

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.1457 of 2010

ORDER :

The petitioners were residents of Gundavolu Village and were in possession of certain structures therein.

2. The Executive Engineer, Telugu Ganga Project, Division No.1, Nellore, submitted requisition for acquisition of structures existing in this village for foreshore submersion of Kandaleru Reservoir under the Telugu Ganga Project. The said reservoir was constructed for utilizing as a balancing reservoir with capacity of 68 TMC, and its full reservoir level was +85.00 M level.

3. The local M.L.A., representing the Rapur Assembly Constituency, submitted to the State Government on behalf of the people of Gundavolu Village and two other villages that after release of 30 T.M.C. of Somasila Water it would cover the villages on all sides cutting off the link to several villages, and requested to take immediate action for payment of compensation for structures in Gundavolu Village and other two villages.

4. The Government in a Memo dt.01.02.2005 and other memos dt.20.12.2005 and 16.02.2005 requested the Special Collector, Telugu Ganga Project, Nellore to examine the request in consultation with the District Collector, Nellore. Basing on the reports of the Special

Collector, Telugu Ganga Project, Nellore and the Chief Engineer, Srikalahasti, the Government decided to acquire the structures so that the villages can be evacuated and complete relief and rehabilitation can be done which would facilitate impounding the reservoir level up to +85.00 M level by the end of 2006. It also requested to get verification of structures done carefully by forming strict guidelines and forming suitable team under the direct supervision of the Joint Collector to safeguard Government's interest by checking non-genuine claims.

5. Thereupon, the Executive Engineer, Telugu Ganga Project, Division No.1, Nellore gave a letter / requisition dt.12.01.2007 for acquisition of structures existing in Gundavolu Village, Rapur Mandal, Nellore District. Thereafter, proceedings under Land Acquisition Act, 1894 (**for short, 'the Act'**) read with the amendment to the said Act in 1984, were initiated to acquire such of the structures which were not at the disposal of Government and belonged to private persons, such as petitioners. A Low Level Committee also inspected each and every structure and submitted proposals to the High Level Committee for approval and the same were approved by the High Level Committee.

6. Proposals for publication of notification under Section 4 (1) of the Act were submitted for acquisition of structures existing in Gundavolu Village. The draft

notification under Section 4 (1) of the Act was approved on 24.04.2007 and it was published in the Andhra Pradesh Gazette on 01.05.2007. It was also published in the Andhra Jyothi Daily newspaper and Andhra Prabha Daily newspaper on 06.05.2007. The substance of the notification under Section 4 (1) was also published in the localities on 09.05.2007.

7. Declaration under Section 6 of the Act was approved by the High Level Committee on 25.04.2007 and it was published in the Gazette on 04.05.2007. It was also published in Praja Sakthi Daily newspaper and Vaartha Daily newspaper on 09.05.2007. The substance of the draft declaration under Section 6 of the Act was also published in the localities on 20.05.2007.

8. It was found that there were 640 structures in Gundavolu Village including Harijanawada, Arundhatiyawada and Girijanawadas, as per the notification and also an *addendum*. The structures under acquisition were got surveyed, sub-division records were got prepared and noted on plotted sketches.

9. Notice under Sections 9 (1) and 10 of the Act were published in the prescribed manner; and notice under Sections 9 (3) and 10 of the Act were served on petitioners proposing to acquire the structures for the purpose of submergence of Kandaleru Reservoir.

Petitioners were asked to appear on 04.09.2008 before the Special Deputy Collector (Land Acquisition), Telugu Ganga Project, Rapur, Nellore District, during his camp at the Gundavolu Village, showing the nature of their interest with particulars, their objections, if any, to the measurements, and also to put in a statement of other interests.

10. Award enquiry was conducted on 05.09.2008, 09.09.2008, 11.09.2008, 12.09.2008, 18.09.2008, 03.10.2008, 14.04.2009 and 15.04.2009.

11. No objections were received at the time of award enquiry, although requests for higher value of compensation were made.

12. An Award No.2 of 2009-10, dt.18.05.2009 was passed by 2nd respondent. The Award recites that 2nd respondent inspected the structures along with the engineering officials on 04.03.2009 and 05.03.2009. Curiously, in the Award, it is stated that the structures which were in occupation of petitioners were in fact located on Government land and on that basis only *ex gratia* was awarded to petitioners (and not compensation under the Act), quoting G.O.Ms.No.192, Irrigation & CAD (PW-TGP.II(2)) Department dt.02.12.1998. It was stated that under the said G.O. only *ex gratia* is payable since the structures were constructed on *Poramboke* lands by

landless poor persons.

13. On the same day, a proceeding in Rc.C.70/2007 dt.18.05.2009 was issued by 2nd respondent stating that the Award dt.18.05.2009 has been passed for compensation to structures erected in patta lands, but certain structures particularly those belonging to petitioners, were found to be in Government *poramboke* lands and only structure value was ordered for payment as per estimates prepared by the Engineering Department. No benefits such as *solatium*, Additional Market Value, Interest, prescribed under the Act were granted to petitioners.

14. Aggrieved by this action of 2nd respondent, the petitioners filed the present Writ Petition, insofar as the 2nd respondent did not pass an Award for payment of compensation under the Act and for above benefits as regards the structures of petitioners.

15. The petitioners contend that they are natives of the village, that their fathers and fore-fathers were residing in the houses which were acquired by respondent; that at no point of time, the Government had made a claim that the land covered by the houses of petitioners was *Poramboke* land; and that two years after the notification under Section 4 (1) was issued, in the Award for the first time, it was not open to 2nd respondent to say that the houses of

petitioners were existing in Government *poramboke* lands. They contend that they are also entitled to *solatium*, additional market value and interest as per the provisions of the Act, that the action of 2nd respondent in only paying the value of the structures to petitioners as fixed by the Engineering Department is not correct, and petitioners cannot be deprived of statutory benefits under the Act.

16. The counsel for petitioners reiterated the said submissions.

17. The 2nd respondent filed a counter-affidavit on behalf of respondent nos.1 and 2 stating that the structures relating to petitioners were raised in Government land without any authority of law and illegally, and by mistake the structures relating to the petitioners were also notified; since the structures were raised in the Government land, petitioners were not entitled for compensation under the Act and they were entitled to *ex gratia* only; and since the structures were notified by mistake under the Act, the same were deleted from the Award at the time of passing of Award.

18. The learned Government Pleader for Land Acquisition appearing for respondents reiterated the said submissions.

19. From the facts narrated above, it is clear that

notification under Section 4 (1) of the Act was issued for acquiring the structures of petitioners in Gundavolu Village on 01.05.2007, and subsequently declaration under Section 6 of the Act was also published in the Gazette on 04.05.2007.

20. Under Section 4 (2) of the Act, the State or its representative, the 2nd respondent, is entitled to enter upon and survey and to do all other acts necessary to ascertain whether the land is adaptable for the public purpose for which it was being acquired. It was also entitled to set out the boundaries of the land proposed to be taken.

21. The Award passed by 2nd respondent states that the structures under acquisition were got surveyed and sub-division records were also got prepared. Therefore, it cannot be contended by respondents at this point of time that the structures were in Government land and they were notified by mistake, since it was always open to Government to publish any *errata* notification deleting the structures, if they were found to be in Government land, and if it was felt that for such structures, the provisions of the Act relating to payment of compensation under the Act were not to be applied. Admittedly, this has not been done. So, the contention of respondents cannot be countenanced. Without taking recourse to de-notifying the structures, it was not open to respondents to deny

compensation under the Act for the structures of petitioners at the time of passing of the Award. The Award has to be in conformity with the notification under

Section 4 (1) of the Act and persons whose structures are acquired under the Act are entitled to claim compensation under the Act, and they cannot be denied the same on the ground that the said structures were in Government land. If this stand is accepted, it would amount to permitting the respondents to act contrary to the Section 4 (1) notification and Section 6 declaration issued under the provisions of the Act.

22. That apart, the Award reveals that 2nd respondent inspected the structures on 04.03.2009 and 05.03.2009 along with engineering Officials. He does not state that any notice of such inspection was given to the petitioners. In the course of the award enquiry under Section 11 it is incumbent on the 2nd respondent to put petitioners on notice that he is proceeding to inspect the structures. If he entertained any doubt that the structures were not located in private land, but in Government land, it was incumbent on the part of 2nd respondent to disclose this fact and give an opportunity to petitioners to establish that they were not located in Government land. Once the project has come up and the land is submerged, it would be impossible to verify the claim of respondents that petitioners' structures were located in Government land. It is clear that 2nd

respondent has not acted in the manner mandated by Section 11, and given an opportunity to petitioners to dispute the stand taken by the State Officials that the structures belong to petitioners were in Government land. For the first time, the petitioners were informed of this fact in the Award No.2 / 2009-10 passed on 18.05.2009 by 2nd respondent and in the proceeding Rc.C.70/2007 dt.18.05.2009, two years after Section 4 (1) notification was issued under the provisions of the Act.

23. Therefore, the action of 2nd respondent in passing the Award denying compensation to petitioners under the provisions of the Act, i.e., benefits such as *solatium*, additional market value and interest and awarding to them only the value of the structures as fixed by the Engineering department, cannot be sustained. The petitioners are entitled to the above statutory benefits as provided under the Act.

24. Therefore, the Award No.2 of 2009-10, dt.18.05.2009, passed by 2nd respondent is set aside. The Writ Petition is allowed, and the 2nd respondent is directed to pass afresh an Award following the provisions of the Land Acquisition Act, 1894 and grant compensation to petitioners including the above statutory benefits under the said Act. This exercise shall be completed within a period of four (04) months from the date of receipt of a

copy of this order. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-06-2016

Ndr/*