

HON'BLE SRI JUSTICE S.V. BHATT

W.P. No.1656 OF 2017

ORDER:

Heard Mr.P.Shashi Kiran for petitioner, the Assistant Government Pleader (Land Acquisition) for respondents 1 to 6 and Mr.Ashwin for respondents 7 and 8.

The petitioner prays for Mandamus declaring the action of respondents in not referring the matter to competent authority under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act') in spite of representation dated 05.11.2016 in connection with the acquisition of lands in Survey No.166AA of Kondapalli Village, Kukunoor Mandal, West Godavari District measuring Ac.3-31 gts.,as illegal, arbitrary and contrary to Article 300-A of the Constitution of India.

Respondents 1 to 6 have initiated land acquisition proceedings for acquiring several extents of lands for the purpose of Polavaram Project. Survey No.166AA of Kondapalli Village measuring Ac.3-31 gts. is one of the survey numbers. The case of petitioner is that the subject matter of writ petition was standing in the name of one Jalagam Narayan Rao and upon his demise, the same devolved in favour of Jalagam Surya Rao and the petitioner claims to be son of Jalagam Suray Rao. According to petitioner, either his grand father or father executed a conveyance in favour of any one much less respondent Nos.7 and 8 herein. The family of petitioner, it is alleged, continues to have right, title and possession of the property, and firstly the assertion of the petitioner is that the

petitioner is entitled for receiving compensation for acquiring the subject matter of writ petition and secondly, without prejudice to the main contention in the instant writ petition, the petitioner complains against the inaction of respondents in considering and passing orders on representation dated 05.11.2016 made for referring the matter under Section 64 of the Act to the competent authority, as illegal, arbitrary and amounts to not exercising the jurisdiction conferred on respondent No.6. On 18.01.2017, this Court granted the following interim order:

“Respondents 1 to 6 are directed not to pay or disburse compensation in respect of the subject property both to the petitioners as well as unofficial respondents. However, it is made clear that other proceedings may go on, in accordance with law.”

Respondents 7 and 8 filed counter affidavit and also petition to vacate the interim order. Respondents 7 and 8 rely upon registered sale deed No.889/1977 dated 01.08.1977 executed by Jalagam Narayan Rao in favour of respondent No.7 and also that respondents 7 and 8 are in continuous possession and enjoyment of Survey No.166AA. Till date, the names of respondents are recorded in revenue records, and pattadar pass book is also issued. Firstly, respondents 7 and 8 are entitled to receive compensation and secondly there is no ground to refer the matter under Section 64 of the Act. The respondents pray for vacating the interim order and also for dismissing the writ petition.

The Assistant Government Pleader for land acquisition places on record written instructions dated 22.08.2017 received from

respondent No.4 in the writ petition. The operative portion of the written instructions read thus:

“In this connection, it is submitted that Kondapalli village is one of the submergence villages under Polvaram Irrigation Project in Kukunoor Mandal and the Requisitioning Department has filed land to lands and schedules for acquisition of the lands fallen within the FRL of the Project. The Preliminary Notification u/s.11 (i) of the LA Act issued by the District Collector, West Godavari, Eluru on 21.06.2016. The said notification was got published in the News papers and also in the locality. The said notification was also got published in the A.P.Gazette Ex-Ordinary issue dated 27.06.2016. Further notices u/s.VI(B) of the Act were also published directing the persons interested to put in their objections for the entries made in the Preliminary Notification within 60 days from the date of the Preliminary Notification vide this Office Roc.No.A/84/2016, dated 27.06.2016. The objections received within the stipulated time were got enquired into in the Gram Sabha held at Gram Panchayat Office, Kondapalli on 30.08.2016. After publication of the Declaration u/s.19(i) of the LA Act notices u/s.21 of the Act were also issued vide this Office Roc.No.A/84/2016, dated 05.10.2016 directing the persons interested to attend the award enquiry to be held at Kondapalli village on 05.11.2016 and to establish their interest in the land. After following the procedure as contemplated under the LA Act 30/2013, the Land Acquisition Officer has passed Award No.20/2016-17 dated 08.03.2017.

But in due regard to the interim orders dated 18.01.2017 issued by the Hon'ble High Court of A.P. the compensation due on Ac.3.31 gts covered by Sy.No.160/AA has been kept in abeyance pending disposal of the writ petition No.1656/2017.”

Counsel for petitioner contends that the family of petitioner continues to be the owner and is entitled to receive the compensation. According to him, the sale deed relied on by respondents 7 and 8 suffers from contradictions and presents

improbable situation, therefore, there is dispute about who is entitled to receive compensation and according to him, the prayer for referring the dispute under Section 64 of the Act is rightly made and the inaction amounts to refusing to exercise the jurisdiction conferred on respondent No.6 and prays for a direction.

Mr. Ashwin appearing for respondents 7 and 8 places strong reliance on Section 64 of the Act which reads as follows:

64. Reference to Authority:- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested;

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a

further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.

and contends that right from the beginning till the award is passed at no stage of acquisition proceedings, the petitioner is treated as an owner or a person entitled to receive compensation or has been shown as awardee in the award passed by the Land Acquisition Officer, therefore, petitioner has no locus under Section 64 of the Act. He further illustrates his contention by relying upon Section 64 of the Act that in the given set of facts and circumstances, respondents 7 and 8, if are aggrieved by quantum or other benefits granted under the Act, they can alone ask for reference under Section 64. Section 64 is not available for resolving the dispute between the claimants to receive compensation. Adverting to the merits of the matter, he contends that the registered sale deed in favour of respondents 7 and 8 was executed in the year 1977. The presumption available in law with the execution of sale, incorporation of name of vendee in the revenue record has been duly given effect by respondent No.6. As long as the document and the entries continue, introducing a dispute contrary to recorded position is impermissible. Therefore preventing owners from receiving compensation is also not within the scope of Sections 75 and 76 of the Act. He finally submits that, if at all cause of action survives the remedy of petitioner is to move competent civil Court for reliefs of declaration etc., but not for reference under Section 64. He prays for dismissing the writ petition.

I have perused the material available on record and taken note of the submissions of counsel appearing for parties.

The circumstances and the contents are not reiterated for brevity. It is suffice to summarize these circumstances with this reasoning:

The petitioner takes note of sale deed No.889 of 1977 dated 01.08.1977. The petitioner accepts incorporation of names of respondents 7 and 8 in the revenue records and also that only respondents 7 and 8 are shown in all the land acquisition proceedings. Now *de hors* these admitted circumstances and documents, the petitioner is calling upon respondent No.6 to dispose of the representation by referring to Section 64 of the Act. After perusing the material, taking note of registered sale deed, entries in revenue records and also that the award is already passed, this Court is of the view that issuing a direction to consider the representation under Section 64 of the Act, for the present, amounts to preventing the owners from receiving the compensation. Hence the writ petition fails and is dismissed. The petitioner, if advised and law provides, can work out prayers against the documents on which respondents 7 and 8 are relying. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT, J

Date:30.08.2017
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