

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos. 16580 AND 26955 OF 2009

COMMON ORDER:

These two cases are being disposed of by this common order as these Writ Petitions were filed by the same parties. W.P.No. 16580 of 2009 was filed challenging the action of respondent Nos. 1 and 2 in declaring respondent Nos. 5 to 7 as claimants-pattedars of land in survey No. 566 admeasuring Ac. 14.27 guntas situated at Macherla Village, Gattu Mandal, Mahabubnagar District, and pressing to award compensation in their favour. W.P.No. 26955 of 2009 was filed challenging the proceedings dated 31-07-2008 of the Tahsildar, Gattu Mandal, Mahabubnagar District, issued in favour of respondent Nos. 5 to 7.

2. The case of the petitioners is that they are the grandsons of one Mahaboob Sab, S/o Gulam Hussain. Respondent Nos. 5 to 7 are daughter-in-law, grandson and daughter-in-law of late Modin Sab, S/o Gulam Hussain, respectively. The grandfather of the petitioners and the grandfather of respondent Nos. 5 to 7 are the sons of one Gulam Hussain. They owned agricultural land of an extent of Ac. 14.27 guntas in survey No. 566 situated at Macherla Village, Gattu Mandal, Mahabubnagar District. The said land stood in the name of the petitioners' grandfather though it was a joint family property. As could be seen from the Khasara Pahani of 1954-55 and Pahanies for the years 1975-76 and 1984-85, the petitioners and respondent Nos. 5 to 7 have been enjoying the property jointly. However, respondent Nos. 5 to 7 got the property mutated in their favour by proceedings dated 03-07-2008 without issuing notice to them. It is further stated by the petitioners that the 2nd respondent issued a notification on 24-06-2008 acquiring the above said land for the purpose of formation of Package No. 109 Muchonipally Balancing Reservoir at Macherla Village of Gattu Mandal, Mahabubnagar District, in the name of respondent Nos. 5 to 7. The petitioners submitted objections. An inquiry held under Section 5-A

of the Land Acquisition Act, 1894 (for short, 'the Act'). In spite of the same, declaration under Section 6 of the Act was published and an award was passed in favour of respondent Nos. 5 to 7. They seek reference under Sections 30 and 31 of the Act. It is their further case that since the revenue records were mutated in favour of respondent Nos. 5 to 7 without issuing any notice, the proceedings of mutation made by the Tahsildar, Gattu Mandal, on 31-07-2008 are bad in law. Against the action of the Tahsildar, Gattu Mandal, the petitioners preferred an appeal before the Revenue Divisional Officer, Gadwal, and the same is pending.

3. A counter affidavit is filed on behalf of respondent Nos. 1 to 4 stating that draft notification under the Act was published in the gazette on 20-06-2008 and draft declaration was published on 24-07-2008. Appropriate notices under Sections 9 (1) and 9 (3) of the Act were issued asking the persons concerned to be present during the award enquiry on 18-08-2008. In response to Section 9 (3) notices, no objections were raised with regard to measurements, survey numbers but submitted title deed and passbook and requested to pay land compensation as per their entitlement. As per the revenue records for the year 2008-09, respondent Nos. 5 to 7 are shown as pattedars and enjoyers of the property. They filed the title deeds and record of rights in support of their claim. However, an objection petition was filed on behalf of the petitioners for payment of land compensation. Accordingly, notices were issued to all the parties calling for documentary evidence on 05-12-2008 and 23-05-2009. Though respondent Nos. 5 to 7 filed the documents, the petitioners could not file any documentary proof in support of their claim in spite of granting sufficient time. In those circumstances, an award was passed and submitted to the Special Collector on 30-06-2009 for approval. The award was approved on 27-07-2009. It is stated that if the petitioners are not satisfied with the award, they can make an application to refer the matter to civil Court. Though the award was passed on 27-07-2009, the compensation amount could not be disbursed to the awardees because of the *interim* orders granted by this Court.

4. With regard to the challenge made to the order of the Tahsildar, Gattu Mandal, in the counter affidavit filed by the Tahsildar in W.P.No. 26955 of 2009, it is stated that since the original pattedars are no more, respondent Nos. 5 to 7, being the successors, made the application for incorporating their names and for issue of pattedar passbooks and title deeds. After conducting thorough inquiry, the proceedings were issued on 31-07-2008. It was stated that the ROR appeal filed on 07-09-2009 *i.e.* after filing W.P.No. 16580 of 2009 is not at all maintainable but as per Khasra Pahani 1954-55, patta stands in the name of late Mahabub Sab who is the predecessor in title to respondent Nos. 5 to 7.

5. Now, it is clear from the above averments that the land of an extent of Ac. 14.27 guntas in survey No. 566 of Macherla Village, Gattu Mandal, Mahabubnagar District, was acquired for the purpose of Package No. 109 Muchonipally Balancing Reservoir at Macherla Village of Gattu Mandal, Mahabubnagar District. Even though the petitioners were given an opportunity to submit documentary evidence, they did not produce any documents in support of their claim but objected to the payment of compensation to respondent Nos. 5 to 7. Now, the record reveals that the names of respondent Nos. 5 to 7 were mutated in the revenue records and the petitioners filed an appeal against the mutation made by the Tahsildar on 31-07-2008 to the Revenue Divisional Officer, Gadwal. It is the case of the petitioners that before mutating the names in the revenue records, no opportunity was given to the petitioners. Both the petitioners as well as respondent Nos. 5 to 7 claimed right to the property through their respective grandfathers who are brothers.

6. In the circumstances, the 2nd respondent is directed to refer the matter to the competent civil Court under Section 30 of the Act as there is a dispute with regard to the title of the property. In the absence of any material of following the proper procedure before mutating the names of respondent Nos. 4 to 6 in W.P.No. 26955 of 2009 is concerned, the 1st respondent is directed to consider the appeal alleged to have been filed by the petitioners on 02-09-2009 and

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dispose of the same in accordance with law within a period of three months from the date of receipt of a copy of this order.

7. The Writ Petitions are, accordingly, allowed to the extent indicated above. Pending miscellaneous petitions, if any, in these Writ Petitions shall stand closed in consequence. No order as to costs.

A.RAMALINGESWARA RAO, J.

Date: 02nd November, 2016.
JSK

