

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.17723 OF 2007

ORDER

This writ petition is filed seeking to declare the order dated 18.8.2007 passed by the first respondent directing the 2nd respondent to take possession of the land to an extent of 72.97 square yards and building bearing No.22-7-486 and 487, Purani Haveli, Hyderabad, as arbitrary and illegal.

It is the case of the petitioner that the petitioner purchased a portion of house bearing Nos.24-7-486 and 487, which was constructed on the land admeasuring 386 square yards situated at Purani Haveli, Hyderabad, from Mir Mustafa Ali Khan and two others for a valuable consideration of Rs.34 lakhs. The property is situated on Aza Khana Zehra to Diara Mir Momin main road. The 3rd respondent addressed a letter to the petitioner on 7.7.2007 stating that the road is proposed to be widened to 60 feet, due to which, an area of 43.75 square yards belonging to the petitioner is being affected and the 4th respondent would arrange to pay the structural compensation as per R & B schedule rates. The petitioner addressed a

letter to the 3rd respondent requesting him to provide the information with regard to the method of handing over possession of the effected area and the rate of compensation. However, the 3rd respondent addressed another letter on 30.7.2007 without reference to the earlier letter dated 10.7.2007 stating that the petitioner was not extending co-operation. The petitioner stated that he is not against the road widening and he wanted the particulars of payment of compensation. When the petitioner went to the office of the 3rd respondent, he came to know that the 1st respondent issued order on 18.8.2007 directing the 2nd respondent to take possession of the property in question and handed it over to the 3rd respondent. At that stage, he filed the present writ petition challenging the order passed by the 1st respondent dated 18.8.2007.

This Court by order dated 21.8.2007 granted interim direction restraining the respondents from dispossessing the petitioner from the said property and the said order has been in operation till today.

Seeking vacation of the said order, WVMP No.3354 of 2011 was filed by the first respondent-Revenue Divisional Officer. In the counter-affidavit, it

was stated that they have received a requisition from Assistant City Planner, Circle I, GHMC, Hyderabad, for acquisition of several properties situated at Azakhana Zehra to Mir Momin Daira Road to an extent of 666.37 square yards for the purpose of road widening under Charminar Pedestrianisation Project. Draft notification under Section 4 (1) of the Land Acquisition Act, 1894, (for short 'the Act') was submitted to the District Collector, Hyderabad, who approved the same on 15.11.2003 and it was published in A.P.Gazette as well as local news papers on 21.11.2003 and draft declaration on 22.11.2003. After publication of the draft notification and declaration appropriate notices were issued to all the interested parties under Sections 9 (1) & (10) and 9 (3) & 10 of the Act. During the award enquiry, one Sri Mir Sujath Hussain Khan, claimant filed claim petition stating that he is the owner of the property and claiming an amount of Rs.10,47,959/-. On the basis of the said claim petition, and in the absence of any rival claim, Award was passed on 17.2.2004. The petitioner purchased the property subsequent to the date of passing of the award and he has no *locus standi* to file the present writ petition. Under the said award, an

extent of 72.97 square yards situated in H.No.22-7-486 and 487, Puranahaveli, Hyderabad, was acquired.

Counter-affidavit is supplemented by subsequent instructions by the learned Government Pleader stating that the possession of the property was not taken and it was not demolished.

No counter-affidavit is filed by the 3rd respondent-Greater Hyderabad Municipal Corporation.

From the above averments, it is clear that the petitioner is the subsequent purchaser of the property. Though the award was passed on 17.2.2004, the possession of the land was not taken and it continued to be in possession of the petitioner. After passing of the award, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, came into force. Section 24 (2) of the same reads as follows:

“Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said Section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings

shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.”

The said provision came up for consideration before the Supreme Court in *Rajiv Chowdhrie Huf vs. Union of India and others*¹ and the defence raised by the Government on the ground that physical possession of the land could not be taken in view of interim order of *status quo* was held not sustainable. Admittedly, physical possession of the property is not taken till today and in view of operation of the status quo order as afore said, the proceedings of land Acquisition shall be deemed to have been lapsed as the award was passed five years prior to the commencement of Act.

Accordingly, the Writ Petition is allowed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE A.RAMALINGESWARA RAO

19th October, 2015

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¹ (2015) 3 SCC 541