

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.28259 OF 2012

ORDER:

Heard learned counsel for the petitioners and the learned Government Pleader.

The petitioners pray for Mandamus complaining against the present alignment at ND.9 of Nossam Branch canal and inspection road as not conforming to the land acquisition in Survey Nos.259; 256 and 257 of Medidinne Village and Survey Nos.456 and 470 of GundlaKunta Village of Peddamudium Mandal, Kadapa District.

Counsel for the petitioners to contend that the respondents have not laid the canal and/or road according to the alignment accepted at the time of acquisition of land in the above survey numbers, has placed strong reliance upon the communication addressed by the Special Deputy Collector dated 11.11.2011 and the rough sketch of subject location marked as Ex.P.4. It is further contended that if the stand taken in the counter affidavit is accepted still laying the canal and bund road at a place not acquired by the respondents is violating the right of petitioners under Article 300-A of the Constitution. Learned counsel for the petitioners stoutly contends that the prayer as made in the writ petition may be considered by this Court.

Learned Government Pleader draws the attention of the Court to the averments in paragraphs 3 to 5 of the counter affidavit which read as follows:

“ It is submitted that, ND9 Minor Canal off takes at 15.80 KM of Nossam Branch Canal of M.R.North Canal of Mylavaram Reservoir, a Major Irrigation Project in Y.S.R.kadapa (District) A.P.

ND9 Minor canal irrigates localised ayacut on both sides of canal and existing now. It is true that, ND9 Minor is running in between S.No.259 on Southern Side and S.Nos.256 & 257 on Northern side in Medidinne (V) limits of Peddamudium (M). It is submitted that, ND9 canal was excavated in the year 1980 on ridge, in between S.No.259, 256 & 257 Medidinne (Village).

It is submitted that, the land in S.No.259 to an extent of 80 feet on western side and 59 feet on eastern side was acquired for ND9

canal, inspection road and field channels on either side to cater to the irrigation needs of ayacut. The land in S.No.256 for 15 feet on western side and 20 feet on eastern side was also acquired. The disputed land in S.No.259 was got surveyed on 08.10.2012 and found that a triangular portion on western side of S.No.259 to an extent 0.13 Acres extra is being used for canal road and two transformers of A.P. Transco, are also laid. The said transformers were commissioned during the year 2003 & 2007.

It is submitted that, the Land Acquisition for ND9 canal was approved during 1979-1980, vide Award No.7/1980-81 dt.30.05.1980 in Survey No.256, 257/48 & 259/1 of Medidine Village of Peddamudium Mandal in YSR District Kadapa. The ND9 Canal road is being used with mutual consent, during excavation in 1980. The Petitioner was not the owner of S.No.259 in the year 1980. The ND9 canal alignment is functioning since the year 1980. The disputed land has been surveyed on 08.10.2012 and found that the canal and inspection road is existing on eastern side of survey No.259, including two transformers of A.P. Transco in Triangular Portion with an extent of 0.13 Acres.”

He contends that the road/canal was finalised, award was passed and construction was over about 3 to 3 ½ decades back and it is difficult to change the alignment now. Therefore, he prays for dismissal of the writ petition.

Counsel for the petitioners alternatively contends that on account of wrong alignment which is passing through petitioners' land there is no distributory channel at Survey No.259 and no open space is left beyond the inspection road. The petitioners are not in a position to utilize the channel passing through their land on account of erroneous and illegal alignment. The petitioners, it is asserted, are deprived of 25 to 30 cents of agricultural land.

I have carefully considered the material available on record and the submissions of learned counsel appearing for the parties.

In the counter affidavit filed by the 2nd respondent it is averred that the disputed land in Survey No.259 was got surveyed on 08.10.2012 and survey report suggested that a triangular portion on western side of Survey No.259 to an extent 0.13 Acres extra is being used for canal road and two transformers of A.P. Transco are also laid. The said transformers were commissioned during the year 2003 & 2007. However, the extent of land on western side is disputed by petitioners.

According to petitioners, the matter is required to be independently examined firstly to fix the extent lost by the petitioners on account of change of alignment of canal/road in Survey No.259 and secondly, appropriate steps are required to be taken for providing distributory channel to the agricultural land of petitioners within the acquired land namely through the road without further loss of land.

I am of the considered view even if this Court is not prepared to accept primary prayer of the writ petitioners as the channel is admittedly passing through Survey No.259, a grievance which is required to be examined on field inspection and verification by the 2nd respondent is made out. Therefore, I am of the view that the writ petition can be disposed of by following order.

- a. The petitioners are given four weeks' time from the date of receipt of copy of this order to present a comprehensive representation to 2nd respondent on the necessity of providing distributory channels within the acquired land and the extent of un-acquired land for which appropriate steps are required to be taken by the 2nd respondent. The petitioners are given liberty to file sketch etc. to impress upon the 2nd respondent in support of petitioners' case for passing appropriate orders.
- b. The 2nd respondent on receipt of such representation, causes enquiry into the matter, affords opportunity to the petitioners and takes a decision on the grievances submitted by the petitioners within eight weeks from the date of receipt of a copy of this order.
- c. For any reason if the petitioners are aggrieved by the final outcome of decision/communication of 2nd respondent, it is needless to observe that the petitioners can work out the remedies available to them in accordance with law.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:22.02.2016

Stp