THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.23261 of 2008

ORDER:

The petitioner's father, late G. Bhoomaiah, was the original owner of agricultural land admeasuring Ac.9.17 guntas in Sy.Nos.36 to 41, 49 and 50 of Lalaguda Village, Secunderabad. It consisted of vast open land with buildings and structures. The said land was acquired for the purpose of construction of Railway quarters for the Officers and Staff.

2. A notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was issued on 13.07.1965 and draft declaration was published on 22.07.1965. The award was passed on 31.08.1968 for an amount of Rs.21,227.24 ps. The petitioner's father received the said amount but filed an application seeking reference under Section 18 of the Act. In the reference, the City Civil Court in O.P.No.193 of 1971 enhanced the market value to Rs.5/- per sq. yard by judgment dated 22.12.1977 and the decree holder filed EP.No.16 of 1978 for realization of enhanced compensation. The Land Acquisition Officer deposited the entire enhanced compensation of Rs.2,23,888.43 ps on 27.03.1979. The EP was closed on 22.09.1979 after the petitioner receiving the enhanced compensation. However, the Land Acquisition Officer filed CCCA.No.102 of 1978 before this Court and the same was disposed of on 01.04.1986 confirming the order passed by the lower Court in O.P.No.193 of 1971. However, the claimant was given the benefit of amended provisions under the Amended Act 68of 1984. Pursuant to the said judgment and

decree, the further amount was also deposited. EP.No.35 of 1981 was filed for realization of Rs.5486.60 which was deposited on 16.06.1982 and on such deposit and payment, EP.No.35 of 1981 was closed.

3. In the meanwhile, the father of the petitioner expired on 21.05.1990 and before his death, he filed EP.No.62 of 1987 claiming an amount of Rs.3,39,854.77 ps towards difference in market value and solatium at 30%. The Land Acquisition Officer deposited an amount of Rs.3,39,600.64 on 14.04.1992 and the EP was dismissed for default on 22.02.1995. EP.No.37 of 1998 was filed by the decree holder for realization of solatium and interest amount and the Land Acquisition Officer deposited Rs.47,451.33 ps on 04.09.2001. The Divisional Railway Manager, Hyderabad Division, Secunderabad directly remitted an amount of Rs.1,44,924 on 04.11.2004 and the decree holder withdrew the said amount in EP.No.37 of 1981.

4. It appears that the averment made in the counter affidavit with regard to EP.No.35 of 1981 does not relate to the present case but it is a case relating to M/s. Margadarshi Chit Fund but the relevant EP is EP.No.37 of 1998. In the said EP, the respondent filed EA.No.367 of 2012 stating that the entire amount was deposited and in fact, more than the due amount was deposited and accordingly, sought disposal of the said EP, which is now posted to 23.11.2016. Some third parties also filed a claim petition and the same was dismissed. This present writ petition was filed in the year 2008 challenging action of respondent in not transferring the property acquired, as above, to the petitioner on the ground that the same was not utilized for the purpose for which it was acquired.

5. Learned counsel appearing for petitioner submitted that in view of the non-utilization of the land for the purpose for which it was acquired, the petitioner is entitled for redelivery of the property and also in view of Section 24(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act 30 of 2013'), the acquisition proceedings stood lapsed. Learned counsel also relied of Section 101 of the Act 30 of 2013. Learned counsel placed reliance on the decisions of the Supreme Court in VIJAY LATKA v. STATE OF HARYANA[1] and ALIGARH DEVELOPMENT AUTHORITY v. MEGH SINGH[2].

6. Learned Government Pleader, on the other hand, by placing reliance on the decisions of the Supreme Court in MAHADEO v. STATE OF UP[3] and K.N. ASWATHNARYANA SETTY v. STATE OF KARNATAKA[4] submitted that the land once acquired cannot be ordered to be delivered merely because some land was left vacant.

7. The above facts of the case are undisputed. Now the proceedings in EP.No.37 of 1998 are pending with regard to the dispute of balance amount as claimed by the petitioner and the defence taken by the respondent with respect to over payment of the entitled amount. The land vested long back in the Government and award was also passed. The Act 30 of 2013 came into force with effect from 01.01.2014 and sub-section (2) of Section 24 and Section 101 of the Act read as follows:

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[1] AIR 2016 SC 2584
[2] AIR 2016 SC 2912
[3] (2013) 4 SCC 524
[4] AIR 2014 SC 279

"S.24. Land acquisition process under Land Acquisition Act, 1894 shall be deemed to have lapsed in certain cases:-

(2) 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:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under Section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.

101. Return of unutilised land:-

When any land, acquired under this Act remains unutilised for a period of five years from the date of taking over the possession, the same shall be returned to the original owner or owners or their legal heirs, as the case may be, or to the Land Bank of the appropriate Government by reversion in the manner as may be prescribed by the appropriate Government."

8. A reading of sub-section makes it clear the proceedings would lapse only in the event of not taking physical possession or not paying compensation. In this case, the possession was taken and compensation was paid and there is dispute only with regard to the balance amount. The decisions relied upon by the learned counsel were delivered in the cases of not taking physical possession and not paying compensation amount and those cases are not applicable to the present situation. Merely because there is dispute with regard to payment of miniscule balance amount, it cannot be held that compensation was not paid and such meaning cannot be attributed to the language employed in sub-section (2) of Section 24 of the

Act 30 of 2013 for the words "*or the compensation has not been paid*" occurring in the said sub-section.

9. A reading of Section 101 makes it clear that it is applicable only when a land is acquired under the provisions of the Act 30 of 2013 and in fact, such provision would come into operation only after expiry of five years from the date of such acquisition. There cannot be any doubt with regard to the non-application of the said Section to the facts of the present case.

10. The Supreme Court in the decision of MAHADEO's case (3 supra) clearly held as follows:

> "14. There is no dispute with regard to the settled proposition of law that once the land is acquired and mandatory requirements are complied with including possession having been taken the land vests in the State Government free from all encumbrances. Even if some unutilised land remains, it cannot be re-conveyed or re-assigned to the erstwhile owner by invoking the provisions of the Land Acquisition Act. This Court in *Govt. of A.P. v. Syed Akbar* (AIR 2005 SC 492) held that:
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> > "10. It is neither debated nor disputed as regards the valid acquisition of the land in question under the provisions of the Land Acquisition Act and the possession of the land had been taken. By virtue of Section 16 of the Land Acquisition Act, the acquired land has vested absolutely in the Government free from all encumbrances. Under Section 48 of the Land Acquisition Act, Government could withdraw from the acquisition of any land of which possession has not been taken. In the instant case, even under Section 48, the Government could not withdraw from acquisition or to reconvey the said land to the respondent as the possession of the land had already been taken. The position of law is well settled. In *State of Kerala and Ors. v. M. Bhaskaran Pillai* (1997) 5 SCC 432 para 4 of the said judgment reads: (SCC p. 433)

> "4. In view of the admitted position that the land in question was acquired under the Land Acquisition Act, 1894 by operation of Section 16 of the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other public purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can be better utilised for the public purpose envisaged in the Directive Principles of the Constitution. In the present case, what we find is that the executive order is not in consonance with the provision of the Act and is, therefore, invalid. Under these circumstances, the Division Bench is well justified in declaring the executive order as invalid. Whatever assignment is made, should be for a public purpose. Otherwise, the land of the Government should be sold only through the public auctions so that the public also gets benefited by getting a higher value."

15. In *Satendra Prasad Jain & Ors. vs. State of U.P.* (AIR 1993 SC 2517), a three Judge Bench of this Court after considering various provisions including Section 17 of the Act observed as under:

> "15. Ordinarily, the Government can take possession of the land proposed to be acquired only after an award of compensation in respect thereof has been made under Section 11. Upon the taking of possession the land vests in the Government, that is to say, the owner of the land loses to the Government the title to it. This is what Section 16 states. The provisions of Section 11-A are intended to benefit the land owner and ensure that the award is made within a period of two years from the date of the Section 6 declaration. In the ordinary case, therefore, when Government fails to make an award within two years of the declaration under Section 6, the land has still not vested in the Government and its title remains with the owner, the acquisition proceedings are still pending and, by virtue of the provisions of Section 11-A, lapse. When Section 17(1) is applied by reason of

> urgency, Government takes possession of the land prior to the making of the award under Section 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11-A can have no application to cases of acquisitions under Section 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner."

16. Indisputably, land in question was acquired by the State Government for the purpose of expansion of city i.e. construction of residential/commercial building under planned development scheme by the Meerut Development Authority and that major portion of the land has already been utilized by the Authority. Merely because some land was left at the relevant time, that does not give any right to the Authority to send proposal to the Government for release of the land in favour of the land owners. The impugned orders passed by the High Court directing the Authority to press the Resolution are absolutely unwarranted in law."

In view of the above position of law, the other plea of the petitioner for redelivery of land on the ground of its non-utilisation does not deserve consideration.

The writ petition is accordingly dismissed. As a sequel, miscellaneous applications, if any, pending shall stand closed. There shall be no order as to costs.

A. RAMALINGESWARA RAO, J

November 23, 2016
DSK