

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.8547 of 2016

ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleader for Revenue appearing for respondents.

2. Petitioners are owners of agricultural land of extent of Ac.5.87 cts in Sy. No.314 of Dorasanipadu village, Dwaraka Tirumala Mandal, West Godavari District having purchased the same under registered sale deeds bearing document Nos.802/2004 dt.08-07-2004, 803/2004 dt.08-07-2004 and 821/2004 dt.12-07-2004.

3. A draft Notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the 1894 Act') was issued by 2nd respondent vide proceedings G2/5211/2004 dt.16-02-2005 proposing to acquire a vast extent of land for the purpose of development of Sri Venkateswara Swamy Vari Devasthanam, Dwaraka Tirumala village Mandal. This included an extent of Ac.5.87 cts in Sy. No.314/2 belonging to the petitioners. Declaration under Section 6 of the said Act was approved on 02-02-2005 and was published in the Gazette on 24-02-2005.

4. Petitioners names were not published either

in the draft Notification under Section 4 (1) of the 1894 Act or in the declaration published under Section 6 of the said Act. There was also no notice to them during the award enquiry and therefore they were not aware of the land acquisition proceedings. Later they came to know that award was passed on 09-04-2005 in respect of their neighbours' land. They then filed W.P.No.5840 of 2009 questioning the very acquisition of their land but it was dismissed on 03-06-2010 on the ground that an award was already passed.

5. Petitioners allege that the Award No.2/2005 was passed on 9-04-2005 in respect of their land, that respondents have not taken possession of that land and they assert that they are in possession and enjoyment of this land even now. They also allege that the respondents had kept the compensation amount in revenue deposit without paying the same to them. .

6. They contend that from 01-01-2014, the 1894 Act was repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 2013 (for short 'the 2013 Act'). They rely on sub section (2) of Section 24 of the said Act which states that if land acquisition proceedings had been initiated under the 1894 Act and the award was passed under Section 11 of the said Act more than five years prior

to the commencement of the 2013 Act, but physical possession of the land was not taken or compensation is not paid, then the proceedings under the 1894 Act lapse. They therefore contend that the impugned award dt.09-04-2005 has declared as illegal, void and as lapsed. They also placed reliance on the judgment in **Pune Municipal Corporation and another Vs. Harakchand Misirimal Solanki and others** [\[1\]](#).

7. Counter affidavit is filed by 3rd respondent admitting the fact that the land of the petitioners was included in the Notification issued under Section 4 (1) of the 1894 Act but contend that in the proceedings relating to the passing of the award, the petitioners' vendors' Ambati Seshayya and others did not participate, and in spite of the same a sum of Rs.13,27,794/- was awarded to the petitioners' vendors. It is also stated that the possession of the land was taken in 2005 itself and the petitioners never came forward claiming title of the land or to seek payment of compensation. However it is admitted in para-9 of the counter affidavit that the compensation amount awarded in respect of the extent of Ac.5.87 cts in Sy. No.314/2 which belongs to the petitioners is not deposited in any Civil Court but it is only kept in revenue deposit. It is therefore asserted that the petitioners cannot seek for quashing of the Award No.2/2005 at this stage

particularly when W.P.No.5840 of 2009 filed by them was dismissed on the ground that award had already been passed.

8. From the above narration of facts, it is clear that the extent Ac.5.87 cts in Sy. No.314/2 of Dorasanipadu village originally belonged to Ambati Seshayya and others. It is nowhere denied by the respondents that the said persons had executed registered sale deeds being document Nos. Nos.802/2004 dt.08-07-2004, 803/2004 dt.08-07-2004 and 821/2004 dt.12-07-2004 in favour of the petitioners. Therefore on the date the sale deeds are executed, title in the said land passed to the petitioners.

9. There is no dispute that the notification under Sec.4(1) of the 1894 Act acquiring this land was issued on 16-02-2005 and it was published in the District Gazette on 24-02-2005 after the petitioners purchased the same. Unfortunately, the petitioners names were not disclosed in the said notification and no notices were also issued to them in the award enquiry before passing of the award No.2/2005 on 09-04-2005 by 3rd respondent.

10. Though the petitioners questioned this acquisition itself in W.P.No.9840 of 2009, the same was dismissed on 03-06-2010 on the ground that the award had already been passed. In my considered opinion, the

said dismissal of the Writ Petition does not in any way prohibit the petitioners in filing of the present Writ Petition seeking quashing of the award No.2 of 2005 dt.09-04-2005 on the basis of the right created in them by sub Section (2) of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act, 30 of 2013 (for short 'the 2013 Act').

11. Sub section (2) of Section 24 of the said Act states:

Section 24 - Land acquisition process under Act No 1 of 1894 shall be deemed to have lapsed in certain cases:

(1)

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act. 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

....”

Thus, even if acquisition proceedings had been initiated under the 1894 Act and an award is passed under Section 11 of the said Act, if such award is passed more

than five years prior to the commencement of 2013 Act, the said proceedings would lapse if physical possession of the land is not taken or if compensation has not been paid.

12. This provision has been interpreted by the Supreme Court in **Harakchand Misirimal Solanki** (1 supra) and the Supreme Court held that for the purpose of Section 24 (2), compensation shall be regarded as paid, if the compensation has been offered to the person interested or if such compensation has been deposited in the Court where reference under Section 18 can be made on the happening of any of the contingencies contemplated under Section 31 (2) of the 1894 Act. It clarified that deposit of amount of compensation in Government treasury is not equivalent to make payment of compensation to the land owners or persons interested; and that deposit of the amount of compensation with the State's revenue account is of no avail and cannot be held to be equivalent to payment of compensation to the land owners or persons interested.

13. This legal position is not disputed by the learned Government Pleader for Land Acquisition appearing for respondents.

14. In the present case, it may be that possession of the land claimed by the petitioners was taken in 2005.

But it is admitted that the compensation amount determined under the above award was not deposited in Civil Court but it was kept in the revenue deposits.

15. Therefore, in view of the above legal position, such deposit in the revenue account of the State cannot be termed to the equivalent to payment of compensation to the petitioners or to persons interested. Consequently, I have no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under sub Section (2) of Section 24 of the 2013 Act.

16. Therefore, the Writ Petition is allowed; the Award no.2/2005 (Rc.(H) 1228/2004) dt.9.4.2005 passed by the 3rd respondent is declared as null and void; and the respondents are directed to initiate proceedings under the 2013 Act afresh within four weeks from the date of receipt of a copy of the order, determine the compensation payable to the petitioners and pay the same to the petitioners within six months from the date of issuance of such Notification under the said Act. The respondents shall also pay costs of Rs.5000/- to the petitioners within 4 weeks from today.

17. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-04-2016

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[\[1\]](#) (2014) 2 S.C.C. 183