

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

WRIT PETITION No.19661 OF 2005

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed to declare the action of the respondents in not taking steps to acquire the lands of the petitioners as arbitrary, illegal and issue a writ of mandamus, directing the respondents to acquire the lands of the petitioners an extent of Ac.10.48 cents in Sy.No.416, an extent of Ac.1.99 cents in Sy.No.417, an extent of Ac.8.88 cents in Sy.No.419, an extent of 1.55 cents in Sy.No.419, an extent of Ac.0.85 cents in Sy.No.420, an extent of Ac.0.45 in Sy.No.421, an extent of Ac.3.37 cents in Sy.No.422, an extent of Ac.5.42 cents in Sy.No.423, an extent of Ac.10.77 cents in Sy.No.424, an extent of Ac. 1.97 cents in Sy.No.427, an extent of Ac. 2.67 cents in Sy.No.430, an extent of Ac.5.26 cents in Sy.No.431, an extent of Ac.0.20 cents (House site) in Sy.No.387 and an extent of Ac.0.50 cents (House site) in Sy.No.386, of Erladinne Village, Hamlet of Kothakota, C. Belagal Mandal, Kurnool District.

02. The petitioners are the sons of K.Subba Rao, resident of Erladinne Village, hamlet of Kothakota, C.Belagal Mandal, Kurnool District. Their father, who died on 12.11.2003, inherited the ancestral property from forefathers, and consequent upon his death, the petitioners succeeded the entire estate and became absolute owners of the land by succession and living jointly. Earlier there was a dam existing, across Thungabhadra river, at about 15 feet height, and the water stored therein was being released to KC canal. In the year 1995, the Government of Andhra Pradesh has decided to construct barrage at a height of 25 feet, incurring 150 crores, with a view to store more water in order to feed KC canal, which is irrigating some lakhs of acres both in Kurnool and Kadapa Districts.

Table No.1:

Sl.No.	Sy.No.	Extent Ac. Ct.
1	416	10.48
2	417	1.99
3	418	8.88
4	419	1.55
5	420	0.85
6	421	0.45
7	422	3.37
8	423	5.42
9	424	10.77
10	427	1.97
11	430	2.67
12	431	5.26
13	387	0.20 (House site)
14	386	0.50 (House site)

03. The lands of the petitioners shown in the above table are situated on the bank of Tungabhadra River. Whenever there was floods in Thungabhadra river, when Sunkesula barrage height was 15 feet, all their lands used to be inundated in the flood water. Now Thungabadra barrage was constructed to a height of 25 feet. The respondents, before taking up the project, surveyed the field and marked the full reservoir level ('FRL' in short), while informing the petitioners and other farmers that all the lands are going to be acquired for the purpose of Thungabhadra barrage. The lands of the petitioners are dry lands, irrigating the same by laying pipe lines from Thungabhadra river, raising two baddy crops, and the soil is mixed soil and fit for paddy cultivation. In the year 1995 when the petitioners wanted to lay a new pipe line in the place of old pipe line, the Engineers of Thungabhadra barrage advised the petitioners not to spent any money, as their lands are going to be acquired for the purpose of Thungabhadra barrage. But, in pursuance of the information passed on to the petitioners by the Engineers of

Thungabhadra barrage, the 5th respondent issued a notification under Section 4(1) of the Land Acquisition Act proposing to acquire following the land in different survey numbers belonging to the petitioners.

Table No.2

Sl.No.	Sy.No.	Extent Ac. Ct.
1	416/1	0.59
2	417/1	1.16
3	418/2	1.30
4	419/1	0.01
5	420/2	0.23
6	422/2	0.51
7	423/2	0.57
8	423/5	0.67
9	424/5	1.74
	Total	6.78

04. Later the petitioners submitted a representation to the 5th respondent dated 28.08.2003 bringing to his notice the difficulties in acquiring only part of the land in Survey numbers covered by notification under Section 4(1) of the Land Acquisition Act, requesting the 5th respondent to acquire the same and do justice by inspecting the lands. The petitioners also submitted another representation to the 3rd respondent informing the difficulties of the petitioners. Without considering the representation of the petitioners, the 4th respondent passed an Award bearing No.1/2004 dated 03.02.2004 acquiring only Ac.6.78 cents in different survey numbers shown in table No.2. Survey numbers mentioned in table No.2 covered by Notification under Section 4(1) of the Land Acquisition Act. The land acquired by the 5th respondent and the third respondent is, in the middle of so many survey numbers and acquisition of part of land caused great hardship to the petitioners.

05. Even after acquisition of part of the land and passing an award, the petitioners submitted representation to the 5th respondent

and again repeated their request to acquire the total extent in all the survey numbers shown in table No.1. But, so far, the 5th respondent did not take any action in this regard. The petitioners also submitted a representation dated 01.02.2005 to the 5th respondent requesting him to furnish FRL, and also requested to acquire the total land mentioned in table No.1. But the 5th respondent deliberately did not furnish FRL and did not take up the proceedings for acquisition of remaining part of the land. Before construction of Thungabhadra barrage in the year 1995, whenever there were floods, the petitioners land used to be inundated in the flood water, now height of Thungabhadra barrage is increased to 25 feet from 15 feet and also fixed stones showing FRL and the authorities stored water at FRL on 18.07.2005. The water stored at FRL fixed by the authorities, the lands shown in the table No.1 were submerged in water totally. Thereby the petitioners could not cultivate their land and suffering a lot and lost their livelihood due to maintenance of FRL in the reservoir. Hence the petitioners are suffering a lot besides loss of their livelihood and prayed to issue a direction to the respondents to acquire the land shown in table No.1 initiating the land acquisition proceedings.

06. Respondent No.5 filed counter admitting construction of Thungabhadra barrage in the year 1995, to maintain FRL (+292.00 M), and on account of such storage, the lands will be submerged due to impounding of water in the barrage reservoir level at FRL and no authority has informed that all the lands of the petitioners will be acquired for the purpose of Thungabhadra barrage.

07. It is the specific case of the 5th respondent that the lands are likely to be submerged at FRL (+292.00 meters) is maintained, for an acquisition as per the detailed, field level survey conducted by the Department Engineers. As seen from the proposals for acquisition of land belonging to Sri K.Raghavendra Rao and other land owners, whose lands are within the limits of FRL were submitted to Deputy

Collector, Land Acquisition and Rehabilitation, Srisailem Project, Kurnool by the Executive Engineer, TBC Division No.1, Kurnool. Accordingly, a notification under Section 4(1) of the Land Acquisition Act dated 20.08.2003 was issued by the Special Deputy Collector, Kurnool, for acquisition of lands shown in table No.2. In pursuance of the requisition furnished by the Executive Engineer about the actual extent coming under the FRL (+299.00 meters), the land mentioned in table No.2 was acquired and the remaining land was not acquired. The acquisition was over as per the procedure and passed an Award, paid compensation for an extent of Ac.6.78 cents in different survey numbers, which falls within FRL area. The lands which are subjected to submersion in the reservoir pond age only as per the requisition of the Executive Engineer and after detailed survey, fixing stones on the ground and paid compensation and they were also present during detailed survey conducted in the petitioners land from 13.05.2003 to 31.05.2003. On 08.07.2003 Surveyor gave a letter to the Executive Engineer, TBC Division-I, Kurnool, and Special Collector, Kurnool, in this regard. Since the entire lands shown in the table No.1 do not fall within FRL, there is no need to acquire those lands and prayed for dismissal of the petition.

08. During hearing, Sri C. Prakash Reddy, learned counsel for the petitioners, contended that the lands of the petitioners shown in the table No.1 are inundated and submerged when FRL is maintained in the Thungabhadra barrage, the lands became use less and the crop raised therein is being damaged every year. Such failure to acquire land by the respondents is violation of fundamental right to life and when there is infringement of fundamental right, this Court can exercise power under Article 226 of the Constitution and pass appropriate orders and directing the respondents to acquire the land of the petitioners.

09. Whereas the learned Government Pleader for Land Acquisition (AP) contended that as per FRL, the lands are not likely to

be submerged, even if FRL in the reservoir is maintained and thereby right of the petitioners is not infringed or invaded, and question of infringement of their fundamental right to cultivate their lands, to enjoy their property does not arise and prayed for dismissal.

10. The 5th respondent also furnished FRL plan as directed by this Court. The only grievance of the petitioners before this Court is that the land of the petitioners is being submerged whenever FRL of Thungabhadra storage tank is maintained. The respondents admitted that some parts of the lands are being submerged, when FRL is maintained in the storage tank of Thungabhadra barrage and acquired those lands, which are subject to inundation or submersion whenever FRL is maintained in the storage tank of Thungabhadra barrage.

11. As seen from FRL 292.000 ground plan of Sunkesula barrage (Sri.Kotla Vijaya Bhaskar Reddy barrage), total land in S.No.417 and part of the lands in S.Nos.419, 421, 422, 423,424,418, 416 is being submerged, which is shown in red colour in FRL 292.000 of ground plan of Sunkesula barrage. The petitioners own and possessed land in different extents of land, in different survey numbers shown in table No.1 and the respondents acquired Ac.0.59 cents out of an extent of Ac.10.48 cents of land in S.No.416/1, Ac.1.16 cents out of an extent of Ac.1.99 cents of land in S.No.417/1, Ac.1.30 cents out of an extent of Ac.8.88 cents of land in S.No.418/2, Ac.0.01 cents out of an extent in Ac.1.55 cents of land in S.No.419/1, Ac.0.23 out of an extent Ac.0.85 cents of land in S.No.420/2, Ac.0.51 cents out of an extent Ac.3.37 cents of land in S.No.422/2, Ac.0.57 cents and Ac.0.67 cents of land out of an extent of land Ac.5.42 cents in S.No.423/2 and S.No.423/5, Ac.1.74 cents out of an extent of Ac.10.77 cents of land in S.No.424/5, leaving the other part of the land, as the other part is not subjected to submersion or inundation.

12. It is the contention of the petitioners that remaining part of the land shown in table No.1 is being submerged, whenever FRL is maintained in Thungabhadra barrage. But, absolutely no piece of

evidence is brought on record in support of their contention even the field inspection report disclosed that other parts of the lands of the petitioners are not likely to be effected due to submersion, whenever FRL is maintained in Thungabhadra barrage. In the absence of proof of submersion of the land of the petitioners, this Court cannot direct the respondents to acquire the land belonging to the petitioners, when the Government is not in need of such land for any purpose. If any such direction is issued compelling the respondents to acquire the land of the petitioners, such land is not fit for any use by them, since they cannot cultivate the land being the Government.

13. The petitioners though contended that their lands are likely to be submerged, no iota of evidence is brought on record, it is their consistent version from the beginning that even before 1995, their lands used to be submerged, but still they are cultivating. Cultivation account of village i.e. adangals are the best piece of evidence to prove the submersion of land, but they were not produced. Suddenly, a difficulty in cultivation is sprung up, when part of the land was acquired by the respondents, which is not a bonafide reason, as there is no possibility of submersion of the land of the petitioners even if FRL in the Thungabhadra barrage is maintained. Therefore, a Mandamus cannot be issued directing the respondents to acquire the lands of the petitioners, which is not being effected on account of backwaters in Sunkesula barrage i.e. Thungabhadra barrage, as the right of the petitioners to cultivate the land is not being infringed on account of maintenance of FRL in the reservoir. Therefore, I find no violation of statutory rule or provision of any act or breach of fundamental right of the petitioners to exercise judicial review under Article 226 of the constitution of India, to issue such direction. This court cannot issue such writs merely because it is lawful to do so, in the absence of proof of any damage to the property of the petitioners or infringement of their right to cultivate their land. Therefore, I find no ground to direct the respondents to acquire the land of the petitioners, since the land which

falls within the area of submersion, if FRL is maintained was already acquired. Hence, I find no merit in the writ petition. Accordingly the writ petition is liable to be dismissed.

14. In the result, the writ petition is dismissed. No costs.

15. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:10.08.2016

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