

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.20725 of 2014

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of mandamus to declare the Award passed by the 2nd respondent in Rc.C/70/2008/2010-2011 dated 12.05.2010 in so far as the lands of the petitioner in Sy.Nos.270/1B, 215/2B and 373/1 of Malyala village, Nandikotkur Mandal, Kurnool District, as illegal and unconstitutional and consequently to direct the respondents not to interfere with the peaceful possession and enjoyment of the land of the petitioner.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner claims to be the owner of the lands referred to above, which are his ancestral properties. At the instance of the 3rd respondent, the 2nd respondent initiated proceedings for acquisition of the lands for construction of a link channel under HNSS scheme to an extent of Ac.28.44 in the village of Malyala. Accordingly, 4(1) notice was published on 12.06.2009 and 5-A enquiry was dispensed with by invoking urgency clause under Section 17(4) of the Land Acquisition Act. Notices were given for conducting Award enquiry under Sections 9 and 10 of the Act. The petitioner along with other affected parties are said to have

demanded compensation of Rs.8 lakhs per acre, but the Land Acquisition Officer is said to have offered Rs.3 lakhs per acre. It is averred that nothing happened thereafter and the petitioner has not received any communication from any of the authorities with regard to the taking possession of the land. However, it is stated that neighbouring land owners have been paid compensation for the land acquired but no amount was paid to the petitioner. It is averred that when the petitioner obtained the possession certificate, the said certificate showed as if the lands have already acquired by the 3rd respondent. It is alleged that though the petitioner is in physical possession of the property and doing agricultural operations, the authorities highhandedly entered in the revenue records as if possession of the said land was taken. It is alleged that the 3rd respondent authorities are visiting the lands and are trying to dispossess the petitioner, even though the possession is still with the petitioner. It is averred that the plea taken by the 3rd respondent authorities that consent given by the petitioner is false and an award could not have been passed without a consent being given in writing by the land owner in the prescribed form is incorrect and improper. Hence, the present writ petition came to be filed.

3) By an order dated 24.07.2014, this Hon'ble court while issuing notice to the respondents, ordered not to dispossess the petitioner.

4) Learned counsel for the respondents 2 and 3 filed their counters disputing the averments made in the affidavit filed in support of the writ petition.

5) It is stated in the counter of the 2nd respondent that pursuant to the consent given by the petitioner in 9(3) and 10 notices, award enquiry statement, Form-III & IV (Agreement Bond) and 12(2) Notices, award came to be passed under section 11(2) of the Land Acquisition Act and the amount was also distributed to all the awardees except the petitioner as he did not turn up to take the compensation though consented. Hence, the said amount came to be deposited before the Treasury under a separate account. The Government Pleader placed on record the entire file to show that the petitioner has consented for surrendering the land along with the other neighbouring land owners and pursuant thereto consent award under Section 11(2) of the Land Acquisition Act came to be passed on 12.05.2010. Subsequently, the same was published in A.P. Gazette dated 12.06.2009 and DD was also published in A.P. Gazette Part-I Extraordinary issue SSP No.146 dated 15.06.2009.

6) The 3rd respondent stated in his counter that the Special Deputy Collector, L.A., HNSS Unit No.IV, Kurnool has acquired and handed over the requisitioned land to the Department vide Award No.1/2010-11 dated 12.05.2010. In reply to paragraph 3 of the affidavit, it is stated that after receipt of the requisitioned land through Award, the 3rd respondent has insisted the work executing agency to ground the excavation of link channel in the fields of petitioner and others as per the approved HPs. It is stated that due to strong protest from the petitioner, the agency was unable enter into the fields of the petitioner on 25.06.2010 and hence represented for settlement of the issues. It is stated that all the other neighbouring land owners except the petitioner has received the compensation and only with a view to cause obstructions to the project, the petitioner refused to receive compensation at a later point of time, though he voluntarily consented for surrendering the land. Having regard to the above, it is stated that there are no merits in the writ petition and the same is liable to be dismissed.

7) The learned counsel for the petitioner questions the Award on two grounds. Firstly, that though the Award reflects as if it was by consent, but the petitioner never gave any consent and what is stated in the Award is incorrect. The second ground urged by the

learned counsel for the petitioner is that possession was not taken from the petitioner and it is still in his custody.

8) In so far as possession is concerned, learned counsel for the petitioner would contend that the respondents 2 and 3 in their counters took two different stands, which is contrary to each other. In the counter filed by the Land Acquisition Officer, it has been stated that the land was acquired and possession was given to R-3. Whereas in counter filed by R-3, it is stated that due to strong resistency, possession could not be taken. Thus, it is urged that the possession, which was taken is only a paper possession and factually, the petitioner is still in possession of the said land.

9) The learned Government Pleader for Revenue would submit that though notices were issued to the petitioner, he did not participate in Award enquiry and consequently an award came to be passed in the year 2010. It is said that though the award came to be passed in the year 2010, the present Writ Petition came to be filed nearly four years later only with a malafide intention. It is his case that the petitioner cannot plead ignorance of the award passed since he was aware about the proceedings and all the neighbouring land owners attended the enquiry and also received the compensation. He further submits that the petitioner could not have filed a Writ under

Article 226 of the Constitution of India challenging the Award as the remedy lies elsewhere.

10) In reply the learned counsel for the petitioner would submit that the argument that there was a delay in coming to the court cannot be accepted for the reason that the petitioner was in possession of the property, doing agricultural operations and only when the respondents started interfering, he approached this Court.

11) In **Municipal Council, Ahmednagar v. Shah Hyder Beig**¹, the Apex Court following the decision in **C.Padma v. Dy.Secy. to the Govt. of T.N.**², held as under :

"In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases."

12) In **State of Rajasthan v. D.R. Laxmi**³, the Apex Court held that when the Award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226.

¹ (2000) 2 SCC 48

² (1997) 2 SCC 627

³ (1996) 6 SCC 445

13) In **May George v. Special Tahsildar and others**⁴, dealing with the issue as to whether Court can interfere when an award has been passed and also as to possession has been taken, the Apex Court after referring to Sections 4, 6 and 9 held as under:-

"25. The law on this issue can be summarized to the effect that in order to declare a provision mandatory, the test to be applied is as to whether non-compliance with the provision could render the entire proceedings invalid or not. Whether the provision is mandatory or directory, depends upon the intent of the legislature and not upon the language for which the intent is clothed. The issue is to be examined having regard to the context, subject matter and object of the statutory provisions in question. The Court may find out as to what would be the consequence which would flow from construing it in one way or the other and as to whether the statute provides for a contingency of the non-compliance with the provisions and as to whether the non-compliance is visited by small penalty or serious consequence would flow therefrom and as to whether a particular interpretation would defeat or frustrate the legislation and if the provision is mandatory, the act done in breach thereof will be invalid.

26. The instant case is required to be examined in the light of the aforesaid settled legal provision. In fact, failure of issuance of notice under Section 9(3) would not adversely affect the subsequent proceedings including the award and title of the Government in the acquired land. So far as the person interested is concerned, he is entitled only to receive the compensation and therefore, there may be a large number of disputes regarding the apportionment of the compensation. In such an eventuality, he may approach the Collector to make a reference to the Court under Section 30 of the Act."

14) Keeping in view the principles of law laid down, I shall now proceed to deal with the issue as to whether possession is still with

⁴ (2010) 13 Supreme Court Cases 98

the Writ Petitioner or the same has been taken over by the Government?

15) Before dealing with the said aspect, the principal contention which was advanced by the learned counsel for the petitioner is that, there was no consent for passing of the Award and that the petitioner was not aware about any such act. The original record, which has been placed before this Court, would show that the petitioner has signed giving consent. It is now urged by the learned counsel for the petitioner that signature of the petitioner was taken on documents, which were in English and the contents of the said document were not explained to the petitioner. Such a plea was never taken in the Writ Petition. For the first time, the said argument is sought to be advanced. However, after seeing the record, the learned counsel for the petitioner did not dispute the signature on those documents either in the writ affidavit or during the course of the argument, advanced before this Court.

16) As seen from the record, all the neighbouring owners gave consent for passing of the Award and also to receive the compensation amount. All the neighbouring land owners received the compensation and possession of the land was taken from them. That being the position, it cannot be said that the petitioner was not aware

about the same. In so far as discrepancy that has been pointed out in the two counters filed, it is to be noted that in the counter filed by Land Acquisition Officer, it has been stated that possession of the land was taken and land was handedover to the 3rd respondent. In the counter filed by the 3rd respondent it is urged that when his people went there to execute the work, there was obstruction. But that does not mean that the petitioner is still in possession. The averments in the counter only show that the petitioner herein protested and not allowed the agency staff into the said land. The argument of the learned counsel that it is highly improbable to believe that the agency like 3rd respondent would have allowed the petitioner to prevent them from executing the work, cannot be accepted. It all depends upon the factual situation on the ground. Since the acquiring agency was the 2nd respondent, probably the 3rd respondent might have thought of not entering into a dispute and create a law and order problem. However, a reading of the contents of the report, filed by the 3rd respondent, does not anywhere indicate that the petitioner is in possession of the land. It is only states that he prevented these people from carrying out the operations in the said land. The fact that the 3rd respondent has deployed men and machinery, itself shows that possession is taken by the 2nd respondent and the same is handedover to the 3rd respondent. Therefore, the plea of the

petitioner that he was not aware about the award being passed and that he is in possession of the property, cannot be accepted.

17) Having regard to the facts and circumstances of the case and in view of the judgments referred to above, I see no merits in this writ petition and the same is liable to be dismissed.

18) Accordingly, the Writ Petition is dismissed. No costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

Dt:25.04.2017
GM



JUSTICE C. PRAVEEN KUMAR