

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION.10683 OF 2005

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to declare the action of the respondents in not acquiring the land in possession and enjoyment of the petitioners to an extent of 2 acres each situated in island of Tungabhadra river within the limits of Sunkesula Village, Kurnool District, as illegal, arbitrary and violative of Article 14, 19 and 21 of Constitution of India and consequently direct the respondents to initiate land acquisition proceedings forthwith for acquiring the land in possession of the petitioners.

The petitioners are the residents of Sunkesula Village, a village comprising of nearly Ac.60.00 of land which is situated on the banks of River Tungabhadra and they belong to Scheduled Caste. In the year 1885, a dam was constructed by Sir Aurthor Cotton across the Tungabhadra River within the limits of Sunkesula Village. It is the case that the petitioners' fathers and forefathers have cultivated the said land with hard labour and started eking out the livelihood. As the petitioners are landless poor persons, they applied for issuance of pattas to the fourth respondent-Revenue Divisional Officer and the fourth respondent was pleased to issue proceedings in D.Dis.No.10348/61 dated 31.10.1961 granting temporary permission to cultivate the land in the petitioners possession to an extent of about Ac.2.00 each. Subsequently, the third respondent-Executive Engineer also issued proceedings permitting the petitioners to cultivate the land. But, no assignment was issued in their favour till today.

While the petitioners were enjoying the property, the Government constructed a barrage across Tungabhadra River within the limits of Sunkesula by demolishing the existing dam with a view to store 2 Tmc water for the purpose of feeding K.C. Canal and the construction of barrage was completed in the year 2005. Though the respondents

initiated land acquisition proceedings by acquiring the land which were submerged in the year 1998, the land in occupation of the petitioners was not acquired. Thereupon, the petitioners approached the respondents/authorities requesting them to acquire the land in their occupation and the respondents promised to acquire the land in phased manner, as the island would be submerged only when the water tank is full. But, no purpose was served. Therefore, the petitioners lost their livelihood on account of submersion of their land in the storage water tank. Despite of the request made by the petitioners, the respondents did not acquire the land which was submerged in the water, depriving their right of cultivating the land. Hence, this writ petition is filed questioning the inaction of the respondents in not acquiring the land in the occupation of the petitioners as illegal and arbitrary.

Learned counsel for the petitioners Sri K. Rathangapani Reddy would contend that, on account of submersion of island, the petitioners are deprived of their livelihood. It is contended by the learned counsel for the petitioners that the storage tank ought to have been constructed after acquiring the petitioners' land. But, without acquiring the said land, the respondents allowed the land to submerge into water storage tank and such action on the part of the respondents is illegal and violative of Articles 14, 19 and 21 of Constitution of India. It is further contended that, as per the Land Acquisition Act, 1894, the petitioners ought to have been put on notice before the proposed acquisition and they are also entitled to claim compensation. Based on Clause (3) of Section 2 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the petitioners requested this Court to direct the respondents to acquire the land.

It is the case of the petitioners that land, an approximate extent of Ac.60.00 was lying as an island in Tungabhadra River of Sunkesula Village and on account of construction of 2 Tmc water storage tank to

feed K.C. Canal, the land which is under occupation of the petitioners is submerged and thereby the petitioners are deprived of their livelihood. Now, such deprivation of enjoying the land by the petitioners would certainly hamper their livelihood. However, the petitioners and their forefathers were only trespassers of the land belonging to the government. Since the island, river banks and river beds belong to the government, the government alone is the owner of the island which they are claiming. Therefore, the petitioners being the trespassers/ encroachers of the land are not entitled to claim any right on the land and they can be evicted by the authorities concerned by following due process of law.

Under the Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884, the trespassers/occupiers are not entitled to claim any compensation when the land was acquired by the government. But, as per Clause (3) of Section 2 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, even the persons who are entitled to claim patta are also entitled to claim compensation. In the present case, the petitioners were in possession and enjoyment of the land and due to submersion of the land in the water storage tank, the island disappeared and thereby the question of evicting them from the property does not arise. In any view of the matter, the question of granting a patta as on the date of filing the writ petition by the Revenue Divisional Officer or by any government authority does not arise, on account of disappearance of island due to submersion in the 2 Tmc water storage tank. As the present writ petition is filed in 2005 and by the date of filing the writ petition Land Acquisition Act, 1894 is alone applicable, but not The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. It is not the petitioners case that the land was acquired and no award was passed to claim the benefit under Section 24 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement

Act, 2013.

The government acquires the property depending on various circumstances and it is totally within the Eminent Domain. Article 300-A of Constitution of India embodies Doctrine of Eminent Domain which comprises two parts, (i) acquisition of property in the public interest; and (ii) payment of reasonable compensation therefor. When the provisions of the Act under which the land is acquired envisage the utilization of the land acquired in a given time or to let the owner use the same for permissible uses, strict compliance is required therewith as the intent of the legislature is to balance the eminent domain power of the State as the acquisition cannot be left for time immemorial in the hands of the authority concerned. The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation.

In the present case, the Government did not propose to acquire the land which was in occupation by the petitioners, since it was not for the public purpose. In such a case, the government may acquire the property to provide livelihood to the petitioners, but it is within the competence of the government under Article 300-A of the Constitution of India. It is not the case that the petitioners being the owners of the land were deprived of any right over the property, they are entitled to claim compensation as they lost their right over the property being the owners, State can be compelled to acquire the property.

The word 'River-bed' is defined under Section [7](#) of the act of 1884 as follows:

"The land within the limits so defined and approved by the State Government shall be deemed to be the river-bed and the limits shall, when necessary, be defined by boundary-stones or other suitable marks to be set up."

If the definition of river-bed under Section [7](#) of the Act of 1884 referred supra is taken into consideration, any Lanka newly formed

or re-formed is also a part of river-bed. Section [11](#) of the Act of 1884 prohibits new cultivation on land in bed of notified rivers. Except the above enactment, no other enactment is available to regulate rights of pattadars on Lanka land and Government. The law laid down by Privy Council in various judgments is still good law as no law was laid down in the recent past with regard to rights of Government and pattadars in newly formed or re-formed Lanka land. In **State of Andhra Pradesh Vs. Korieu Suryanarayana and others** ^[1], his Lordship Seshachelapathi, J., after elaborate discussion on various provisions of Madras Rivers Conservancy Act, 1884, and the law laid down by Privy Council in various decisions on this aspect, observed in para No. 14 as follows:

"According to the Indian law as expounded by the Privy Council, the bed of a public navigable river is presumed to be the property of the Government, whether tidal or not. (Vide Haradas Vs. Secretary of State : AIR 1917 PC 86 and Tarakdas Acharjec Choudary Vs. Secretary of State :). In Maharaja of Pithapuram Vs. Madras Province : Lord Normand observed that:

The rule to be applied is that the bed of a navigable river in any part of India, whether tidal or not, is vested in the Government, unless it has been granted to private individuals. Under the Indian law, therefore, the public ownership of the bed of the river does not depend upon its tidality, but upon its navigability.

Here, the government did not take away the right of the petitioners and they were in occupation of the land, in view of the temporary permissions granted for one year by the Revenue Divisional Officer and the third respondent i.e. licence to cultivate the land for one year. But the petitioners being the landless poor scheduled caste persons can claim assignment subject to fulfilling the conditions. However, it is the prerogative of the State either to assign the land or

not, but the question of assignment is not in dispute and it needs no examination by this Court at this stage. The only question before me is whether the government can be directed to acquire the property which was in the occupation of the petitioners. Admittedly, they were in possession for one year in pursuance of the permission accorded by the third respondent and thus they are entitled to temporary occupation in Dis.No.10348/61 dated 31.10.1961 and the permission itself clearly indicated that such permission is liable to be rejected at any time without paying any compensation to the cultivators and before the expiry of one year period. Even in the letter No.643 dated 22.03.1982 addressed by the Executive Engineer, Kurnool, i.e. fourth respondent, the petitioners were permitted to enjoy the property on lease basis for the agricultural year 1980-1981 and as such, the petitioners are not the owners of the property and they are liable to vacate the property after completion of the period of lease or license granted in their favour. Of course, they are entitled to claim patta, but as on the date of filing the present writ petition, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 did not come into force and the provisions of the said Act, cannot be complied retrospectively.

It is the case of the learned Government Pleader that they do not require any land for public purpose and apart from that, the petitioners are not the owners of the property, since the river bed or the island are vested on the government. The question of acquiring, its own land by the government does not arise and it is within the eminent domain of the State and the Court cannot compel the State to acquire the property which belongs to the Government itself. No doubt, as contended by the learned Government Pleader and admitted by the learned counsel for the petitioners, the land which constitute an island is in Tungabhadra River and they were in occupation of the petitioners.

As per the provisions of Andhra Pradesh (Andhra Area) Rivers Conservancy Act, 1884, the island which is subjected to submersion

depending upon the water levels in the tank exclusively belongs to the government and the petitioners being the occupants temporarily permitted by the third and fourth respondents are not entitled to claim any right in the property and on the ground of temporary occupation, the government cannot be compelled to acquire the property. Therefore, this Court found no ground to direct the respondents to acquire the property which is vested in the government itself.

Hence, the writ petition is devoid of any merit and it is liable to be dismissed. In the result, the writ petition is dismissed, but however without costs.

Consequently, miscellaneous applications pending if any shall also stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

01.07.2016
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[\[1\]](#) AIR 1963 AP 94