

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.1655 of 2007

ORDER:

This Writ Petition is filed by the petitioner to declare the action of the 1st respondent in trying to disburse the land acquisition compensation amount in favour of respondent Nos.2 and 3, when the civil suits are pending adjudication against respondent Nos.2 and 3 in O.S.No.41 of 2006 on the file of the Court of the Junior Civil Judge, Kalyandurg, Anantapuramu District and in CMA.No.20 of 2006 on the file of the District Judge, Anantapuramu and in Appeal No.RC.634/2006/B, on the file of Revenue Divisional Officer, Dharmavaram, Anantapuramu District and consequently, direct the 1st respondent not to disburse the land acquisition compensation amount in favour of respondent Nos.2 and 3 in respect of land in Sy.No.105, an extent of Ac.8.35 cents, and land in Sy.No.212-1, an extent of Ac.0.72 cents, in Konampalli Gram Polam, Beluguppa Mandal, Anantapuramu district, till completion of civil and revenue cases.

2. The brief facts of the case, according to the petitioner are as follows:

Petitioner's father purchased the land situated in Sy.No.105, an extent of Ac.8.35 cents, and in Sy.No.212-1, an

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extent of Ac.0.72 cents, in Konampalli Gram Polam, Beluguppa Mandal, Anantapuramu district, in the year 1969 and that his father had been in possession and enjoyment till his death. After death of his father, petitioner and his brother late Nagabhushana had been in possession of the said land. After the death of petitioner's brother ie., Nagabhushana, his wife Narayanamma and his son Nageswara are in possession and enjoyment of the said land along with petitioner by way of cultivation, without any interruption from any quarter. While the things stood thus, the Government acquired the said lands for the purpose of construction of Konampalli Dam. The respondent Nos.2 and 3 have nothing to do with petitioner's lands, but with an intention to get compensation in their favour, manipulated the revenue records with the assistance of revenue authorities and obtained pattadar pass books and title deeds, in their favour. Thereafter, the petitioner and his late brother filed civil suit for permanent injunction in O.S.No.41 of 2006, on the file of the Junior Civil Judge, Kalyandurg, Anantapur District. The Trial Court, at the initial stage granted injunction in their favour. Subsequently, at the stage of final hearing, dismissed the petition in I.A.No.77 of 2006 in O.S.No.41 of 2006, dated:9.6.2006, holding that once Land Acquisition Act proceedings are initiated, this Court has no jurisdiction to

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pass orders restraining respondent Nos.3 to 6 therein from giving compensation to respondent Nos.1 and 2.

3. Petitioner further submits that, aggrieved by the orders of the trial Court dated:9.6.2006, petitioner and his brother filed Civil Miscellaneous Appeal No.20 of 2006, on the file of the District Judge, Anantapuramu. Similar appeal was also filed before the Revenue Divisional Officer, Dharmavaram in R.C. No.634/2006/B, dated:1-4-2006, requesting to cancel pattar pass books and title deeds, in favour of respondent Nos.2 and

4. Smt. Narayanamma, W/o late K. Nagabhusana filed W.P.No.16666 of 2006, before this Court, challenging the action of the Revenue Divisional Officer, Dharmavaram in not cancelling pattadar pass books and title deeds issued in favour of respondent Nos.2 and 3. This Court by its order dated:26.8.2006, directed the Revenue Divisional Officer to dispose of the appeal within a period of three months from the date of receipt of the order. The said appeal is still pending before the Revenue Divisional Officer. The petitioner got issued legal notice dated:5-1-2007, to the Special Deputy Collector (Land Acquisition), requesting not to disburse the compensation amount in favour of respondent Nos.2 and 3.

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5. Counter-affidavit has been filed by the 4th respondent *inter alia*, stating that the petitioner has filed suit in O.S.No.41 of 2006 on the file of the Junior Civil Judge, Kalyandurg, against the 1st respondent and others from awarding compensation in favour of them. The application filed for grant of injunction was dismissed on 09-6-2006. Against the said order, an Appeal was preferred before the District Court, Anantapuramu and the same is pending. It is further stated in counter-affidavit that the petitioner having invoked jurisdiction of the Civil Court, cannot invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. The relief that is sought for in Writ Petition is identical to the relief that has been sought for in the Suit.

6. It is further stated in counter-affidavit of the 4th respondent that the petitioner has not impleaded the 4th respondent as party to the writ petition and he has impleaded his father who died more than 25 years ago as 2nd respondent and the writ petition has been filed against a dead person. The 3rd respondent is the brother of the 4th respondent and he also died in the year 2007 and his legal heirs were not brought on record. Basing on these two objections, Counsel for the 4th respondent prays for dismissal of the Writ Petition.

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7. This writ petition was admitted on 01-2-2007 and the 4th respondent impleaded himself as party respondent on 20.7.2010. Writ Petition was dismissed for default, as against 2nd respondent vide order dated:23-6-2011. No reply-affidavit to the counter-affidavit has been filed by the petitioner denying the averments made in the counter-affidavit.

8. Learned Counsel for the petitioner does not dispute the fact that the 2nd respondent is the father of the 4th respondent and that he died about 25 years back. Similarly, a special plea has been taken in the counter-affidavit of the 4th respondent that the 3rd respondent died in March, 2007 and his legal heirs were not brought on record. Even this fact is not disputed by the counsel for the petitioner. Admittedly, the petitioner has approached the Civil Court seeking the same relief of not awarding the compensation in favour of respondents Nos.2 and 3. In view of the facts and circumstances, this Writ Petition itself is not maintainable as the jurisdiction of the Civil Court has already been invoked. During the course of arguments, learned Assistant Government Pleader furnished written instructions of the Special Deputy Collector, Land Acquisition, Ananthapuramu, in Rc.No.E/91/2006, dated:04-12-2007. According to the said instructions, the award amount of Rs.8,37,731/- has been

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withdrawn vide cheque No.109030, dated:27-3-2008 and the same was deposited in the Court of Principal Senior Civil Judge, Ananthapuramu.

9. Learned Counsel for the 4th respondent submits that he does not have any objection for disbursement of the amount, after disposal of the pending litigation between the parties.

10. As seen from the record, as there are disputes between the petitioner and the unofficial respondents with regard to the said property and that CMA.No.20 of 2006 is still pending on the file of the District Judge, Ananthapuramu, and as the Counsel for 4th respondent does not have any objection for disbursement of the amount after disposal of the litigation between the parties, the 1st respondent is directed to disburse the same to the rightful owner of the property after disposal of the litigation between the parties.

11. The Writ Petition is disposed of accordingly. Miscellaneous Petition/s, if any, pending, shall stand closed.

KONGARA VIJAYA LAKSHMI, J.

Dated:19th December, 2017

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HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI



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Dt:19th December, 2017

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