

**THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

**WRIT PETITION Nos.18968 and 18969 of 2006**

**COMMON ORDER:**

These two cases are being disposed of by this common order as they relate to acquisition of land for the purpose of formation of Outer Ring Road.

W.P.No.18968 of 2006 was filed challenging the award proceedings dated 27.05.2006 and the consequent notice dated 01.06.2006 issued under Section 12(2) of the Land Acquisition Act, 1894, in respect of the petitioners' land in Survey Nos.11, 12, 14, 23P, 24P, 62, 16P and 32 in an extent of Acs.6.34 guntas situated at Kishanguda Village, Shamshabad Mandal in Ranga Reddy District. The said prayer was amended by making challenge to the notification issued under Section 4(1) and the declaration made under Section 6 of the Land Acquisition Act and also the award made on 27.05.2006, as aforesaid, by order in W.P.M.P.No.21728 of 2007, dated 15.12.2009. Initially the said Writ Petition was disposed of on 07.03.2014 by following the order in W.P.No.27600 of 2013, dated 30.09.2013. The first petitioner in W.P.No.18968 of 2006 filed Review W.P.M.P.No.42942 of 2016, and the order passed on 07.03.2014 was reviewed by order dated 31.10.2016 by allowing the review petition and setting aside the order dated 07.03.2014 in W.P.No.18968 of 2006 only to the extent of the first writ petitioner, who is concerned with the land of an extent of

Ac.1.04 guntas in Survey No.16P only. As a result of such order, now the main W.P.No.18968 of 2006 is posted before this Court.

W.P.No.18969 of 2006 was filed challenging the award proceedings dated 11.05.2006 and the consequent notice dated 01.06.2006 issued under Section 12(2) of the Land Acquisition Act in relation to the land in Survey Nos.13, 15, 16, 25, 26 and 27 in an extent of Acs.2.09 guntas situated at Toundupally Village, Shamshabad Mandal in Ranga Reddy District. This prayer was amended in W.P.M.P.No.14414 of 2007 dated 15.12.2009 and also by way of a subsequent amendment in W.P.M.P.No.7744 of 2014 dated 06.03.2014. As a result of such amendments, the award proceedings dated 11.05.2006, 01.10.2005, and consequent notices dated 01.06.2006 and 01.10.2005 issued under Section 12(2) of the Land Acquisition Act in respect of the land in an extent of Acs.3.02 guntas was challenged. This Writ Petition was also disposed of on 06.03.2014 following the order in W.P.No.18173 of 2013, dated 26.06.2013, and on filing Review W.P.M.P.No.42937 of 2016, the said order was reviewed and the review petition was allowed on 31.10.2016. As a result of the same, this Writ Petition is also posted for hearing afresh.

As stated above, initially W.P.No.18969 of 2006 was filed in respect of the land of an extent of Acs.2.09 guntas, but subsequently, the prayer was amended by including another

extent of Ac.0.33 guntas. But, no copy of the award was filed even though amendment was sought and ordered. In the circumstances, this Court cannot consider the award dated 01.10.2005, which was sought to be challenged by way of amendment and which was ordered by this Court. Hence, W.P.No.18969 of 2006 is confined to the extent of Acs.2.09 guntas only.

In both the cases the land was sought to be acquired for formation of Outer Ring Road junction and appropriate notices under Section 4(1) of the Land Acquisition Act were issued on 12.12.2005 and 24.11.2005 respectively. Declaration under Section 6 was published on 15.12.2005 and 28.11.2005. Awards were passed in respect of the said extent on 27.05.2006 and 11.05.2006 respectively. An amount of Rs.13,01,499/- was awarded in respect of the land of an extent of Ac.1.04 guntas in Survey No.16P relating to the first petitioner in W.P.No.18968 of 2006. It is admitted that the possession of the land was taken immediately after the declaration under Section 6 of the Land Acquisition Act in the year 2006 itself. But, the compensation amount was not paid to the petitioner and a notice was issued on 01.06.2006 asking the first petitioner in W.P.No.18968 of 2006 to appear in person for receiving the amount specified in the said notice and further stating that if he does not appear, the amount would be kept in the Revenue Deposit. At that stage, W.P.No.18968 of 2006 was filed.

In respect of the petitioners in W.P.No.18969 of 2006, a perusal of the award dated 11.05.2006 shows that the following amounts were awarded for their land covered by each survey number.

| Sl.No. | Survey Nos. | Petitioners in W.P.No.18969 of 2006 | Amount awarded |
|--------|-------------|-------------------------------------|----------------|
| 1.     | 16          | Sri Bihari Lal Agarwal              | 2,99,229/-     |
|        | 25          | Sri Naveen Agarwal                  | 2,99,229/-     |
|        | 26          | Sri Nitin Agarwal                   | 2,99,228/-     |
|        | 27          |                                     |                |
| 2.     | 13          | Sri Bihari Lal Agarwal              | 2,23,727/-     |
|        | 15          | Sri Naveen Agarwal                  | 2,23,727/-     |
|        |             | Sri Nitin Agarwal                   | 2,23,727/-     |

A notice was issued on 01.06.2006 asking the petitioners to appear in person for receiving the amount specified in the said notice and further stating that if they do not appear, the amount would be kept in the Revenue Deposit. The land was taken possession immediately after publication of declaration under Section 6 of the Land Acquisition Act in the year 2006 itself. But, the compensation amount was not paid to the petitioners.

As stated above, the compensation amount was not paid and the Writ Petitions are pending. In the meanwhile, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), came into force with effect from 01.01.2014. As per Section 24(2) of the said Act, if the award has been made five years or more prior to the commencement of this Act or the compensation has not been paid, the proceedings taken under the Land Acquisition Act, 1894, shall be deemed to have lapsed and liberty was given to the appropriate Government to initiate

proceedings afresh in accordance with the provisions of the new Act. However, a proviso was included in subsection (2) of Section 24 stating that in respect of majority of the landholdings if compensation was not paid in the account of the beneficiaries, then they will be entitled to the compensation in accordance with the provisions of the Act. Whether the said proviso is an exception to subsection (2) of section 24 or it should be construed in relation to Section 24(1)(b) or Section 24(2) independently came up for consideration before a Division Bench of this Court, which elaborately considered the issue in W.A.No.259 of 2015 and batch, dated 16.11.2016, and this Court after examining Section 24 from various angles, held as follows:

“There is a demonstrable distinction between the wordings in Section 24(2) and the proviso below. If both Sections 24(2), and the proviso below it, are understood as applicable to awards made before 01.01.2014, and as exceptions to Section 24(1)(b) which requires compensation for awards made before 01.01.2014 to be paid in accordance with the provisions of the 1894 Act, the distinction between Section 24(2), and the proviso below, would be evident. While Section 24(2) would apply to land acquisition proceedings where an award has been made under Section 11 of the 1894 Act, five years or more prior to the commencement of the 2013 Act, it is only for awards made within the five year period prior to 01.01.2014 (i.e. between 01.01.2009 and 31.12.2013) would the proviso apply. Similarly while Section 24(2) would apply to cases where, despite an award being passed before 01.01.2009, physical possession of the land has not been taken, possession of the land being taken has no bearing on the application of the proviso. Likewise, while Section 24(2) would apply to awards made before 01.01.2009 and where compensation has not been paid, the proviso would apply only where compensation in respect of a majority of landholdings has not been paid pursuant to the awards made between 01.01.2009 and 31.12.2013. While Section 24(2) creates a legal fiction and requires land acquisition proceedings to be deemed to have lapsed, the proviso does not provide for deemed lapsing but

only confers a right on the landowners, whose lands are sought to be acquired pursuant to the notification issued under Section 4(1) of the 1894 Act, to claim the benefit of the higher compensation prescribed in the 2013 Act.”

In the present case, it is clear that the compensation was not paid to the landowners and possession was taken in the year 2006 followed by an award in the same year. The awards were passed five years prior to the coming into force of the new Act with effect from 01.01.2014. In the circumstances, in view of Act 30 of 2013, the acquisition proceedings stood lapsed and under subsection (2) of Section 24 of Act 30 of 2013, the State Government shall issue fresh notification for acquisition of the said lands whose possession was already taken, and pass appropriate award. The said action shall be taken not later than six months from the date of receipt of a copy of this order.

The Writ Petitions are, accordingly, allowed. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed. There shall be no order as to costs.

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**(A.RAMALINGESWARA RAO, J)**

28.12.2016  
vs