

HONOURABLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.7169 of 2010

ORDER:

1. The 1st petitioner claims to be the owner of the land of an extent of Ac.03.03 cents in Sy.Nos.118/1B and 118/2 of chandapuram village, Nandigama Mandal, Krishna District, whereas the 2nd petitioner purchased Ac.0.50 cents out of the said land. It is the case of the petitioners that in the first week of October 2004, the 4th respondent and his subordinates approached the 1st petitioner and expressed their intention to acquire the above land for construction of 132/33 K.V. sub-station at Nandigama as the said land was found to be suitable for the said purpose. During negotiations, an amount of Rs.4,00,000/- per acre was agreed and a consent letter was obtained on 05.10.2004. The sub-station contract was awarded on 09.03.2005 and thereafter a notification under Section 4 (1) was published on 27.06.2005 followed by a declaration under Section 6 of the Act on 12.07.2005. The Land Acquisition Officer fixed the compensation at Rs.3,50,000/- per acre and the petitioners agreed for the same. On 16.08.2005, 80% of the agreed compensation along with solatium and additional market value was paid by taking possession of the land. However, an award was passed fixing the compensation at Rs.2,00,000/- per acre and challenging the said award No.38 of 2008 dated 13.08.2009, the present writ petition was filed.

2. This Court by order dated 30.03.2010 directed the respondents not to recover the differential amount sought to be recovered under the impugned award. Seeking vacation of the said order, W.V.M.P.No.2628 of 2010 was filed along with a counter-affidavit. It is stated in the counter-affidavit that after publishing the declaration, the Sub Collector inspected the land and proposed a rate of Rs.5,04,350/- per acre and submitted a report to the District Collector, Krishna on 12.08.2005. Accordingly, 80% of the compensation was paid to the land losers on 04.08.2005 and possession was taken on 16.08.2005. Subsequently, the Joint Collector, Krishna, fixed the market value at Rs.2,00,000/- per acre. Accordingly, an award was passed on 13.08.2009 for an amount of Rs.2,00,000/- per acre and ordered for recovery of excess payment of compensation of Rs.4,24,584/- paid to the petitioners. The petitioners filed a representation before the Land Acquisition Officer on 30.10.2009 requesting to refer the award to the Civil Court under Section 18 of the Land Acquisition Act and accordingly it was sent to the learned Senior Civil Judge Court, Nandigama on 12.11.2009. It appears that the said reference was numbered as L.A.O.P.No.15 of 2010 and ultimately the said O.P. was closed as the claimants were called absent on 19.06.2014.

3. Though the above facts are not in dispute, the learned Counsel for the petitioners submits that passing of the award on 13.08.2009 is *non est* in law as by the date of passing the said award, the

proceedings should lapse by operation of Section 11-A of the Land Acquisition Act. He also placed reliance on the decisions of the Supreme Court in *M/s Soorajmull Nagarmull v. State of Bihar*¹ and *Laxmi Devi v. State of Bihar*².

4. In the instant case, the declaration under Section 6 of the Land Acquisition Act was published on 12.07.2005, 80% of the compensation was paid on 04.08.2005 and the possession of the land was taken on 16.08.2005. The award was passed on 13.08.2009 though it should have been passed within two years from the date of publication of declaration under Section 6 of the Act i.e., 12.07.2005. As on the date of passing of the award on 13.08.2009, the proceedings should lapse by operation of Section 11-A of the Land Acquisition Act. The payment of 80% of compensation is of no consequence in view of the decision of the Supreme Court in *Laxmi Devi case* (2nd *supra*). The payment of said compensation amount and the effect of Section 11-A of the Land Acquisition Act in the light of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013) was considered by the Supreme Court in *Laxmi Devi case*.

5. In terms of the aforesaid decisions of the Supreme Court, the acquisition pursuant to Section 4 (1) notification dated 27.06.2005 is set aside and the respondents are directed to issue a fresh notification under Section 4 of the Act 30 of 2013 within eight weeks

¹ AIR 2015 SUPREME COURT 3400

² (2015) 10 SUPREME COURT CASES 241

from the date of receipt of a copy of this order. The payment of compensation pursuant to the said notification shall be in accordance with the provisions of the Act 30 of 2013.

6. The Writ Petition is accordingly allowed. No order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

A.RAMALINGESWARA RAO, J

23-11-2016
Gsn

