

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

* * * *

WRIT PETITION No.20784 of 2008

Between:

Dr.Shiva Kumar and others.

....Petitioners

and

The Government of Andhra Pradesh,
Revenue Department,
Rep.by its District Collector,
Ranga Reddy District,
And others.

....Respondents

JUDGMENT PRONOUNCED ON

26.10.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.20784 of 2008

ORDER:

Heard the learned Counsel for the petitioners and the learned Advocate General for the respondents.

This is the second round of litigation initiated by the petitioners after disposal of W.P.No.23126 of 2007 dated 26.12.2007. The said Writ Petition was filed challenging the action of the respondents seeking to dispossess the petitioner therein from the land admeasuring Acs.228.15 guntas situated at Thummaluru Village, Maheswaram Mandal in Ranga Reddy District, under the guise of land acquisition proceedings. This Court set aside the award dated 13.11.2006 to the extent of the land admeasuring Acs.49.02 guntas and gave liberty to the respondents to initiate award proceedings afresh to the said extent of land after following due procedure under Sections 9(3) and 10 of the Land Acquisition Act, 1894 (for short, the Act). In view of the rival claims as to the possession by the petitioner and the third respondent therein, the parties were directed to maintain *status quo*. This Writ Petition was filed challenging the proceedings of the second respondent dated 31.07.2008 in confirming the award dated 13.11.2006 and seeking to dispossess the petitioners from the land in various survey numbers from out of the land in an extent of Acs.179.13 guntas of Thummaluru Village, Maheswaram Mandal in Ranga Reddy District.

The case of the petitioners as set out in the affidavit filed in support of the Writ Petition is that one Bijnath Tiwari and others, residents of Mankhal Village were the absolute owners of several extents of land including the land which is the subject matter of the Writ Petition. The Land Reforms Tribunal – cum – Additional Revenue Divisional Officer, Ranga Reddy District, conducted an enquiry and declared the holdings of respective parties. The holding of the first petitioner was decided on 28.06.1993. The father of the first petitioner, later on his brothers and himself were in peaceful possession and enjoyment of the shares secured by them in the land situated in Survey Nos.182, 185 to 193 and 194P of an extent of Acs.179.13 guntas of Thummalur Village. The Revenue Divisional Officer, Ranga Reddy District (East Division) Hyderabad, issued a title deed bearing Patta No.1161 countersigned by the Mandal Revenue Officer, Maheswaram, along with the Village Administrative Officer. After declaration of the respective holding, the survey authorities demarcated the land and respective parties were given survey numbers with their sub division. The first petitioner is the owner and possessor in respect of the land in Survey Nos.152/U, 153/U, 181/U, 182/U, 183/U, 184/U, 185/U, 186/U, 187/U, 188/U, 189/U, 190/U, 191/U, 192/U, 193/U and 194/U admeasuring a total extent of Acs.49.02 guntas in book No.Z244501. Pattadar pass book bearing No.1161 was issued. His name figured in the adangals/pahanies of the period 1980 to 2006 as

the absolute owner and enjoyer of the said property. He has been cultivating the said land through his agent investing huge amounts. When the third respondent and his subordinates tried to interfere with the said land, he was informed of the said interference by his agents and workers. He came to know that the third respondent requested respondent Nos.1 and 2 to acquire the land situated at Thummaluru Village for expansion of IDA Park. In the said process, respondent Nos.1 and 2 chose to acquire the land owned by an influential politician in the Village who happened to be a state level leader. Initially they thought of acquiring Acs.300.00 in Mohabatnagar Village along with the land of the first petitioner. However, due to political and financial factor, the said declaration proceedings were dropped to the extent of Acs.300.00 and the land of the first petitioner was not dropped from acquisition as he and his brothers did not yield any political influence. The family of the petitioners owns an extent of Acs.107.12 guntas and they are left with only the land which is the subject matter of the present Writ Petition. The first petitioner settled in Tirupati due to his service in Animal Husbandry Department. When the award was passed without following due process of law, the first petitioner filed W.P.No.23126 of 2007 challenging the land acquisition proceedings including passing of the award and the above order was passed on 26.12.2007. Challenging the said order, the third respondent filed W.A.No.628 of 2008 and later on it was withdrawn on 23.06.2008. The first petitioner left the job at

Tirupati and shifted from Tirupati to Hyderabad for undergoing treatment for low backache with disc prolapse and addressed a letter to the second respondent intimating about the change of address on 21.06.2008. It appears that the second respondent initiated fresh award proceedings and appears to have sent a notice to Tirupati address which could not be served on him. A notice was sent to his Counsel who appeared in the above Writ Petition. The award was passed without due notice to the petitioners and on the basis of the said award, the third respondent officials came to the site in the first week of September 2008 and threatened to dispossess the petitioners. Later on the petitioners came to know that an order was passed on 31.07.2008 confirming the award dated 13.11.2006 and challenging the said order, the present Writ Petition was filed.

This Court, by order dated 30.09.2008, granted *status quo* to be maintained with respect to the said property. Seeking vacation of the said order W.V.M.P.No.4413 of 2011 was filed by the third respondent and respondent Nos.1 and 2 filed a separate counter affidavit.

The counter affidavit filed by respondent Nos.1 and 2 discloses that the third respondent sent acquisition proposal for acquisition of the land of an extent of Acs.179.13 guntas situated at Thummaluru Village, Maheswaram Mandal in Ranga Reddy District, for expansion of IDA park by the third respondent to the Collector, Ranga Reddy District, on

26.12.2005. The draft notification was published in the A.P.Gazette dated 22.04.2006 and also in two daily local newspapers on 29.04.2006 and 01.05.2006 respectively. The substance of the notification was published in the locality on 02.05.2006. The enquiry under Section 5A of the Act was conducted and the petitioners and others filed their objections on 29.05.2006 and 03.06.2006. After conducting the enquiry, draft declaration was published on 06.07.2006. The same was published in two daily local newspapers on 06.07.2006 and 07.07.2006. The award enquiry was taken up by issuing appropriate notices to all concerned on 08.09.2006 fixing the date of enquiry as 25.09.2006. It was adjourned to 05.10.2006. The award was passed on 13.11.2006. Since there was dispute with regard to title of the land, the matter was referred to the District Court under Section 30 of the Act while depositing the compensation amount in the Court under Section 31 of the Act. The name of the first petitioner was also included in the said reference. Possession of the land was taken and handed over to the third respondent on 15.11.2006 under a cover of panchanama. Subsequently, the first petitioner filed W.P.No.23126 of 2007 and the same was disposed of on 26.12.2007 directing the respondents to initiate fresh proceedings for award enquiry. The lands are dry lands with no irrigation source. The names of five persons were entered in the revenue records, but other persons filed their objections stating that they entered into an agreement with the said persons for

purchase of the land and since they did not honour the agreement, they filed O.S.No.409 of 1988 on the file of the learned I Additional Sub Judge, Ranga Reddy District, and an appeal in A.S.No.2860 of 1996 is pending in this Court. After disposal of W.P.No.23126 of 2007 notices were issued to the first petitioner and his Counsel. The postal authorities returned the notice with the endorsement that addressee left without intimation and returned the notices. The Counsel received the notice, but did not appear on the date of hearing nor sent any claim petition. The notices were sent to the first petitioner's last known address. The matter, on reference, is pending in O.P.No.727 of 2007 on the file of the learned I Additional District Judge, Ranga Reddy District. The name of the first petitioner was included in the said reference.

The third respondent filed a counter affidavit stating that possession of the land was delivered to the third respondent on 15.11.2006 itself and since the said date they are in possession of the land. The appeals in A.S.Nos.2860 of 1996 and 672 of 1997 were dismissed by this Court by common order dated 15.09.2006 confirming the judgment and decree of the trial Court in O.S.No.409 of 1988 and as on today there is no case pending with regard to the alleged agreement entered into by the third parties with the original owners.

The petitioners filed a reply affidavit to the counter affidavit filed by the respondents and the third respondent filed

a rejoinder and in view of the short point involved in the present Writ Petition consequent to the order of remand, it is not necessary for this Court to deal with those averments made in the said reply and rejoinder affidavits.

Learned Counsel, Sri K.Vivek Reddy appearing for the third respondent and also representing the learned Advocate General submitted that the correct legal position was not brought to the notice of this Court in the earlier round of litigation, which resulted in remanding the case for fresh award enquiry even though such an enquiry was not warranted in view of the settled legal position. Learned Counsel for the petitioners, on the other hand, submitted that the acquisition of the land of the petitioners deleting a major portion of the land belonging to the other parties is a *mala fide* exercise of power and even after intimation of change of address by the first petitioner, no notice was issued and hence the Writ Petition should be allowed.

As stated above, the present Writ Petition is filed after the order in W.P.No.23126 of 2007 dated 26.12.2007 by setting aside the award dated 13.11.2006 to the extent of Acs.49.02 guntas of land owned by the first petitioner. After setting aside the award, as aforesaid, notices were sent to the first petitioner and his Counsel through registered post with acknowledgement due on 05.06.2008 and 01.07.2008. The notice to the first petitioner was sent to the address mentioned in W.P.No.23126

of 2007 but the same was returned, whereas the notice sent to his Counsel was served. It appears that the first petitioner intimated the change of address from Tirupati to Hyderabad on 21.06.2008, but by that time the notice sent to the first petitioner was returned unserved. The result was that the notice was not served to the first petitioner and the earlier award dated 13.11.2006 was confirmed by order dated 31.07.2008.

Learned Counsel for the respondents relied on **State of Tamil Nadu v. Mahalakshmi Ammal**¹, wherein it was held that any irregularity in service of notice under Sections 9 and 10 of the Act would be a curable irregularity and on that account, the award made under Section 11 of the Act does not become invalid, as the award is only an offer on behalf of the State.

He also submitted, by placing reliance on **Nasik Municipal Corporation v. Harbanslal Laikwant Rajpal**², that in the absence of notice or failure to serve notice, the award does not become invalid and the only remedy available to the petitioners is to seek reference under Section 18(1) of the Act. In the said case the Supreme Court was considering the appeal preferred by the Nasik Municipal Corporation against the order of the Bombay High Court setting aside the award while upholding the notification and declaration under Sections 4(1) and 6 of the Act. The Supreme Court held that by publication

¹ (1996) 7 SCC 269

² (1997) 4 SCC 199

of the declaration under the Act, the public purpose becomes conclusive and the only remedy available to the aggrieved party is to seek reference under Section 18(1) of the Act.

In **May George v. Special Tahsildar**³ the effect of non service of notice was considered and it was held as follows:

“28. In fact, the land vest in the State free from all encumbrances when possession is taken under section 16 of the Act. Once land is vested in the State, it cannot be divested even if there has been some irregularity in the acquisition proceedings. In spite of the fact that Section 9 notice had not been served upon the person interested, he could still claim the compensation and ask for making the reference under section 18 of the Act. There is nothing in the Act to show that non-compliance therewith will be fatal or visit any penalty.

29. The view taken by us hereinabove stands fortified by large number of judgments of this Court wherein it has been held that if there is an irregularity in service of notice under sections 9 and 10, it could be a curable irregularity and on account thereof, award under Section 11 would not become invalid (see : **State of Tamil Nadu Vs. Mahalakshmi Ammal** (1996) 7 SCC 269; and **Nasik Municipal Corporation v. Harbanslal Laikwant Rajpal** (1997) 4 SCC 199).

30. Be that as it may, the writ court rejected the contentions raised by the appellant after being fully satisfied that the notice under section 9(3) was affixed on the part of the land in dispute as the appellant was not available; the appellant was not the resident of the area; and if instead of “Smt” in the notice/documents, she had been shown as “Thiru”, it would be immaterial so far as the merit of the case was concerned. The Court was fully satisfied that notice had been affixed on the land, satisfying the requirement of law and the award had been made within limitation. Though appellant was aware of the proceedings, she conveniently chose to remain silent and made use of the notice, asking her removal from the unauthorized occupation as the basis of challenging the award and land acquisition proceedings after inordinate delay of 10 years and vesting of land in the State itself. The same findings have been affirmed by the appellate court.”

Learned Counsel for the respondents further submitted that all efforts were made to serve notice on the last known address of

³ (2010) 13 SCC 98

the first petitioner and the first petitioner could not be served in spite of their best efforts.

As stated above, the change of address was intimated to the respondents only after sending the notice of enquiry. As per the scheme of the provisions of the Act, the award enquiry is for the purpose of determining the offer made in the award by the Government to the affected party and the said amount is not the final amount. The aggrieved party can always seek enhancement by seeking reference under Section 18 of the Act. The impugned order was passed in the circumstances mentioned above and it cannot be held to be vitiated on the ground of non-service of notice on the first petitioner. The first petitioner did not make any effort to contact the second respondent in spite of earlier round of litigation but wanted to take advantage of the situation. He could successfully stall the proceedings for the last one decade. His right to get compensation is not affected in any manner. Since the declaration made under Section 6 of the Act has become final, the only remedy available to the first petitioner is to get compensation and in the present proceedings, the bonafides or otherwise of the acquisition cannot be decided.

In view of the above circumstances and in the light of the settled legal position, the Writ Petition is dismissed. But in order to protect the right of the first petitioner to avail appropriate remedies for seeking compensation, the second

respondent shall forward a copy of the award to the first petitioner within four weeks.

The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

26.10.2016
vs

