

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.33258 of 2014

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ORDER:

The petitioners in this writ petition seek to question the action of respondents 1 to 5 in disbursing the compensation in favour of respondents 6 to 10 and consequently seek a direction to the respondents to refer the dispute to the competent civil court.

2. The facts in brief are as follows:-

(a) The petitioners claim that the 1st petitioner is the owner of the land admeasuring Ac.3-13 cents, the 2nd petitioner is the owner of the land admeasuring Ac.4-00 cents and the 3rd petitioner is the owner of the land admeasuring Ac.4-00 cents in Sy.No.183 situated at Jakkampudi Village, Gannavaram Mandal, Krishna District, based upon the registered sale deeds in their favour. It is stated that the Government formulated a Scheme under G.O.Ms.No.875, M.A. & U.D. (K2) Department, dated 04-12-2007 to acquire the total extent of 221.79 cents and intended to share the acquired land between the Government and the land owners in the ratio of 60:40 and the developed land has to be disbursed back to the land owners in lieu of compensation by draw of lots.

(b) Respondents 6 to 9 stated to have claimed the land admeasuring Ac.11-13 cents in the same Sy.No.183 of Jakkampudi Village on the ground that they are owners of the said land.

(c) The petitioners state that after purchase of the lands they asked the 10th respondent to look after the property but the petitioners were unaware of any Notification issued or the acquisition proceedings and the proceedings taken up under G.O.Ms.No.875, referred to above.

(d) The petitioners alleged that the 10th respondent agreed to surrender and agreed to share the land though he had no right as such. They state that after coming to know of the attempt of respondents 6 to 10 a complaint was filed in Cr.No.331/14 in the II Town Police Station, Vijayawada. It is also alleged that respondents 6 to 10 are making claim on the basis of forged documents. The affidavit further refers to details of investigation in the criminal complaint, which is not relevant hereunder. The petitioners, therefore, claim that since respondents 6 to 9 are making claim for disbursement of compensation, the present writ petition is filed for the relief as aforesaid.

3. On 07-11-2014 when this writ petition was heard, while issuing notice before admission, this court granted interim direction as prayed for, which is in operation.

4. The 3rd respondent herein filed a counter affidavit stating that the Government of India has launched the Jawaharlal Nehru National Urban Renewal Mission (JNNURM) in the year 2005-06 for development of Urban Sector, Vijayawada and thereupon, the Vijayawada Municipal Corporation made a requisition for acquisition of land in Jakkampudi Village. Accordingly, 4(1) Notification was issued on 08-02-2007 in the Gazette and later published in the Newspapers in the locality. Enquiry under Section 5-A was proposed and conducted on 05-03-2007 and at that stage, some of the land owners approached this Court and obtained interim stay orders. Subsequently, the Collector, Krishna, had several negotiations with the landowners and most of the land holders came forward and gave consent to acquire their lands and agreed to share the land in proportion of 60:40 ratio without cash compensation. Accordingly, G.O.Ms.No.875, dated 04-12-2007 was issued and those cases, which are not covered by the stay orders, were taken up.

5. It is also stated that as per the Adangal extract for the 1417 Fasli, the land admeasuring Ac.22-26 cents in R.S.No.183 shows the names of some of the respondents, but the petitioners' names were not noted in the Adangal. It is stated that no representation was received from the petitioners during 5-A enquiry and later declaration under Section 6 was also issued for the land admeasuring Ac.68-10 ½ cents vide Gazette Notification, dated 01-02-2008 followed by local publications. Thereafter, notices under Sections 9(1) and 10 were issued to the landholders to attend award enquiry on 28-02-2008. The said notice is stated to have been affixed in the locality at prominent places in the village but neither the petitioners nor any one on their behalf attended the enquiry. Respondents 7 to 9 along with one G.Hemanth Raman stated to have attended award enquiry and claimed title on the basis of a registered Gift Deed and water tax receipts, their title was accepted and Award No.31/08, dated 13-06-2008 was passed, which includes the disputed land admeasuring Ac.11-13 cents. It is stated that possession of the land was taken and handed over to the Municipal Corporation on 04-12-2008, which has developed the land into layouts for allotment to beneficiaries under JNNURM Scheme. The details of the disputed land admeasuring Ac.11-13 cents are given in tabular form and it is stated that draw of lots was conducted on 30-08-2014 and respondents 7 to 9 along with G.Hemanth Raman have attended draw of lots and chosen their plots. At that stage, the present writ petition is filed and an interim direction was obtained on 07-11-2014.

6. It is contended that neither the petitioners nor any one on their behalf at anytime participated the entire acquisition proceedings and the title documents produced by respondents 7 to 9 were accepted and an award was passed in their favour. Hence, it is contended that the petitioners have approached this Court, after a gap of six years and after entire land acquisition proceedings are completed and as such, the writ petition be dismissed.

7. Sri N.Subba Rao, learned counsel appearing for the petitioners submits that the petitioners title flowing through registered sale deeds of 2005 are required to be taken into consideration and claims that none of the respondents 7 to 10 have any right but are making claim on the basis of self styled and fabricated documents. He also submits that the petitioners were kept in dark and were not aware of the acquisition proceedings and the actions of respondents 7 to 10. Hence, the petitioners could not bring their title to the notice of Land Acquisition Officer. However, as soon as they came to know, the intervention of this Court is invoked in this writ petition.

8. Learned counsel, therefore, submits that in view of serious dispute of title between the petitioners and respondents 7 to 9, they seek a direction to refer the dispute for adjudication before appropriate Court under the Scheme of the Land Acquisition Act. He also contends that as the developed land has to be reallocated by draw of lots to the landholders, there is no compensation as such payable, but in lieu of that developed land is to be allotted as per the draw of lots. He submits that as respondents 7 to 9, without knowledge of the petitioners and without any authorisation, have participated in the acquisition proceedings, as if they are owners, they are not entitled to get benefit of securing developed plots in lieu of compensation. Learned counsel would therefore urge that till the inter se title dispute is adjudicated, the disbursement of compensation viz., the allotment of developed plots be withheld so that the developed plots would be available to the successful party. He also contends that atleast the persons interested/petitioners are entitled to seek a reference.

9. Learned Advocate General for the State of Andhra Pradesh appearing for respondents 1 to 5 submits that the writ petition itself is not maintainable, as the petitioners have not participated in the acquisition proceedings at any stage nor they are entitled to remedy

available under Section 30 of the Land Acquisition Act. He also states that the petitioners cannot fall within the definition of persons interested.

10. Learned Advocate General placed reliance upon the decision of the Hon'ble Supreme Court in ***DR.G.H.GRANT Vs. STATE OF BIHAR***^[1] and particularly para '13' thereof. He submits that though the facts before the Hon'ble Supreme Court were with reference to a request for Reference under Section 30 of the Act made by a person on whom right to receive compensation was devolved after filing of the award, such factual situation does not exist in the present case as the petitioners' claim pre-existing right and title, but never participated in any proceedings under the Land Acquisition Act including the Award. He, therefore, submits that if the petitioners have any grievance, the same has to be worked out by an appropriate remedy but not under Section 30 of the Act.

11. He also placed reliance upon the judgment of the learned Single Judge of this Court in ***K.BHAGYAMMA Vs. GOVERNMENT OF ANDHRA PRADESH***^[2] particularly para '14' thereof, where a similar request for reference under Section 30 was rejected as the petitioners therein had never raised any objection in any proceedings under the Land Acquisition Act and the remedy for such third parties is under general law.

12. The 11th respondent, who is a donee from the 6th respondent and who claims 3 acres of land, as well as counsel for respondents 6 to 10 substantially adopted the arguments of the learned Advocate General and in addition, it is contended that the names of the petitioners were not found in the Notification nor they have participated in the award. Hence, when the title claimed by the petitioners itself is disputed, Section 30 of the Act is not available to them.

13. In the light of the above submissions, the point which requires to be determined is whether the petitioners can seek reference under Section 30 of the Act as they are neither parties nor have participated in the proceedings under the Act upto the stage of passing of the award.

14. The answer to the above question is clearly found in the two decisions cited by the learned Advocate General, as referred to above.

15. For the sake of convenience, para '13' of the decision of the Hon'ble Supreme Court, referred to above as well as para '14' of the decision of this Court, referred to above, are extracted herein:-

"13. There are two provisions [ss. 18\(1\)](#) and [30](#) which invest the Collector with power to refer to the Court a dispute as to apportionment of compensation or as to the persons to whom it is payable. By sub-s. (1) of s. 18 the Collector is enjoined to refer a dispute as to apportionment, or as to title to receive compensation, on the application within the time prescribed' by sub-s. (2) of that section of a person interested who has not accepted the award. [Section 30](#) authorises the Collector to refer to the Court after compensation is settled under [s. 11](#), any dispute arising as to apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable. A person shown in that part of the award which relates to apportionment of compensation, who is present either personally or through a representative, or on whom a notice is served under sub-s. (2) of [s. 12](#), must, if he does not accept the award, apply to the Collector within the time prescribed under [s. 18\(2\)](#) to refer the matter to the Court. But a person who has not appeared in the acquisition proceeding before the Collector may, if he is not served with notice of the filing, raise a dispute as to apportionment or as to the persons to whom it is payable, and apply to the Court for a reference under s. 30, for determination of his right to compensation which may have existed before the award, or which may have developed upon him since the award. Whereas under [s. 18](#) an application made to the Collector must be made within the period prescribed by sub-s.(2) cl. (b), there is no such period prescribed under [s. 30](#). Again under s. 18 the Collector is bound to make a reference on a petition filed by a person interested. The Collector is under [s.](#)

[30](#) not enjoined to make a reference: he may relegate the person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award.”

“ 1 4 . It is no doubt true that *prima facie* when certain survey numbers are covered by the self-same sale deed referring the matter in relation to certain survey numbers only to be decided by the Civil Court under Section 30 of the Land Acquisition Act, may not be justified. But however, this may have to be appreciated in the back-drop of the facts. It is not as though Smt.Bhagyamma, the original petitioner and the present legal representative – Munirathnam were not aware of these proceedings. For the reasons best known, at appropriate time they had not raised the objections. It is needless to say that the procedure contemplated under the provisions of the Land Acquisition Act to be followed. Certain submissions were made by the learned Assistant Government Pleader for Land Acquisition that inasmuch as appropriate objections had not been raised at appropriate time as contemplated by the provisions of the Land Acquisition Act, at present no positive direction can be given to refer the matter relating to the other survey numbers covered by the sale deed also under Section 30 of the Land Acquisition Act. There cannot be any doubt whatsoever that such positive direction cannot be given at this stage. It may be that due to the negligence of the writ petitioner – Smt.Bhagyamma and the present legal representative – Munirathnam, this might have happened. In the light of the peculiar fact situation, this Court is of the considered opinion that liberty to be given to the writ petitioner to agitate his rights, if any, for the realisation of the compensation amounts said to have been paid to the third parties under the general Law, if the petitioner is so advised. Except making this observation, nothing else can be done at this stage. The Land Acquisition Officer while disbursing compensation especially in a case of this nature where large scale acquisition had been made could have been more careful and cautious.”

Also see ***M/s.CYRUS INVESTMENT (P) LIMITED, HYDERABAD***

Vs. MOHD.FAREEDUDDIN KHAN AND OTHERS^{[\[3\]](#)}.

16. It is not in dispute that the petitioners’ names were not found anywhere in the acquisition proceedings and admittedly they have not

participated at any stage. The claim for title made by the petitioners is only at the stage when award was being implemented. Had the award been for payment of compensation, the payment would have been made by the Land Acquisition Officer to the awardees in terms of the Award. However, in the present case, since developed land as per draw of lots is to be allotted, the petitioners are objecting to the allotment of developed plots to respondents 6 to 9 by way of this writ petition and seek a reference to be made under Section 30 of the Act.

17. In the light of the ratio of the decisions aforesaid, such a right would be available only to those persons whose names are notified and who have participated in the acquisition proceedings and the award proceedings. In fact, a reference would be made by the Land Acquisition Officer only when he finds a dispute relating to apportionment among different claimants.

18. In the present case, admittedly, the petitioners have not participated in the award proceedings also and no such dispute was raised before the Land Acquisition Officer, as is raised now. Obviously, therefore, Section 30 of the Act is not available to the petitioners and they will have to seek their remedy under a general law as held by this Court in the decision referred to above.

19. In view of the above, therefore, I do not find any reason to interfere and the writ petition is liable to be dismissed and the same is accordingly dismissed. No order as to costs.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed.

VILAS V.AFZULPURKAR, J

Date: -02-2016

Prv

HON'BLE SRI JUSTICE VILAS V.AFZULPURKAR

W.P.No.33258 of 2016

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Prv

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- [\[1\]](#) AIR 1966 SUPREME COURT 237
[\[2\]](#) 2010 (1) ALT 271
[\[3\]](#) 1993 (3) ALT 246 (D.B.)