

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.3632 of 2012

ORDER :

The petitioner purchased in a Court auction conducted in O.E.P.No.47/1984 in O.S.No.81 of 1979 conducted by the Senior Civil Judge, Madanapally, an extent of Acs.2.50 cents in Survey No.461, situate at Ponnetipalem Village in Madanapalle Mandal, Chittoor District and obtained a sale certificate to that effect on 14.06.1999.

2. It appears that Scheduled Caste community of Gandhipuram and Kummarapuram villages in Madanapalle Mandal represented to 1st respondent and other respondents to acquire this land for use as burial ground, and a decision was taken to acquire this land for the said purpose.

3. The 1st respondent vide Reference No.LASW/5346/07 dt.17.12.2008 instructed his subordinates to initiate proceedings under the provisions of the Land Acquisition Act, 1894 **(for short, 'the Act')**. So notification and draft declaration proposals under the Act were approved by 1st respondent by proceedings LASW/5346/07 dt.07.05.2010. They were also published in the District Gazette, newspapers and in the locality as per provisions of the said Act. After doing

this, nothing else was done by 1st respondent.

4. The petitioner contends that when he enquired from respondents why they are not taking steps to acquire the land and pay compensation to him as per market value, the respondents told him that they were not interested in acquiring the land of petitioner and would withdraw the notification and declaration issued in 2010. The petitioner contends that he is unable to safeguard his land from encroachments; and because of the notification and declaration issued under the Act on 07.05.2010 by 1st respondent, the Scheduled Caste community people are forcibly using his land as a burial ground, and he is unable to stop them from doing so. He also contends that local political leaders are supporting the Scheduled Caste persons and are prevailing upon the police and revenue departments not to take any action against such persons rendering the petitioner helpless.

5. The 2nd respondent has filed a counter-affidavit admitting that petitioner had purchased the property in Court auction and obtained sale certificate dt.14.06.1999. He stated that thereafter when petitioner tried to measure and fence the land there was a conflict between petitioner and residents of Gandhipuram and Kummarapuram villages in Madanapalle Mandal, and the Mandal Revenue Officer, Madanapalle passed an order under Section 145 Cr.P.C. prohibiting petitioner from entering the land. He also stated that petitioner questioned the same in Criminal

Revision Petition No.745 of 2000 before this Court, and this Court quashed the said proceedings by a judgment dt.05.03.2002. It is also admitted that notification under Section 4 (1) of the Act and declaration under Section 6 of the Act were approved by 4th respondent on 07.05.2010 and they were also published in the District Gazette, newspapers and in the locality as per provisions of the Act.

6. However, it is asserted that petitioner purchased the property knowing fully well that the said land was being used as a burial ground over the last fifty years, that possession of the land was not taken by respondents, that there is no necessity to withdraw the notification issued under the Act in 2010 since the said notification lapsed on 31.05.2012, and it is for petitioner to protect the land from villagers since land purchased by him was already being used as a burial ground.

7. The counsel for petitioner contended that after petitioner purchased the land in 1999, he was prevented by the Mandal Revenue Officer, Madanapalle from entering the land by passing of an order under Section 145 Cr.P.C., which was challenged by petitioner in Criminal Revision Petition No.745 of 2000 in this Court, and this Court quashed the said proceedings on 05.03.2002.

8. The counsel for petitioner contended that after the draft notification and draft declaration were approved by

1st respondent on 07.05.2010 and the same was published in the District Gazette, newspapers and in the locality as per the provisions of the Act, which is also admitted by respondents in the counter-affidavit, the Scheduled Caste community persons of Gandhipuram and Kummarapuram villages in Madanapalle Mandal have started using petitioner's land as a burial ground; and now it is not open to respondents to state that the land was already being used as a burial ground for more than fifty years and deny compensation to petitioner. He also contended that no material is placed by respondents before this Court to show that the land was already being used as a burial ground by the time the petitioner purchased it.

9. I find considerable force in the contention of the counsel for petitioner.

10. The respondents are not disputing the title of petitioner to the subject land, but they are trying to blame petitioner for having purchased the land containing burial ground without placing any material before this Court to prove that by the date the petitioner purchased the land in the Court auction on 14.06.1999, there was already a burial ground in the land.

11. Having issued a draft notification and declaration under the provisions of the Act (which was approved by 1st respondent on 07.05.2010) and published in the

District Gazette, newspapers and in the locality as per the provisions of the Act, and having given an impression to the general public as well as members of the Scheduled Caste community in the neighbouring villages that petitioner's land could be used as a burial ground, the respondents could not have deprived the petitioner of compensation for the said land under the provisions of the Act. Once such publicity is given that the land has been acquired under the provisions of the Act by issuing Section 4 (1) notification and Section 6 declaration by publishing them in the District Gazette and in the newspapers, naturally the people of the Scheduled Caste community would believe that the land has been acquired for use as a burial ground by them; and they would start burying their dead in the land and the petitioner would be powerless to stop them. After encouraging the persons of the Scheduled Caste community to use petitioner's land as a burial ground for two years, the respondents are *estopped* from now contending that they need not acquire the land and they need not pay any compensation to petitioner under the provisions of the Act. This action is clearly arbitrary, illegal and violative of Articles 14 and 300-A of the Constitution of India.

12. Therefore, the Writ Petition is allowed and respondents are directed to acquire the land admeasuring Acs.2.50 cents in Survey No.461, situate at Ponnetipalem Village in Madanapally Mandal, Chittoor District under the provisions of Right to Fair Compensation and

Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay compensation to him under the said Act. This exercise shall be completed within a period of six (06) months from the date of receipt of a copy of this order. The respondents shall also pay costs of Rs.2000/-to petitioner within a period of four (04) weeks from the date of receipt of a copy of this order.

13. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-06-2016

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