

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.18267 of 2007

ORDER:

This writ petition is filed against the action of the respondents in acquiring the land in R.S.No.445/ 1 to an extent of Ac.1.35 cents of Vissakoderupalem, Palakoderu Mandal, West Godavari district, which is a burial ground, as illegal, arbitrary and violation of provisions of Land Acquisition Act (for short, 'the Act').

2. The brief facts of the case, according to the Petitioner, are that the Petitioner Society was registered under the Societies Registration Act, 1860. The petitioner-society is in possession of the land in Sy.No.445/ 1, consisting of Ac.6.01 cents, situated at Vissakoderu palem, Palakoderu mandal for more than 100 years. Some people in the village state that the said land was purchased from Kshyatriya people i.e., late Samanthapuri Padmaraju, the original owner of the land, and was donated at the time of construction of Ramalayam temple. The petitioner is in possession of the said land for more than a decade and filed Adangal, land revenue receipts. The said land is used by nearly 400 families of their community, along with others, residing in the village. Out of the said land, more than Ac.4.00 land was earmarked for being used as burial ground, and in the remaining land they have planted coconut trees, palmyra trees and sapota trees, and the income derived there from was being utilized for maintaining the Ramalayam temple, which was stated to have been constructed about 200 years back.

It is further submitted that after knowing about the proposal of the Government to acquire the said land in Sy.No.445/ 1, the petitioner society made a representation to the Chief Minister requesting to drop the proposal, and in response, the 3rd respondent issued a letter dated 27.05.2006 stating that the land in Sy.No.445/ 1 is not included in the acquisition proposals. However, later the 2nd respondent issued the Notification under Sec.4(1) of the Act proposing to acquire the land in Sy.No.445/ 1 to an extent of Ac.1.35 cents for the purpose of allotting house sites to the weaker section people of the village, and issued notice under Sec.5(A) to Sri Samanthapudi Padmaraju, who died about 40 years back, and who has no right whatsoever in the said land, having alienated the same by way of sale/ gift, and the respondent authorities are aware of the fact that the land is in exclusive possession of the petitioner-society. Hence, the petitioner made another representation dated 25.07.2006 to the 2nd respondent, but could not get any positive action. Therefore, the petitioner filed W.P.No.16725 of 2006 before this Court, challenging the said proposal of acquisition, which was disposed of by this Court on 14.08.2006 giving liberty to raise all objections before the 2nd respondent. However, the 2nd respondent did not consider the representation of the petitioner, and issued Form-6 under Sec.9(1) and 10 of the Act in the name of Padmaraju, ignoring the petitioner-society, which is in actual possession of the subject land.

It is further contended that selecting the subject land, which is adjacent to burial ground for allotting house-sites to the weaker section people is *prima facie* perverse and evidently the result of non-application of the mind by the respondent-authorities, as the same is not fit for house sites.

It is further stated that 75 coconut trees, 70 Palmyra trees and 25 Sapota trees exist in part of the proposed land in Ac.1.35 cents in Sy.No.445/ 1, and these income yielding trees are planted only for the purpose of getting some income, which can be utilized for the purpose of maintaining the very old temple situated therein.

3. The writ petition was admitted on 28.08.2007, and when the matter came up for hearing on 27.11.2007, this Court directed the respondents not to cut the trees on the disputed land for a period of one week, if they were not already cut. The said interim direction was extended for some more period. Thereafter, the petitioner filed WPMP.No.34118 of 2007 seeking amendment of the main prayer, and as the same was not opposed by the other side, this Court allowed the amendment. Later, on 07.02.2008, after the respondents filed their counter, the interim order granted earlier was vacated, observing as under:

“At the hearing, learned counsel for the petitioner did not show to the Court any document proving prima facie title of the petitioner-society. He, however, submitted that the possession of the Petitioner-Society has been admitted. Mere possession without title, in my prima facie opinion, does not entitle the petitioner to stall the acquisition proceedings; moreover out of Ac.6.01 cents of land an extent of Ac.1.35 cents alone is

proposed to be acquired. Since the proposed acquisition is for public purpose, I am not inclined to continue the interim order granted by this Court on 27.11.2007 and extended from time to time.”

4. Aggrieved by the said dismissal of the WPMP and vacating the interim order granted earlier, the petitioner carried the matter in appeal, vide W.A.No.1084 of 2008. However, the said appeal was disposed of, basing on and agreeing with the submissions made by the learned counsel for the appellant, that “if the writ petition is disposed of at an early date, it would be in the interest of both the parties” and directing the Registry to notify this writ petition for final hearing on 02.03.2009.

5. On behalf of the Respondents, the 2nd respondent/ Revenue Divisional Officer & Land Acquisition Officer, Narsapur filed a counter-affidavit stating that consequent to the decision of the Government to develop the villages and provide permanent housing to all under ‘Indiramma programme’, in the village of Vissakoderu, the authorities identified 278 beneficiaries for providing house-sites and that the subject land of Ac.1.35 cents in R.S.No.445/ 1B has been acquired, which stands registered in accounts in the name of Sri Samanthapudi Padmaraju and others. Accordingly, the respondents issued the notification under Sec.4(1), followed by 5A enquiry notice, requiring all the persons interested to lodge their objections if any and adduce any documentary evidence in support of their objections. But the petitioner society has not filed any documentary evidence in support of its contentions or title in the subject land, and hence the objections of the petitioner-society

are rejected. Thereafter, the declaration under Sec.6 of the Act has been published, and issued Award Enquiry Notices in Form-6 under Sec.9(1) and 10 of the Act etc., to all the concerned requiring them to appear in person or by an authorized agent to show their respective interest on the lands. In response to the same, the petitioner-Society, through Kukkala Venkateswara Rao, President filed a statement with the same contentions and requested to drop the acquisition proceedings, but he has not filed any evidence to establish the title of the Society. Therefore, the authorities considered their objections and passed Award on 23.06.2007 acquiring the land in question, and as the title and ownership of the disputed land is not established, the compensation awarded is ordered to be deposited in Civil Court for disposal according to law.

6. Heard the learned counsel for the petitioner-society and the learned Government Pleader for Land Acquisition, and considered the material on record. No reply has been filed disputing the contentions of the counter affidavit.

7. The learned counsel for the petitioner submits that the petitioner-Society is in possession of the subject land for the last several years. However, even today also, during the course of hearing, the petitioner is not in a position to substantiate or show any evidence to show that the petitioner-society is the owner of the subject land. The only contention of the petitioner is that it is in possession of the subject land even today also, and the said possession is not taken by the respondents/ authorities.

8. Admittedly, the interim direction granted in this writ petition is only with regard to cutting of trees existing in the disputed land, if they have not been cut as on that date. Even the said interim order was also vacated by this Court long back on 07.02.2008.

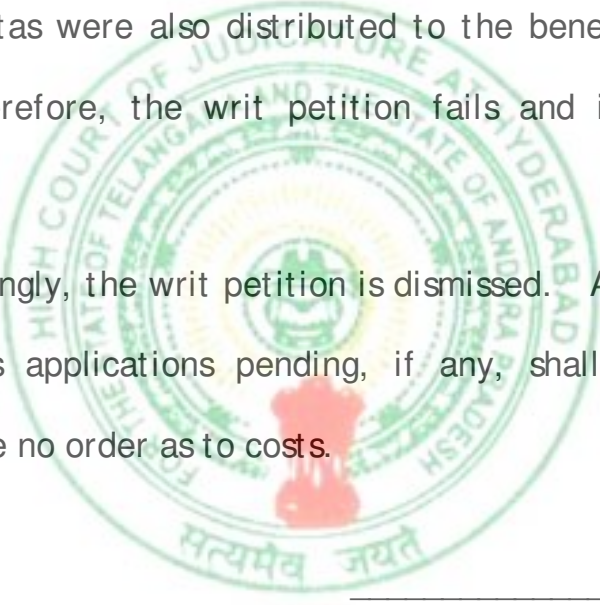
9. During the course of hearing, the learned Government Pleader for Land Acquisition submitted the latest written instructions of the respondent-authorities, dated 26.11.2017, which are placed on record. According to the said written instructions, the objections raised by the petitioner in 5A enquiry and the Award Enquiry were rejected, as the petitioner has not filed any documentary evidence to establish its title. It is also stated that Notice under Sec.12(2) of the Act was also given to the petitioner on 11.07.2007 itself informing the fact of passing of Award and about depositing the compensation in the Civil Court under Sec.31(2); and the physical possession of the land was taken by the Government, pattas were distributed to the beneficiaries; the post award action has also been completed, and Sec.13 notice published in Gazette was also submitted to the Collector, West Godavari.

10. Though the petitioner society has participated in the award enquiry through out, but did not produce any documentary evidence to establish its title over the subject land. Therefore, the objections raised by the petitioner-society were rightly rejected by the respondents/ authorities. Even before this Court also, the petitioner-society has not produced any acceptable

evidence in support of its claim and to establish its title over the subject land. In fact, the petitioner was also informed about the passing of the award and depositing the compensation before the Civil Court.

11. In view of the above, it is clear that the petitioner could not establish its title to the subject land, the acquisition proceedings were completed already in all respects, the compensation amount has been deposited before the Civil Court, the physical possession of the land was taken over by the respondents-authorities, and even the pattas were also distributed to the beneficiaries in the village. Therefore, the writ petition fails and is liable to be dismissed.

12. Accordingly, the writ petition is dismissed. As a sequel, the miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.


KONGARA VIJAYA LAKSHMI, J

Date: 04.12.2017
Kv

HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI



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