

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.1267 of 2011

ORDER:

The present Writ Petition came to be filed seeking issuance of Writ of Mandamus declaring the action of the Land Acquisition Officer-cum-Revenue Divisional Officer (3rd respondent) in passing an Award dated 30.09.2010 in R.C.No.E/1121/2008 in respect of land admeasuring Ac.7.27 guntas in Sy.No.848 of Kodimial village, Karimnagar District, as illegal and arbitrary.

The facts which lead to filing of the Writ Petition are as under :

The 4th respondent herein is the grandfather of the petitioner. An extent of Ac.7.27 guntas in Sy.No.848 of Kodimial village which was sought to be acquired by the District Collector is an ancestral property allotted to one P.Vidyasagar Rao, who is the father of the petitioner by the 4th respondent herein in an oral family settlement, which took place in 1995. It is said that since then the petitioner and his family members are in possession of the same, though the revenue records show the name of the 4th respondent. During the lifetime of the father of the petitioner, a portion of the land was sold away as house sites to several persons under different registered sale

deeds. While things stood thus, a notification under Section 4(1) of the Land Acquisition Act on 24.07.2008 came to be issued intending to acquire land in Sy.Nos.410, 411, 412 and 848. The petitioner is said to have raised objections during the 5A enquiry conducted by the land acquisition officer, but however, the same was rejected and a draft declaration under Section 6 of the Land Acquisition Act came to be published on 06.10.2008. At that point of time, the petitioners herein filed W.P.No. 22515 of 2008 questioning the 4(1) notification and Section 6 draft declaration. The petitioner also sought for exemption of his land from acquisition. Initially this Court granted stay of the proceedings, but however, by its order dated 12.02.2009 disposed of the writ petition. As the Land Acquisition Officer was proceeding further without considering the objections raised by the petitioner, he approached this Hon'ble Court vide W.P.No.12953 of 2009 which was disposed of by an order dated 18.01.2010 on the same lines as in W.P.No.22515 of 2008. It is said that inspite of the orders passed by this Court, the Land Acquisition Officer passed an Award without calling for objections from the petitioner. Hence, the present Writ Petition.

By an order dated 28.01.2011 this court while issuing Rule nisi passed the following order:

“The Award was passed on 30.09.2010. However, the funds were not made available to the Land Acquisition Officer as on that date. It is only through proceedings dated 12.01.2011, that the District

Collector accorded sanction to the Land Acquisition Officer to draw the amount and pronounce the award. An award can be deemed to have been passed only when it is pronounced and the pronouncement can take place only when the amounts are ready. For all practical purposes, the award was not passed till 12.01.2011.

Hence, there shall be interim suspension, as prayed for.”

A counter and vacate stay petition is filed by the 1st respondent disputing the allegations made in the petition. According to him, there was an oral partition between the unofficial respondent and his son by name Vidyasagar Rao before the village elders in respect of the lands in Sy.Nos.410, 411, 412 and 848, which were allotted to Vidyasagar. It is stated that insofar as Sy.No.848 is concerned, an extent of Ac.0.14 guntas was acquired for laying pipeline of Sripada Sagar Project and compensation was paid which was not objected to by the petitioner herein. It is further stated that the petitioner neither raised any wet crops nor cultivated the said land. He has denied the allegation of collusion between himself and the Government officials for acquiring the land belonging to the petitioner. It is further stated by him that the objections raised by the petitioner were considered by the authority and as such the question of reconsidering the objections while passing the award would not arise.

The land acquisition officer also filed his counter denying the allegations made. It is his case that the objections were considered by the District Collector and

basing on the facts, a draft declaration under section 6 was approved and as such the question of reconsidering the objections would not arise. In view of the above, it is said that the same does not warrant interference.

From a reading of the material on record, it is clear that a draft notification under Section 4(1) of the Land Acquisition Act was approved on 24.07.2008 and the same was published in all news papers. Notices in Form 3 u/s.5A were issued to the interested persons vide reference No.E/1121/2008 dt:27.07.2008. Objections were filed by all the parties and the authority after hearing, submitted proposals for passing an order u/s.5A of the Act. Later a draft declaration u/s.6 came to be published on 06.10.2008. After the enquiry u/s.5A of the Act the petitioner herein filed W.P.No.22518 of 2008. By an order dated 16.10.2008 this Court in W.P.M.P.No.29330 of 2008 granted interim stay. Subsequently on 12.02.2009 this Hon'ble court disposed of the said writ petition, the relevant portion of the order is as under :

“According to the learned Government Pleader for Land Acquisition the award is not yet passed.

Under those circumstances, the Writ Petition itself is disposed of directing the L.A.O. to take into consideration the objections filed by the petitioner and the 3rd respondent and pass appropriate Award, as per law. However, if there is any serious dispute as to title, the matter may be referred to the competent civil court under Section 30 of the Land Acquisition Act.”

Since the authorities were proceeding further

without considering his representation, the petitioner again filed W.P.No.12953 of 2009, after the draft declaration dated 06.10.2008 made under Section 6 of the Act. By an order dated 18.01.2010 this Court disposed of the writ petition reiterating what has been said earlier. The relevant portion of the order is as under :

“Therefore, I thought it appropriate to direct the Land Acquisition Officer to consider the claim of title and interest of the petitioner over the notified land and pass appropriate Award in accordance with law, as expeditiously as possible. If there is any rival claim with regard to the compensation to be paid to the claimants, the Land Acquisition Officer is at liberty to refer the matter under Section 30 of the Act, to a competent civil court.”

Though both the orders of this Hon'ble Court categorically state that the claim of title and interest of the petitioner shall be considered by the Land Acquisition Officer before passing the award, but strangely the Land Acquisition Officer did not consider the same while passing the Award. The same is apparent from the order, the relevant portion which indicate the same is as under :

“In light of the directions of the Hon'ble High Court of A.P., the objection was received by the petitioner Sri P.Harish Kumars/o.Vidya Sagar Rao, r/o.Kodimial, for an extent of 7.27 acres in respect of Sy.No.848. The local enquiry and personal hearing was conducted about the objection along with the enquiry report of the objection, the D.D. proposals submitted to the Collector, Karimnagar vide this office Ref.No.E/1121/2008 dt:27.09.2008 and the Collector, Karimnagar approved the D.D. proposals. The petitioner objection has been considered at the time of the D.D. stage by the Collector, Karimnagar and L.A.O. & Revenue Divisional Officer, Jagtial. Therefore the consideration of the objection of the petitioner is not arise at this award stage.”

A reading of the Award clearly shows that the Land Acquisition Officer did not take into consideration the objections raised by the petitioner before passing the Award on the ground that such objections were considered at the time of 5A enquiry. But it is to be noted that in the writ petitions, which were filed after 5A enquiry and Section 6 draft declaration, this Court directed the Land Acquisition Officer to consider the objections before passing the award. The facts on record clearly disclose that the Land Acquisition Officer passed the award without taking into consideration the contents of the order passed by this Court in the two writ petitions.

The material on record further discloses that till date, possession of land is not taken and the interim order dated 28.01.2011 passed by learned single judge of this Court also show that for all practical purpose there was no Award till 12.01.2011. The interim suspension as ordered by the Court is still in force till today.

Without going into the merits of the claim and counter claim made by either of the parties, the writ petition is allowed setting aside the Award dated 30.09.2010 in R.C.No.E/1121/2008 on the file of the Land Acquisition officer and RDO, Jagtial and consequently directing the land acquisition officer to pass a fresh award as early as possible preferably within a period of 4 months from the date of receipt of the order, after taking into

consideration the objections raised by the petitioner. No costs. As a sequel to it, miscellaneous petitions pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

Date:31.12.2015

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