

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No. 28391 OF 2009

ORDER:

Learned counsel for the petitioner was absent on 15-11-2016. Today, when a request was made in the morning seeking further adjournment, the request was denied and the case is passed over. When the matter is taken up after lunch, none appeared for the petitioner.

2. It is the case of the petitioner that she is owner and possessor of premises bearing Nos. 23-1-1119, 23-1-1119/1 to 6, 23-1-1119/5/1 and 2 which were constructed in the land admeasuring 341.44 square yards. It is her case that the property was gifted to her by her husband under oral HIBA during the year 1985. While so, the Municipal Corporation of Hyderabad issued a notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short, 'the Act'), on 06-03-2007. In the said notification, premises bearing Nos. 23-1-1115 to 1118 were mentioned and those mulgies belong to her son. It is her case that the said premises were constructed in the land admeasuring 97.66 square yards. For the premises in 23-1-1119 along with by-numbers are concerned, the extent is 341.44 square yards. Since the said door numbers were not mentioned in the notification, the petitioner was advised not to take any further steps. When some officers came for taking measurements and in the process they were also taking the measurements of the petitioner's property, she came to know that a notification was already issued on 06-03-2007 and they were taking the measurements in pursuant to the said notification. In those circumstances, she filed W.P.No. 26370 of 2008 challenging the dispossession and the said Writ Petition was disposed of on 03-12-2008 recording the statement made on behalf of the respondents that the property of the petitioner was not affected. Thereafter, a notification was issued under Section 4 (1) of the Act seeking to acquire an extent of 156.68 square meters equivalent to 187.40 square yards in

respect of premises bearing Nos. 23-1-1119/126, 23-1-1119/5/1 and 23-1-1119/5/2 owned by the petitioner. The petitioner filed her objections on 09-06-2009. Without conducting any inquiry, an order was passed on 24-06-2009 rejecting the objections and declaration under Section 6 (1) of the Act was published on 30-06-2009. Challenging the order dated 24-06-2009, the petitioner filed W.P.No. 13588 of 2009. This Court granted an *interim* direction not to dispossess the petitioner by order dated 09-07-2009. Thereafter, respondent No. 2 filed an application in W.P.M.P.No. 28092 of 2009 seeking to withdraw the draft notification under Section 4 (1) of the Act published in the District Gazette dated 08-05-2009. The said application was allowed and consequently, W.P.No. 13588 of 2009 was closed as infructuous. Thereafter when there was an interference with her property, the present Writ Petition was filed challenging the action of respondent Nos. 1 and 2 in seeking to dispossess the petitioner in respect of the mulgies and the land admeasuring 341.44 square yards situated in Panch Mohallah, Moghalpura, Hyderabad.

3. This Court, by order dated 29-12-2009, granted *interim* stay of dispossession of the petitioner in the *meanwhile*.

4. Seeking vacation of the said order, W.V.M.P.No. 48 of 2010 was filed along with the counter affidavit stating that the Assistant City Planner, Circle – 1, GHMC, Hyderabad, placed a requisition on 31-01-2007 for acquisition of certain properties for the purpose of road widening from Charminar to Falaknuma situated at Shaheer-e – Hyderabad Village, Bahadurpura Mandal, Hyderabad District. A survey was conducted pursuant to the said requisition and as per the attested sub-division record, the total extent of attested area in respect of various premises is as follows:

S.No.	Premises Number	T.S.No.	Ward No.	Block	Extent in square meters	Extent in square yards
1.	23-2-276	5/1	217	J	14.92	17.85
2.	23-2-678, 677	5/2	217	J	29.40	35.17
3.	23-2-679	5/3	217	J	14.40	17.23
4.	23-1-680	5/4	217	J	17.28	20.67
5.	23-1-1115 to 1118	2/2 & 4/2	217	A	203.80 30.00	243.80 35.89
6.	23-2-621	2/2	217	M	9.60	11.48
7.	23-2-620	2/3	217	M	10.20	11.60
8.	23-2-153	2/4	217	M	9.70	11.60

The draft notification was published on 06-03-2007 invoking the urgency clause and the draft declaration was published on 07-03-2007. The land was acquired from the petitioner's family and it falls in T.S.Nos. 2/2 and 4/2 of an extent of 150 square yards, wherein premises Nos. 23-1-1115 to 1118 are situated and another extent of 341.44 square yards, wherein premises Nos. 23-1-1119, 23-1-1119/1 to 6, 23-1-1119/5/1 and 23-1-1119/5/2 are situated. In the draft notification and declaration, the area was shown as 279.69 square yards but the two T.S. numbers covered by the door numbers consist of 13 mulgies. In the award, the son of the petitioner filed a claim petition claiming to be the owner of the entire property and there was a mistake in the requisition as well as the draft notification and declaration in not notifying all the 13 mulgies but the entire land was covered under the notification as well as in the declaration. An award was passed on 24-11-2008 awarding compensation for the entire land of 279.69 square yards. Neither the petitioner nor her son ever pointed out that the total land of 279.69 square yards is owned by both of them. In W.P.No. 26370 of 2008, learned standing counsel for G.H.M.C. by mistake stated that the land and

building were not included and her possession would not be disturbed. That mistake led to the issuance of another 4 (1) notification on 08-05-2009 including 9 door numbers pertaining to 9 mulgies. When the petitioner frilled W.P.No. 13588 of 2009, the said mistake was realized and W.P.M.P.No. 28092 of 2009 was filed seeking permission to withdraw the draft notification dated 08-05-2009. In those circumstances, W.P.No. 13588 of 2009 was closed. The draft notification dated 06-03-2007 and draft declaration dated 07-03-2007 cover all the 13 mulgies and an award was passed on 24-11-2008. The entire land acquisition proceedings became final in respect of all the 13 mulgies bearing door Nos. 23-1-1115 to 1118, 23-1-1119, 23-1-1119/1 to 6, 23-1-1119/5/1 and 5/2. The petitioner and her son have been living jointly in the same house and the petitioner is aware of the proceedings. The property was originally purchased by the petitioner's husband, late Mohd. Khaja Miyan. After the death of the original owner, the names were not mutated. Hence, the claim of the petitioner that she got the property under HIBA cannot be believed.

5. When a notification was issued pursuant to the order of this Court in W.P.No. 26370 of 2008 dated 03-12-2008, the petitioner filed her objections on 09-06-2009, they were overruled and an order was communicated on 24-06-2009. The petitioner herself appeared on 09-06-2009. A perusal of the declaration dated 06-03-2007 shows that it was issued for an extent of 339.30 square meters equivalent to 405.90 square yards, wherein the property of the petitioner was shown as 23-1-1115 to 1118 in the name of one Haji Pasha in respect of T.S.No. 2/2, Ward No. 217, Block No. A and T.S.No. 4/2, Ward No. 217, Blcok No. A. The total extent mentioned was 243.81 square yards and 35.89 square yards. 243.81 square yards stood in the name of Abdul Ghorī Miya as the person interested and 35.89 square yards in the name of Sahzada Abdullah as the person interested. The petitioner filed W.P.No. 26370 of 2008 and the same was disposed of on 03-12-2008 on the wrong statement made by leaned standing counsel that the petitioner's land and building were not included

in the notification and if the same is required, they will follow the due process of law. Accordingly, they issued another notification on 08-05-2009 and a notice was issued to the petitioner on 15-05-2009 calling for her objections. The petitioner appeared before the authority on 09-06-2009, filed her objections and her objections were rejected by order dated 24-06-2009. The petitioner filed W.P.No. 13588 of 2009. After filing the said Writ Petition only, the mistake in not including the property of the petitioner in the earlier notification was realized. W.P.M.P.No. 28092 of 2009 was filed seeking permission of the Court to withdraw the draft notification under Section 4 (1) of the Act issued on 08-05-2009 and the said application was allowed. As a result, the draft notification on 08-05-2009 as well as the order passed pursuant to the inquiry under Section 5-A on 24-06-2009 have become infructuous. No corrigendum was issued to the notification dated 06-03-2007 or to the declaration of even date. However, an award inquiry was conducted without specifically including the premises of the petitioner but indicated the T.S. numbers covering the property of the petitioner. In the award inquiry, the son of the petitioner was present and filed a claim petition along with title documents indicating the name of his father. Accordingly, an award was passed on 24-11-2008 and a notice was issued to the son of the petitioner. Now, it is stated that both the son and the mother are residing in the same house and the mother knows about the acquisition but taking advantage of the laches in the declaration by not including the specific premises, the present Writ Petition was filed though the total extent of the land under acquisition did not vary.

6. There is no proof of title to the petitioner as no mutation proceedings were effected in favour of the petitioner consequent to the death of her husband. The son of the petitioner appeared before the Land Acquisition Officer in the award inquiry and an award was passed in favour of the son of the petitioner. Though there are technical irregularities, since the award was passed for the total extent of 279.70 square yards covered by the land in T.S.Nos. 2/2 and 4/2 of Block A in

Ward No. 217 on 24-11-2008, this Court sees that no serious prejudice is caused to the petitioner. The land was required for widening of the road from Charminar to Falaknuma and not only the land of the petitioner but others' land was also included. The order of dispossession was obtained after one year of passing of the award on 29-12-2009. In the counter affidavit filed on 16-01-2010, it is stated that even though the acquisition proceedings were completed on 24-11-2008, the road widening work could not be taken up due to dilatory tactics adopted by the petitioner taking advantage of the printing mistake in the draft notification dated 06-03-2007. The property stood in the name of the husband of the petitioner and her son, claiming to be a successor, participated in the award proceedings. It appears that the awarded amount was not paid to the son of the petitioner. Now, the award was passed for an amount of Rs.52,94,680/- and if the petitioner has any claim with regard to the share in the said awarded amount, it is open to the petitioner to approach respondent No. 2 claiming her share in the awarded amount within one month from the date of receipt of a copy of this order, failing which respondent No. 2 shall take appropriate proceedings in accordance with law.

6. The Writ Petition is accordingly disposed of subject to the above observations. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed in consequence. No order as to costs.

A.RAMALINGESWARA RAO, J.

Date: 16th November, 2016.
JSK