

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.1846 of 2007

ORDER:

Heard counsel for the petitioners and the Government Pleader for R & B Department appearing for respondents 1 and 2.

2. The grievance of the petitioners in this Writ Petition is that the respondents had laid a road in their agricultural lands without paying any compensation to them and that this action of the respondents is arbitrary, illegal and violative of Articles 14 and 300A of the Constitution of India.

3. Petitioners claim to be the owners of small extents of lands in Balajinagar via Janakinagar to Dhudiya Thanda of Kodad and Chilukur Mandals of Nalgonda District. They claim that they belong to Scheduled Tribe Community and that the above lands are their only source of livelihood.

4. Petitioners had earlier approached this Court by filing W.P.No.10446 of 2004 alleging that they had submitted a representation on 15.03.2004 to the 3rd respondent complaining that their lands were taken away without following due process of law and they also marked a copy of the said representation to the Mandal Revenue Officer, Chilukur and Kodad as well as the Executive Engineer, Panchayat Raj, Nalgonda for payment of compensation, but no action was taken in the matter. The said Writ Petition was disposed of on 25.06.2004 directing the 3rd respondent to consider the petitioner's representations and pass orders in accordance with law.

5. Thereafter the 3rd respondent addressed a letter to the

Executive Engineer, Panchayat Raj, Miryalaguda on 10.01.2005.

The latter replied to the 3rd respondent stating that the Panchayat Raj authorities have already handed over the road to the R & B Department, Miryalaguda in 1989 as per G.O.Ms.No.138, dt.27.03.1999 and the road is no longer under the jurisdiction of the Panchayat Raj Department and the said Department is not responsible for payment of compensation to the petitioners.

6. Thereafter the 3rd respondent addressed a letter to the Executive Engineer, R & B Department, Miryalaguda, Nalgonda District on 01.07.2005 and the latter replied to the 3rd respondent on 20.07.2005 stating that the road does not pertain to his division and asked the District Collector to take further action in the matter.

7. Petitioners contend that while this was going on, a fresh road was laid on 06.02.2006 on the existing road and the work was also inaugurated by the Executive Engineer, R & B, Miryalaguda Division.

8. Since the petitioners' grievance of payment of compensation had not been redressed by the 3rd respondent, petitioners had filed the present Writ Petition.

9. The 2nd respondent filed counter affidavit stating that in 1998 the Panchayat Raj Department had formed a road under Janma Bhoomi Round-II and it was formed on the alignment of katcha road (cart track) which was existing and it was also reflected in a Survey of India TOPO Map No56 P/13 published in 1969. He stated that the work of laying road was completed on 29.03.1999. According to him, the road was later transferred and handed to R & B Department vide G.O.Ms.No.138, Panchayat Raj & Rural

Development (Prog.II) Department, dt.27.03.1999, that the R & B Department modified the road to black top from Chainage 0/0 to 17/8 KM with an estimated cost of Rs.229.40 lakhs and at the time of taking over by the R & B Department, there was only a metal road with 12' carriage way width. He denied that the land of the surrounding farmers such as petitioners was encroached and contended that it was laid only on the available width donka passage. He admitted that the total land occupied by the pathway is Ac.0-09 ½ guntas out of which an extent of Ac.0-02 guntas is in the petitioners' lands. After deducting the land covered under pathway, from total extent of the petitioners' land, an extent of Ac.1-02 ¾ guntas is covered under the existing R & B road. He contends that petitioners are acting unfairly in demanding compensation without objecting to the modification of the road and that the claim for compensation is only an after thought. However, in para 8 of the counter it is admitted that following extents of land belonging to the petitioners were covered by the pathway.

Sl. No.	Survey No.	Total extent covered by the Present R & B road	Extent covered by pathway	Extent Additionally covered by the road	Area belong to Writ Petitions including land under pathway
1	893	0.13	-	0.13	-
2	238	0.05	0.00 ¼	0.04 ¾	0.04 ¼
3	239	0.25½	-	0.25 ½	0.14
4	240	0.05¼	-	0.05¼	-
5	241	0.05¼	-	0.05¼	-
6	243	0.12	0.07 ¼	0.04 ¾	0.02 ½
7	244	0.12	-	0.12	-
8	248	0.12	-	0.12	-
9	273	0.05¼	-	0.00¾	-
10	329	0.00¼	-	0.00¼	-
11	330	0.22	0.00 ¾	0.21¼	0.11 ¾
12	334	0.16	0.00 ½	0.15½	0.08
13	335	0.03¼	0.00 ¾	0.02½	0.00 ¾
14	340	0.01½	-	0.01½	0.01 ½
	Total:	3.13 ¾	0.09 ½	3.04 ¼	1.05 ¾

10. The 3rd respondent also filed counter stating that no requisition was received from the Executive Engineer, Panchayat

Raj or R & B Department, Miryalaguda to acquire the land for covering and widening the existing road into an R & B road. He also alleged that the petitioners are unfairly claiming compensation without objecting to the modification of the road during 1988 and subsequent to its' handing over to the R & B Department in 1999.

11. The 1st respondent filed a counter stating that his office has nothing to do with the laying of the road and the same was done when the road was under the control of the Panchayat Raj Department. It is alleged that if any land was occupied by the R & B Department, the petitioners should have claimed compensation from the said authority in 1988. According to his counter, the 1st respondent is entitled to only to maintain the existing roads taken over from the Panchayat Raj Department, but his department cannot extend or acquire any land for the purpose of expansion of the roads. He stated that his department took over the road in 1999 and was maintaining the same for free movement of the traffic and subsequently in 2005 amount was sanctioned under NABARD scheme for laying a black top road and the work was executed. He contended that if the petitioners are held entitled to claim compensation, it is for the Panchayat Raj Department to pay it and the R & B Department is not liable to pay it.

12. In order to ascertain how much of the land of the petitioners, if any, was utilized for laying of the above road, this Court by order dt.18.02.2016 appointed an Advocate-Commissioner, since there was a dispute on the said issue. While the 3rd respondent had stated in the counter that only Ac.0-09½ guntas of land was utilized, the petitioners disputed the same.

13. The Advocate-Commissioner filed a report stating that only

petitioners 2 and 3 attended pursuant to the notice given by him along with the Mandal Surveyors, Chilukur and Kodad and the Village Revenue Officer, Kodad apart from Tahsildar, Chilukur but none represented respondents 1 and 2. In his report, the Advocate-Commissioner stated that on his instructions, the Mandal Surveyor of Chilukur and Kodad in the presence of Village Revenue Officer, Kodad measured the lands of the petitioners 2 and 3 and found that pathway was covered to an extent of Acre 0-02 ½ guntas of land of 2nd petitioner and Ac.0-03 guntas of land of 3rd petitioner. The Advocate-Commissioner did not accede to the request of the petitioners 2 and 3 to determine the land within certain boundary stones in the agricultural fields also, since there was no such direction to him by this Court. But he did mention in the report that some of the boundary stones were laid in the agricultural lands of the petitioners 2 and 3 which are alleged to have been placed by the R & B Department.

14. No objections have been filed to this report dt.23.03.2016 of the Advocate-Commissioner by the respondents.

15. The report of the Advocate-Commissioner proves that an extent of Ac.0-02 ½ guntas of land of the 2nd petitioner and Ac.0-03 guntas of land of the 3rd petitioner were utilized for the road laid by the respondents 1 and 2.

16. Since no citizen can be deprived of his property without following due process of law, it is incumbent on the part of the respondents to initiate proceedings for acquisition of the above extent land of the petitioners 2 and 3 as per the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay them

compensation. This entire exercise shall be completed by the respondents within four (04) months from the date of receipt of a copy of this order. Since in para 8 of the counter of the 2nd respondent it is admitted that an extent of Ac.1-05 $\frac{3}{4}$ guntas belonging to the land holders of the village including the petitioners 2 and 3 was utilized for the purpose of the road, costs of Rs.2,000/- shall be paid by respondents 1 and 2 to each of the petitioners.

17. The Writ Petition is accordingly allowed.

18. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

29th June, 2016

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