

THE HON'BLE SRI JUSTICE M.GANGA RAO

W.P. No.14797 of 2005

ORDER:

This writ petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to pass the award determining the compensation by fixing the market value of the land as on the date of notification issued on 10.11.2004 and to pay statutory benefits as per the provisions of the Land Acquisition Act, 1894 (for short 'the Act').

2. The case of the petitioners is that they own and possess residential and non-residential buildings, which are situated at a junction of National Highway 5 and 214, which passes through Kathipudi to Gudivada. All the buildings owned by the petitioners were acquired by the respondents for road widening of National High Way 5 from 100 feet to 200 feet. Advance possession was taken in the month of December, 2002. After taking possession, buildings were demolished without passing any award. At the time of removal of the structures, the respondents have prepared valuation of structures and also land value according to their own estimates and paid 85% of the compensation so determined to the owners. The remaining 15% of the compensation determined is payable to the petitioners. The further contention of the petitioners is that in spite of several representations made to the respondents, the 1st respondent has not released balance amount of 15% compensation determined by the R&B Department. The respondents having acquired the land were statutorily bound to pass the award and pay the

compensation. Though almost three years have elapsed, the respondents have not released the balance compensation of 15% payable to the petitioners. The petitioners further contended that the respondents issued notification under National Highways Act, 1956 (for short 'NH Act') for the purpose of acquiring part of the property only on 06.11.2003 and for remaining property on 19.11.2004. Since the petitioners' properties were acquired at the same time, they are entitled for the compensation determined taking the value of the property existing as on 19.11.2004. The petitioners further contended that the petitioners are entitled for the benefit of solatium, additional compensation as per Section 12(A) of the Act and also interest as per Section 30 of the Act. When the respondents failed to take any steps to pay remaining balance amount of 15% payable to the petitioners and non passing of the award, the present writ petition is filed.

3. The respondents filed counter-affidavit, denying the allegations made in the affidavit filed in support of the writ petition, contending *inter alia* that the Project Director, National Highway, Rajahmundry, had sent a requisition vide letter No.ELU/IA3/I/RJY/PIU/2001-2002/577, dated 09.07.2001 for acquisition of land admeasuring Acs.7.83 cents in Sy.Nos.52, 53, 103 etc., of Kathipudi village of Sankhavaram Mandal for widening of existing N.H.4/6 lane road under the NH Act, which was published in Central Gazettee No.1074(E), dated 01.11.2001 of Government of India, New Delhi. The said notification was published in two daily news papers in English

and Telugu viz., Deccan Chronicle and Andhra Bhoomi on 22.11.2001; that the notification under Section 3D of NH Act was also published in Central Gazettee vide notification No.SO.161(E) Government of India, New Delhi on 05.02.2002; that public notice under Section 3G(3) of the NH Act was issued and published in two daily newspapers i.e., in Sunday Express and Andhra Bhoomi on 04.03.2002 calling all the persons interested in such land and requesting to appear in person or by an agent or by legal practitioner with relevant documents before the competent authority & Revenue Divisional Officer, Peddapuram, on 13.03.2002. All the persons attended for enquiry on 13.03.2002 and pleaded for the grant of the prevailing market value of the agricultural lands ranging from Rs.2 lakhs to 8 lakhs per acre and requested to pay reasonable market value to their lands. But they failed to produce any recorded evidence in support thereof. The Land Acquisition Officer has fixed the market value of the land taking into consideration of the sales, statistics took place preceding 3 years of the 3A notification dated 22.11.2001 and also the structure values, bore value and tree values etc. were got fixed by the concerned department as per the norms prescribed and award was passed by the Land Acquisition Officer on 27.12.2004 and award amount was paid to all the land owners who are entitled. Subsequently the Project Director, National Highways, Rajahmundry, has submitted further requisition for acquisition of land in Sy.Nos.53, 103, 106 etc., measuring Ac.1.40 cents situated at Kathipudi village for widening of existing NH5 road

and accordingly issued notification and also published the same in newspapers; that notification under Section 3D of the NH Act was also published in the Central Gazettee vide S.O.No.955(E) Government of India, New Delhi on 27.08.2004 and public notice under Section 3G(3) of NH Act was issued and published in Andhra Jyothi on 19.11.2004 and Hindu on 20.11.2004 calling all the persons interested in such land and requested them to appear in person or by an agent or by legal practitioner with relevant documents before the competent authority & Revenue Divisional Officer, Peddapuram, for enquiry on 29.11.2004; that on the said date all the persons who attended the enquiry pleaded for the grant of the prevailing market value of agricultural lands are ranging from Rs.2 lakhs to 8 lakhs per acre and requested to pay reasonable compensation, but they failed to produce any recorded evidence. The Land Acquisition Officer had fixed the market value of the land under acquisition taking into consideration the sale took place in preceding 3 years of 3A notification dated 07.11.2003 in the Sub Registrar's Office, Prathipadu, and the value of structure, bore and tree etc., were fixed by the concerned department as per the stipulated norms; that award was passed on 05.01.2005 by the Land Acquisition Officer and award amounts including structure values were paid as fixed by the Superintending Engineer, R&B, Kakinada, in both the awards to the awardees. It is not correct to contend that no notice was issued and no award was passed till date and the petitioners were paid 85% compensation only and in fact the awardee Smt.Vemulapalli Vijaya Lakshmi of Kathipudi village has

received compensation of Rs.2,73,344/- including structure value of Rs.2,44,474/- without any protest; and that the contention of the petitioners that till date the respondents have not passed award is not correct and baseless; that the petitioners having received entire compensation amount under the awards are not entitled to plead for payment of remaining 15% of compensation so determined. The contention of the petitioners that they are entitled for compensation, solatium, interest as per the provisions of the Land Acquisition Act is untenable and the provisions of the Land Acquisition Act are not applicable to the lands acquired for public purpose under the provisions of the NH Act.

4. Heard Sri P.R.Prasad, learned counsel for the petitioners, Sri S.S.Varma, learned Standing Counsel for National High Ways and the learned Assistant Government Pleader for Revenue.

5. Sri P.R.Prasad, counsel appearing for the petitioners would contend that the petitioners' residential and non-residential buildings were acquired for road widening of National Highway-5 from 100 feet to 200 feet. Advance possession was taken in the month of December-2002 and after taking possession, the petitioners' buildings were demolished without passing any award. At the time of demolition of the buildings 80% of the compensation so determined was paid to the petitioners along with others. But, the remaining 15% of the compensation is not paid to the petitioners in spite of several

representations. The learned counsel further contended that notifications acquiring the petitioners' land were issued on 06.11.2003 and on 19.11.2004, as such, the petitioners are entitled for fixation of compensation as per the prevailing market value as on 19.11.2004. The counsel further contended that the petitioners are entitled for the benefit of solatium, additional compensation as per Section 12-A of the Act and also interest as per the provisions of Section 30 of the Act. He further submitted that non-payment of compensation by passing award is illegal.

6. On the other hand, Sri S.S.Varma, learned Standing Counsel for National Highways would contend that the petitioners' property was acquired for widening of NH-5 from Kathipudi village to Gudivada as per the provisions of Section 3A of the NH Act by issuing notification as per law. The competent authority-Revenue Divisional Officer, Peddapuram after conducting due enquiry on 13.03.2002, taking into account the market value of preceding three years of the notification issued under Section 3A of the NH Act, determined the compensation and passed award on 27.12.2004. The entire compensation amount was paid to the awardees including the petitioners, as such, the contention of the counsel for the petitioners that the respondents had not passed award and compensation not paid to the petitioners is incorrect. He further contended that provisions of the Land Acquisition Act, 1894 are not applicable to the land acquisition made for laying of road for public purpose under the provisions of the National Highways Act, 1956. He further contended that if the

petitioners, so aggrieved by the award, they are at liberty to approach the Arbitrator under Section 3G(5) of NH Act.

7. In the facts and circumstances of the case and in considered view of this Court, the petitioners were paid entire compensation as determined under the award passed on 27.12.2004. The contention of Sri P.R.Prasad, learned counsel for the petitioners that the petitioners are entitled for compensation to be determined basing on the market value of the petitioners' property as on 19.11.2004 and also for benefit of solatium, additional interest as per Section 12-A of the Act and also interest as per the provisions of Section 30 of the Act are untenable as the provisions of Land Acquisition Act, 1894 are not applicable for the acquisition made under the provisions of the National Highways Act, 1956. As the compensation is also determined as per the provisions of NH Act, taking into account the market value of preceding three years of the notification issued under Section 3A of the NH Act, and award was passed on 27.12.2004, if the petitioners so advised, they could initiate arbitration proceedings under Section 3G(5) of the NH Act, for inadequate compensation awarded to the petitioners.

8. Accordingly, the writ petition is disposed of. No costs. Miscellaneous petitions pending in this writ petition, if any, shall stand closed. No order as to costs.

27.12.2017
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M.GANGA RAO, J