

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE P. NAVEEN RAO

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Writ Appeal Nos.240 and 252 of 2016

Date:08.06.2016

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Between:

Bejjam Samrajam,
Guntur,
Guntur District,
Andhra Pradesh.

.....Appellant

And

The District Collector,
Guntur District,
Andhra Pradesh,
Hyderabad and others.

... Respondents

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE P. NAVEEN RAO

Writ Appeal Nos.240 and 252 of 2016

PC:(Per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Writ Appeal No. 240 of 2016 is directed against the order dated 18.11.2015 passed in Writ Petition No. 37446 of 2015, whereby, the appellant's writ petition has been dismissed.

The writ petition was directed against the award dated 11.5.2011 passed under Section 11(1) of the Land Acquisition Act, 1894 (for short 'the Act'). The challenge is mainly on the ground that due procedure contemplated under the provisions of the Act for acquiring appellant's one acre land in Survey No. 147/1 of Rajupalem Village in Guntur District was not followed. In support of this contention, learned counsel for the appellant, invited our attention to the reference to Section 17(4) of the Act, to contend that on one hand, the official respondents applied urgency clause and on the other, they claim that enquiry under Section 5-A was also conducted. Similar contentions were urged before learned Single Judge.

It appears that before filing the instant writ petition, the writ petitioner had filed Writ Petition No. 12823 of 2012, on almost similar ground. This court, on 27.4.2014, passed the following interim order:

"Notice.

Pending further orders, there shall be interim stay of dispossession except in accordance with law."

The impugned order reveals that even before the aforementioned order was passed in the writ petition, the official respondents had followed the due procedure contemplated by the provisions of the Act, starting with a notification under Section 4(1). This all was taken into consideration by

learned Single Judge, as reflected in paragraphs 5 and 6 of the impugned order. Paragraphs 5 and 6 of the impugned order read thus:

“5. Though the learned counsel for the petitioner asserts that petitioner continues to be in possession and protected by the aforesaid order, the counter affidavit filed by the LAO in the aforesaid writ petition, relied upon by the learned counsel for the petitioner, however, states that after publication of notification under Section 4(1), notice under Form-3 under Section 5A was published and issued, but the petitioner refused to receive the said notice and did not file any objections and three other persons have filed objections. The said objections were considered and rejected on 10.6.2010 and thereafter the notification under Section 6 was published, in accordance with law followed by notices under Sections 9(1) and 10, and Award enquiry was taken. In the said Award enquiry petitioner gave statement refusing to part with the land and thereafter Award was passed on 09.05.2011 being Award No.3 of 2011 and the entire compensation was deposited in the Court of Principal Senior Civil Judge, Guntur on 28.05.2011 and the notice under Section 12(2) dated 10.06.2011 sent to the petitioner was also refused by him. It is further averred that under a panchanama dated 30.5.2011, possession was taken over and handed over to the Requisition Department on 01.10.2011. Petitioner's counsel submits that the averments in the said counter affidavit and in the impugned Award clearly show that the Award is fraudulent. Learned counsel, primarily, relies upon the reference in the impugned award that Section 17(4) has been invoked, as recorded in the preamble of the award, while dealing with the claim for interest under the Award. On that basis, it is contended that whether the Enquiry was conducted itself is doubtful as Section 17(4) is stated to have been invoked and thereby, questions the award as a paper Award.

6. I am unable to see any such contradiction as contended by the learned counsel inasmuch as the Award itself specifically mentions that while referring to the draft declaration, enquiry under Section 5A, was conducted on 08.01.2010 at the Office of the Tahsildar, Rajapalem Mandal. The counter affidavit also states the same and as such there does not appear any contradiction. No doubt at some place in the counter affidavit, reference to Section 17(4) is made. But, however, in fact enquiry having been conducted under Section 5A, reference to Section 17(4) is superfluous. I, therefore, do not find any fraud as alleged by the learned counsel and at this length of time, i.e., after lapse of four years, it is not open for the petitioner to question the acquisition proceedings and the Award all over again as per the ratio of the Supreme Court in **Swaika Properties Pvt. Ltd., vs. State of Rajasthan**^[1].”

It is pertinent to note that the appellant had participated in the award enquiry and her statement was also recorded in the said proceedings. It is also clear from the facts that notice under Form-3 under Section 5-A was also published and issued, which the petitioner refused to receive. In other words, she refused to participate in the proceedings under Section 5-A. She also refused the notice under Section 12(2), dated 10.6.2011. In view of her conduct and having considered that the entire procedure was followed as

contemplated by the provisions of the Act, the learned Single Judge has rightly dismissed the writ petition. Even the reference to Section 17(4) in the impugned order, holding that it was superfluous, also deserves no interference in view of the undisputed fact that proceedings under Section 5A were conducted. In the circumstances, the writ appeal is dismissed.

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Writ Appeal No. 252 of 2016

This writ appeal is directed against the order dated 1.12.2015 passed in Writ Petition No. 12823 of 2012, whereby, the appellant's writ petition has been dismissed.

In this writ petition, the appellant-writ petitioner simply challenged the action of 2nd respondent in measuring her land. The petitioner contends that the measurement was carried out behind her back and/or without giving notice and following the due process of law. It is apparent that when the land was measured, award was already passed. In the circumstances, Writ Appeal No. 252 of 2016 is also dismissed.

Consequently, pending miscellaneous petitions shall also stand closed.

DILIP B. BHOSALE, ACJ

P. NAVEEN RAO, J

8th June, 2016

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[\[1\]](#) (2008) 4 SCC 695