

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.27854 of 2011

ORDER

This writ petition was filed challenging the action of the respondents in changing the alignment of ROB/Bye pass road connecting Eluru road and K.N.Road so as to effect the property of the petitioner situated in S.No.373 (R.S.No.239/2 and 240) of Kadakatla of Tadepalligudem, West Godavari District.

The petitioner states that he is the absolute owner of the property of an extent of Ac.1.37 cents in R.S.Nos.239/2 and 240 of the said village. Since the land was classified as Inam, the Tahsildar, Tadepalligudem, issued patta in Form-VIII. He constructed a house in an extent of 300 square yards out of the said land. The remaining land is being used for grazing purpose. While so, the 2nd respondent issued a notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') to acquire Ac.4.73 cents in R.S.No.244/1 in the same area for laying ROB/Bye pass road connecting Eluru Road with KN Road. When notices were issued under Section 5-A of the Act, the land owners including the petitioner submitted their objections and thereupon, the 2nd respondent passed orders on 1.7.2007 rejecting their objections.

It is the case of the petitioner that in order to benefit the 6th respondent even after rejecting the objections, the alignment was changed in front of the house of the petitioner affecting his

property. He applied for plans under Right to Information Act. He filed copies of the original alignment and changed alignment along with the writ petition.

This Court, by order dated 12.10.2011, directed the respondents not to interfere with the possession of the petitioner in respect of the property if it is not the subject matter of Section 4 (1) notification, dated 10.4.2007. Seeking vacation of the said order, the 3rd respondent filed WVMP No.3916 of 2014 along with counter-affidavit. It is stated in the counter-affidavit that the Tahsildar, Tadepalligudem, has initiated proposals for acquisition of land admeasuring to an extent of Ac.4.73 cents in R.S.No.244/1 etc., of Kadakatla and draft notification was approved by the District Collector, West Godavari District, Eluru, *vide* proceedings dated 19.1.2007. In addition to the land covered by the acquisition, other land covered by Government poramboke, assigned land, is also falling in the alignment of the approach road to the ROB. It is further stated that Kadakatla Village is an Inam Village and taken over by the Government. The petitioner has represented to the then Mandal Revenue Officer, Tadepalligudem, stating that he is in possession of the land admeasuring Ac.0.67 cents in R.S.No.239/2; Ac.0.70 cents in R.S.No.240 and Ac.1.00 cents in R.S.No.300/5, part of Kadakatla and requested to grant Ryotwari patta in his favour. The then Mandal Revenue Officer, Tadepalligudem, has issued Ryotwari patta to the petitioner vide ROC.No.1728/1991, dated 15.10.1997, to hold the lands. The

Ryotwari Patta obtained by the petitioner is inconsistent with the ground position and that there is no previous record proving that the land was held by the Inamdar and it is presumed that the petitioner has got the Ryotwari patta fraudulently. The then Tahsildar, Tadepalligudem, has filed an appeal before the District Revenue Officer, West Godavari, Eluru, on 14.5.2012, for setting aside the Ryotwari patta granted in favour of the petitioner and the same is pending. In those circumstances, it was treated that Ac.0.70 cents of land in R.S.No.240 was classified as poramboke. Out of the said extent, an extent of Ac.0.02 cents (96.8 square yards) in R.S.No.240 is falling in the alignment of the approach road in which the compound wall of the petitioner is existing. The land in R.S.No.240 is Grama Kantham (Government Poramboke) and hence, land acquisition proposals were initiated. The land of the 6th respondent was also acquired and compensation was paid as per rule.

A separate counter-affidavit was filed by the 5th respondent stating that R & B Department examined three alignments in the initial stages. An alignment taking off at KM 112/8 of NH-5 crossing railway track at LC No.371 was proposed and even the administrative approval was accorded based on the same alignment. However, after conducting detailed survey, R & B Department submitted two alternate alignments. Thereafter, a joint inspection of Railway, Municipal, Revenue and R&B authorities was conducted on 4.8.2006 and it was found that the

alignment at KM 112/374 of NH-5 is a better option. The Engineer-in-Chief, R&B approved the 2nd alignment on 23.08.2005. The estimate was finalized and tender notice was issued on the same day. Even after approving the 2nd alignment, the same name of the work in all correspondence is continued. The compound wall of the petitioner is falling in the alignment.

Today, learned Government Pleader for R & B produced the record.

5th respondent filed additional counter-affidavit stating that the 4th respondent addressed a letter to the Engineer-in-Chief on 1.3.2007 stating that some change in the approved alignment was required at points 'Q' to 'S' and it was proposed to utilize the curve between the points 'Q' to 'S' by utilizing the Government poramboke land as it avoids acquisition of land and structures by savings in financial aspects. The same was approved by the Engineer-in-Chief (R&B), Roads & Administration on 28.3.2007. It was also noticed that the change in design by creating a curve will not be hazardous either in traffic creation or becomes accident prone area.

A reply affidavit is filed by the petitioner stating that his father filed O.S.No.147 of 1937 on the file of the District Munsif, Kovvur, West Godavari District, against one Pallaiah and others for partition of the properties. The suit was decreed by judgment dated 9.3.1940. In those circumstances, he addressed a letter on 3.9.2012 requesting the Tahsildar, Tadepalligudem, to furnish the

records relating to old survey number 125/2, but no information was provided to him. After expiry of his father, an extent of Ac.1.23½ cents share was devolved on him. The appeal preferred by the Tahsildar was only after grant of interim order in the present writ petition. Except serving notice, no enquiry took place since 2012. If it is assumed that the land was described as 'Grama Kantham' in revenue records, the land in 'Grama Kantham' is also meant for construction of houses and private parties can hold the land.

In view of the above averments, the only point that fell for consideration is whether the curve created after issuance of 4 (1) notification and approval of the 2nd alignment was intended to benefit the 6th respondent and cause loss to the petitioner.

This Court carefully perused the record produced by the R&B Department and noticed that there was nothing to benefit the 6th respondent in creating such curve, as the record shows that the curve was intended to avoid the acquisition of private parties and lay a road in the Government land. It is stated that only 98 square yards of land where the compound wall of the petitioner is located is involved in the laying of road. But the patta itself is disputed in appeal before the District Revenue Officer. However as stated by the petitioner, the appeal itself was filed after granting interim order in the present case and no further steps were taken except filing the appeal in the year 2012.

In the circumstances and in view of the *prima facie* title held by the petitioner as on the date of proposals for acquisition of land, respondents 2 and 3 are directed to issue 4 (1) notification in respect of the property of the petitioner and take further steps of passing an award in accordance with the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and if no order adverse to the interest of the petitioner was passed with regard to the title, the compensation amount shall be paid to him.

Writ Petition is accordingly disposed of. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

21st December, 2016
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