act was repealed and proceedings were declared as abated by order, dated 08-10-2010. The said order was confirmed in W.A.Nos.1150/2010, 1151/2010 and 30/2011, dated 27-03-2014, against which Review W.A.M.P.No.1546 of 2014 is stated to be pending, at the instance of the Government.

(b) While so, Notification, dated 12-02-2015 was issued by the 2nd respondent under Section 11(4) of the Central Act 30/13 proposing to acquire the land admeasuring 4930 sq. yards in T.S.No.16/2/2. The petitioners filed objections in response to the said notice on 13-04-2015 and thereafter, the 3rd respondent submitted a report to the 2nd respondent. After considering the objections of the petitioners and others, the 2nd respondent rejected the objections by proceedings, dated 27-04-2015 under Section 15(2) of the Act confirming the acquisition proceedings. Thereafter, declaration under Section 19 was issued on 06-05-2015 in Gazette and News Papers showing premises number as 16/2/1/A.

(c) The 3rd respondent thereafter again issued notice under Section 21 of the Act on 05-05-2015, served on the petitioners on 13-05-2015, wherein the premises number was mentioned as T.S.No.16/2/1/A admeasuring 4930 sq. yards. The petitioners state that the property initially notified as T.S.No.16/2/2 and subsequent notice, dated 05-05-2015 mentions a different property covered by T.S.No.16/2/1/A and the said two properties are in different locations. It is contended that the petitioners had no notice or opportunity to file objections with regard to the newly identified property bearing No.16/2/1/A. However, the petitioners submitted their objections to the said notice on 05-01-2015 bringing the said discrepancy to the notice of the 3rd respondent. Thereafter, the petitioners have received impugned notices notifying the award and directing the 4th respondent to take possession of the land in question. The said subsequent notices are questioned in this writ petition.

(d) The petitioner in the latter writ petition also questions the subsequent notices issued under Section 37(2) of the Central Act 30/13 on 16-07-2015 by seeking to declare the entire acquisition proceedings as vitiated on the ground that the property notified earlier was different from the property in T.S. number now notified.

5. Both the petitioners contend that the acquisition is for the purpose of Metro Rail Project, which is separately arrayed as the 9th respondent in both the writ petitions.

6. Sri Vedula Venkata Ramana, learned Senior counsel and Sri K.Goverdhan Reddy, learned counsel appearing in support of the petitioners in the latter and former writ petitions respectively, contended that the preliminary notification had notified the property in T.S.No.16/2/2 and now the subject matter of notices impugned is a different property bearing T.S.No.16/2/1/A and consequently contended that obviously there was no preliminary notification relating to T.S.No.16/2/1/A, which is now sought to be proceeded against. They also submit that in the absence of preliminary

notification their right to file objections stood denied and that substituting a different property than the one notified in the preliminary notification is clearly impermissible under law. It is also contended that the opportunity to file objections and personal hearing being mandatory under law, the impugned proceedings of the respondents are clearly in violation of law. The award in question is also challenged on the ground that neither the petitioners were intimated nor any date was fixed for hearing and fixation of value for the land is wholly contrary to the principles of the determination of compensation envisaged under the Central Act 30/13. The award is seriously criticized by demonstrating that the market value of land, if commercial in nature, should not be less than Rs.60,000/- per sq. yard, whereas the respondents have adopted the value at Rs.25,000/- per sq. yard. The Certificates issued by the Registration and Stamps Department are relied upon in support of the said writ petition. Further, the learned Senior counsel for the petitioners submits that even after adopting low value for Rs.25,000/- per sq. yard, the Land Acquisition Officer has further subjected the compensation to 40% deduction for development and thereby, a meagre compensation is awarded to the petitioners.

7. A counter affidavit is filed by respondents 2 and 3 accepting that in the preliminary notification T.S.L.R. number was notified as 16/2/2 but after preparation of Sub-Division record, in the subsequent notifications T.S.L.R. number was given as 16/2/1/A. It is further stated that T.S.No.16/2 was earlier sub-divided into 16/2/1, which was acquired for road widening and in T.S.No.16/2/2 in which 840 mtrs. were acquired for laying Manjeera Water Pipe line, whereas 16/2/1/A is given to the remaining 4930 sq. yards in terms of Sections 89A and 89B of the Hyderabad Land Revenue Act 1317 Fasli. The respondents relied upon the location sketch submitted by the Requisition Department and sub-Division record, which is annexed to the counter affidavit.

8. It is also stated that the land under acquisition is open land and not in any approved layout and since the surroundings are covered with residential

structures, it is treated as residential land and consequently, the value at Rs.25,000/- per sq. yard, as certified by the Sub-Registrar, is adopted in the Award.

9. To the extent of allegations of the petitioners, it is stated that public notice and individual notices were issued on 05-05-2015 fixing the date of award enquiry as 05-06-2015 were duly served on the petitioners on 13-05-2015. In response to the said notice, the Secretary of the petitioner in the latter writ petition attended the award enquiry and filed claim petition. The petitioners had already filed objections and claim petitions in response to the earlier notices issued to them on 05-01-2015. The documents of the petitioners were already filed in the said enquiry viz., the registered sale deeds of the year 1960. It is also asserted that the preliminary notification as well as final notifications were published in accordance with the provisions of the Act and in the notice, dated 13-02-2015 issued under Section 15(2) itself while fixing the date of enquiry as 15-04-2015, the petitioners were informed that they are at liberty to appear in person and adduce oral and documentary evidence in support of their objections and in response thereto, the petitioners filed claim petition on 13-04-2015 claiming compensation under the Central Act 30/13. It is also stated that the petitioners have correctly mentioned the exact details and location of the property under the acquisition and as such clearly identified the property, which is sought to be acquired. It is also stated that the property bearing T.S.No.16/2/2 was already acquired for laying Manjeera Water Pipeline to the extent of 840 sq. mtrs. and further portion was acquired by the municipal authorities for road widening, which was assigned separate T.S.No.16/2/1. The present property being necessary for the purpose of curves and bends in construction of Metro Rail project is identified as 16/2/1/A. It is claimed that since the petitioners themselves are aware of exact location of the proposed property and have filed objections with reference to same property there is neither any confusion nor any variation and in any case, the petitioners are not put to any prejudice. It is stated that since the petitioners property bearing T.S.No.16/2/2 was already

acquired for Manjeera Pipeline, they could not have filed objections relating to that property and clearly, they are aware of the extent of the property proposed to be acquired under the impugned notifications as is evident from their objections. It is also stated that even award enquiry notice was served on the petitioners on 14-05-2015 and the award was later passed and also served on the petitioners on 06-08-2015. In support of the said contention, learned counsel produced a Sub-Division sketch of all T.S.Nos. showing the portion identified as T.S.No.16/2/2, which was already acquired for Manjeera water pipeline and the proposed extent as 16/2/1/A, notified in yellow and orange colours in the plan. True extract copy of TSLR register is also appended to the counter affidavit showing the sub-divisions and the extent.

10. The petitioners have filed a reply affidavit accepting that the award was served on them on 06-08-2015, which was received by them under protest. They also state that possession of the land was taken on 26-07-2015 under a panchanama even before serving a copy of the award on the petitioners and as such state that the said panchanama and proceedings taking possession itself is illegal and contrary to Section 38 of the Act. The petitioners also state that on account of the property now acquired under the impugned proceedings, the remaining property of the petitioners has become useless and the petitioners are unable to utilize the same and also seek to set aside the award.

11. The points that arise for consideration are :-

- 1) Whether the action of the respondents in notifying premises No.16/2/2 in the Notification issued under Section 11(4) and thereafter, issuing declaration under Section 19 notifying premises No.16/2/1/A under the Central Act 30/13 vitiates the entire acquisition proceedings?
- 2) Whether the impugned award passed on 15-07-2015 in proceedings No.C3/284/2015 and issuance of notices under Section 37(2) of the Act are sustainable?

POINT No.1:

12. While it is true that in the preliminary notification and in subsequent notification, different T.S.Nos. were mentioned, as discussed above, and the contentions of the learned counsel for the petitioners on that ground appears to be sustainable in the first instance, however, on deeper examination, it is evident that the petitioners are fully aware of the property, which is subject to acquisition for Metro Rail Project, and evidently, none of the notifications are questioned by the petitioners. For the first time, notice of making of the award and notice proposing to take possession is questioned under the former writ petition, which was filed only on 23-07-2015 and latter writ petition was filed only on 30-07-2015. Thus, evidently, both the writ petitions are subsequent to passing of the award and after taking possession of the property on 24-07-2015 stated to have handed over to the Metro Rail authorities on 24-07-2015 itself. Thus, in the light of the ratio of the decision of the Hon'ble Supreme Court in ***Swaika properties Private Limited Vs. State of Rajasthan***^[1], the challenge to the acquisition proceedings is not maintainable. It has to be noted that the general challenge of acquisition proceedings is made only in the latter writ petition and not in the former writ petition. Consequently, to the extent of discrepancy in T.S.No. notified in the preliminary notification is concerned, even the objections filed by the petitioners before the 3rd respondent clearly show that they were aware of the property, which is subjected to acquisition and they specifically referred to the said property only and not the one which was notified in the preliminary notification.

13. It is not in dispute that the property which was notified in the preliminary notification was long back acquired for Manjeera Water Pipe line and was no more the property of the petitioners and it was only the remaining land to the extent of 4930 sq. yards, which was subject matter of acquisition. Thus, in spite of the fact that the property notified in the preliminary notification and final notification, is at a variance with regard to T.S. No., the extent and identity of the property remains unchanged and the petitioners are well aware of the identity of the property and even in fact submitted objections as well as claims in support of the same.

14. Learned Standing Counsel for Metro Rail has, therefore, rightly submitted that no prejudice is caused to the petitioners on account of mis-description of the property in the preliminary notification. He also relied upon two decisions of the Hon'ble Supreme Court, which are directly on point i.e., in ***BABU BARKYA THAKUR Vs. STATE OF BOMBAY AND OTHERS***^[2], the Hon'ble Supreme Court in para '12' held as follows:-

"It is further argued that S.4(1) of the Act had deliberately omitted the words "for a Company" and insisted upon a public purpose. The absence from the notification under S.4 aforesaid of those words, namely, for a public purpose, are fatal to the proceedings. The purpose of the notification under S.4 is to carry on a preliminary investigation with a view to finding out after necessary survey and taking of levels, and, if necessary digging or boring into the subsoil whether the land was adapted for the purpose for which it was sought to be acquired. It is only under S.6 that a firm declaration has to be made by Government that land with proper description and so as to be identifiable is needed for a public purpose or for a Company. What was a mere proposal under S.4 becomes the subject matter of a definite proceeding for acquisition under the Act. Hence, it is not correct to say that any defect in the notification under S.4 is fatal to the validity of the proceedings, particularly when the acquisition is for a Company and the purpose has to be investigated under S.5A or S.40 necessarily after the notification under S.4 of the Act."

15. In ***P.PARTHASARATHY Vs. STATE OF KARNATAKA AND OTHERS***^[3], the Hon'ble Supreme Court held as follows:-

".....

In our considered opinion full opportunity having been given to the petitioner to place his case and to oppose the acquisition process, there could be no further grievance of the petitioner in that regard. We are also of the opinion that no prejudice is caused to the petitioner in any manner for the land was resurveyed and thereafter the land sought to be acquired was identified, which included the land of the petitioner and, therefore, the entire preconditions and formalities as laid down under Section 28 of the Act were duly complied with and were adhered to and followed and, therefore, there cannot be any further cause of grievance for the petitioner.

.....

We feel that the law laid down in the said decision applies in full force to this case also. In the present case also there were some errors and mistakes in the notification issued under sub-section (1) of

Section 28 of the Act but the same did not, in any manner, prevent the petitioner from submitting an effective objection and also from getting an opportunity of effective hearing for him. A resurvey was done in his presence and, therefore, the purpose for which the provision of sub-sections (1), (2) and (3) have been enacted, have been fully carried out in the present case.

16. Thus, applying the said ratio to the facts of the case would clearly show that the petitioners are no way prejudiced on account of mis-description and as such, the validity of the notification on that ground cannot be questioned by way of present writ petitions and in fact, it is not questioned as is evident from the prayers in the writ petitions.

17. Accordingly, point No.1 is answered against the petitioners.

POINT No.2:-

18. As mentioned above, the award was passed on 15-07-2015 and notices under Section 37(2) were issued on 16-07-2015 and served on the petitioners on 23-07-2015 informing that the compensation amount would be disbursed as soon as after disposal of these writ petitions.

19. To the extent of award, however, the contentions of the learned Senior counsel appearing for the petitioners appears to be sustainable, inasmuch as the property appears to be on a main road and may have a commercial value, which would however depend upon appropriate enquiry at the stage of award. In the present case, however, though claim petitions were filed by both the writ petitioners claiming substantial compensation, the impugned award is passed treating the value of the land as applicable to residential area. Obviously, if the property falls in the commercial area, the value of the property is clearly much higher. Further, the deduction of 40% from the awarded amount is also inexplicable, as the purpose for which the land is acquired does not require any development to be undertaken and hence, such a deduction to an extent of 40% appears at a much higher side.

20. Learned Standing Counsel for the Metro Rail was very fair in submitting that to the extent of award, the Land Acquisition Officer would re-examine and

pass a fresh award in view of the discrepancies pointed out therein and in view of the said fair suggestion.

21. Accordingly, point No.2 is answered in favour of the petitioners.

22. Hence, while upholding the acquisition, these writ petitions are partly allowed setting aside the impugned award, dated 15-07-2015, directing the Land Acquisition Officer to issue fresh notices for conducting award enquiry to the petitioners in both the writ petitions and consider their claim on the basis of the record available and pass appropriate award, after hearing the petitioners.

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

VILAS V.AFZULPURKAR, J

Date: 10-12-2015

Prv

L.R. Copy to be marked

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.Nos.23030 and 23923 of 2015

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Prv

[\[1\]](#) (2008) 4 SCC 695

[\[2\]](#) AIR 1960 Supreme Court 1203 (1)

[\[3\]](#) (2011) 12 Supreme Court Cases 183