

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.8689 of 2006

O R D E R:

This is a sad case where the petitioner was being deprived of his land in 1995 and has been harassed by the respondents, as will be explained more in detail in this order, without being paid any compensation or being given any alternative land, though it was promised by the 2nd respondent-Corporation.

2. Petitioner was the owner of the house bearing No.16-7-169/1 with appurtenant land of 1000 sq. yards in survey No.15/12 of Girmajipet. This is adjacent to the Warangal grain market and bus stand.

3. When the 2nd respondent-Municipal Corporation's predecessor i.e., the Warangal Selection Grade Municipality, sought to dispossess the petitioner's father from his possession, he filed O.S.No.315 of 1984 before the II Additional District Munsif, Warangal for a perpetual injunction restraining the defendant therein from interfering with the above property specifically by way of dismantling or by laying a road. The said suit was decreed on 25.03.1986.

4. There was no challenge to the said decree and it attained finality.

5. In 1987, the property of the petitioner was within the limits of Selection Grade Municipality, Warangal, which is the 2nd respondent herein. It was then decided by the respondents to widen the road connecting from Narsampet to Warangal grain market and bus stand into 80 feet as per the Master plan.

6. In this road widening, since the petitioner's property would also be affected, the 2nd respondent requested the 3rd respondent to initiate proceedings under the Land Acquisition Act, 1894 (for short 'the Act') for acquisition of the petitioner's property.

7. On 16.01.1987, the 2nd respondent issued a notice to the petitioner informing that his land is proposed to be acquired.

8. Thereupon, a Notification under Section 4(1) of the Act was issued proposing to acquire 1000 sq. yards in survey No.15/2 including house property therein and showing the petitioner as the owner of the said property. This was published in the District Gazette on 19.01.1987.

9. Subsequently, Notification under Section 5(A) of the Act was also issued on 11.02.1987.

10. Petitioner submitted objections and also participated in the Award enquiry.

11. The 3rd respondent issued a Memo dt.22.04.1989 calling upon the petitioner to produce documentary evidence in respect of the property, to which petitioner submitted explanation on 01.05.1989, along with the documents.

W.P.No.6990 of 1989 and order dt.18.03.1990 therein

12. Since nothing was being done by the respondents thereafter, petitioner filed W.P.No.6990 of 1989 before this Court challenging the inaction of the Revenue Divisional Officer-cum-Land Acquisition Officer, Warangal in passing Award within limitation in respect of the property proposed to be acquired.

13. In that Writ Petition it was noticed by this Court that since notification under Section 4(1) of the Act was published on 19.01.1987 and three years had elapsed, no award has been passed; and that under Section 11A of the Act, it is not possible to pass an award. The Court took note of the counter affidavit filed by the respondents on 08.03.1990 that the Land Acquisition proceedings were dropped and it gave the following directions in its order dt.18.03.1990.

- “i) The second respondent shall pass an order after due consideration of the documentary evidence adduced by the petitioner claiming title of the property which is under acquisition.
- ii) Even after such perusal, if they come to the conclusion that the land is a Government land, then the authorities may issue notification of withdrawal as required under Rule 5 framed under section 55 of the

Act. If the authorities come to the conclusion that the land, in fact, belongs to the petitioner as evidenced by the documentary evidence, then they shall be at liberty to issue a fresh notification under section 4(1) of the Act to initiate proceedings for the acquisition of the said land.

The above exercise shall be completed with due promptitude preferably within two months from the date of receipt of this order.”

14. It is not in dispute that no order had been passed by the Revenue Divisional Officer-cum-Land Acquisition Officer, Warangal as directed in the above order passed by this Court.

15. Subsequently, a notification under Section 4(1) of the Act was issued on 03.10.1991 and declaration under Section 6 of the Act was also issued on 15.04.1992. In this notification also petitioner was named as Pattadar and owner of 1000 sq. yards for the land in survey No.15/12 which was proposed for acquisition for widening of 80 feet master plan road.

16. However, even without passing any award or paying any compensation to him, the respondents deprived the petitioner of his property and widened the road in 1995.

W.P.No.12023 of 1992 and order dt.22.04.2002 therein:

17. Prior thereto petitioner had filed W.P.No.12023 of 1992 before this Court challenging the action of the respondents in not passing award under Section 11 of the Act in respect of this property.

18. In the counter affidavit filed by the Mandal Revenue Officer, Hanamkonda in that Writ Petition, it is mentioned that the Revenue Divisional Officer, Warangal had requested the Commissioner of Municipality to place funds at his disposal for acquisition, but instead of sanctioning the funds, the Commissioner of Municipality by letter dt.20.11.1992 directed withdrawal of the proceedings for acquisition under Section 48(1) of the Act in view of the poor financial position of the Municipality. It was even denied that the petitioner's land was taken by the respondents for widening the road.

19. To resolve this controversy in that Writ Petition, this Court by order dt.21.09.2000 appointed an Advocate-Commissioner to make personal physical inspection and make enquiry with regard to taking up of possession of the land and house bearing No.16-7-169/1 of Girmajipet, Warangal District for widening the road to 80' and whether any road was laid by the respondents and submit report within four (04) weeks.

20. After giving notice to both parties, the Advocate-Commissioner inspected the site on 21.10.2000 and submitted his report on 27.10.2000 to this Court. In that report he stated that only 97.8 sq. yards of land is being enjoyed by the petitioner and that already metal road was laid by the Municipal Corporation Authorities and lorries and

other vehicles were utilizing the road from Warangal Bus stand to Narsampet. The Advocate-Commissioner held that except 97.8 sq. yards i.e., the house structure, all the land was utilized by the municipal authorities for laying the road and the petitioner was residing in the house in that area of 97.8 sq. yards. He stated that except a length of 32'6 width of 27', which is occupied by the structure of the petitioner, the rest of the land was in possession of the Municipality.

21. No objections were filed to this report by the respondents.

22. During the course of hearing of this Writ Petition, the District Collector examined the documents of the petitioner with regard to his title over the house and land claimed by him in consultation with the Director of Survey and Land Records and certified that the petitioner had got undisputed title over the property.

23. On the basis of written instructions of the Commissioner of Municipal Corporation, Warangal, its Standing Counsel reported to this Court that the Municipal Corporation was willing to allot any plot equivalent to the plot affected for road widening by the Corporation other than plot Nos.80 and 81 falling in L.P.No.31/60 of Girmajipet Village, which were under court litigation and requested the petitioner to give his consent, which was also given on 22.03.2002.

24. W.P.No.12023 of 1992 was then disposed of on 22.04.2002 recording that the petitioner was made to run from pillar to post, but in vain and noting the conduct of the Commissioner of Municipal Corporation, Warangal in not taking any steps to allot alternative land in spite of the consent given by the petitioner on 22.03.2002. This Court then directed the Commissioner, Municipal Corporation to pass appropriate orders on top priority within four weeks from the date of receipt of a copy of the said order.

25. In stead of allotting the plots No.44 and 45, 51 to 62 for which the petitioner had given consent on 22.03.2002, the Municipal Corporation then issued a Notification for public auction of the said plots on 26.06.2002.

C.C.No.713 of 2002 :

26. Petitioner then filed C.C.No.713 of 2002 before this Court alleging willful disobedience by the Municipal Corporation of the order dt.22.04.2002 in W.P.No.12023 of 1992.

27. On 04.03.2003 in the said Contempt Case, the Commissioner of Municipal Corporation informed the Court that a sum of Rs.30 lakhs was deposited before the Revenue Divisional Officer-cum-Land Acquisition Officer on 24.03.2000. Recording the same, the Contempt Case was closed.

28. But, the said amount was also not paid to the petitioner, though a copy of the cheque bearing No.688201 dt.24.02.2003 for the amount of Rs.30 lakhs was given to the petitioner along with a letter dt.24.02.2003 stating that another sum of Rs.10 lakhs was under deposit with the Revenue Divisional Officer, Warangal. However no payment was released to the petitioner by the respondents.

29. Petitioner made a representation on 20.11.2003 seeking alternative land as promised by the respondents in the order passed by the Court in W.P.No.12023 of 1992.

30. Since compensation was not paid to him, on 24.06.2004, the Commissioner of Warangal Municipal Corporation wrote to the Principal Secretary to Government, Municipal Administration & Urban Development Department, requesting the Government to accord permission for acquiring house and land admeasuring 1000 sq. yards bearing premises No.16-7-169/1 situated at Girmajipet of Warangal affected in the widening of the 80 feet master plan road and also to grant permission for allotment of alternative municipal land of 1500 sq. yards in favour of the petitioner at Balasamudram besides Hanuman Temple, Hanamkonda.

31. It appears that the State Government called for another report subsequently from the Commissioner of the Warangal Municipal Corporation and this time a volte-face was

committed by the Commissioner of Municipal Corporation stating that only 154 sq. yards of site was affected by the road widening, and in any event the proposed 80 feet master plan road was never laid, and that only a C.C. road was laid in 2001 on the existing B.T. Road with is 13 feet width only. The Commissioner stated that there is no need for laying of 80 feet road, since main cause for laying the road did not exist any more.

The present Writ Petition :

32. Blindly accepting this report, and contrary to the stand taken in the earlier proceedings before this Court admitting not only petitioner's title, but also utilization of the land of the petitioner for the purpose of laying of 80 feet master plan road, (which was also certified by the Advocate-Commissioner in his report dt.27.10.2000 filed in W.P.No.12023 of 1992 which was undisputed), the admission contained in the Notification under Section 4(1) issued by the respondents on 19.01.1997 and 3.10.1997 respectively, as well as the letter dt.24.06.2004 of the earlier Commissioner of Warangal Municipal Corporation, the 1st respondent passed the impugned order on 20.10.2005 through G.O.Rt.No.1445 and the same was communicated to the petitioner on 07.12.2005, which was received by the petitioner in January, 2006. Petitioner therefore filed present Writ Petition assailing the same.

33. Petitioner contends that the action of the 1st respondent in rejecting the petitioner's claim for alternative land in lieu of the land which he was deprived of without paying any compensation is clearly illegal, arbitrary and violative of Articles 14 and 300A of the Constitution of India and that the respondents have played fraud upon this Court by misleading it, time and again, with different contentions at different point of times and dragged on the matter for more than 20 years causing irreparable loss to the petitioner.

34. Petitioner contends that the action of the respondents has to be termed malafide and cannot be countenanced, since the respondents have admitted the title of the petitioner, took possession of the land of the petitioner without following due process of law, did not pay compensation to the petitioner under the provisions of the Land Acquisition Act, 1894, and having promised to give alternative land which was recorded by this Court in its order dt.22.04.2002 in W.P.No.12023 of 1992 to which the 1st respondent is also a party, have gone back on their word.

35. Sri A.Sanjeev Kumar, Special Government Pleader representing the Additional Advocate General for respondents has pointed out that the title of the petitioner itself was disputed in an additional affidavit filed by the 2nd respondent in the present Writ Petition. He placed reliance on Urdu Government Gazette 1340/Fasli/No.43/1359 Hijri.

36. The said document's translation is also filed which shows that it is a Notification under Section 5 of the Land Acquisition Act, 1894 which was issued on 7th Meher 1349, Fasli in which land was proposed to be acquired for extension of the grain market, Warangal, wherein survey No.15 is mentioned as 'Poramboku'.

37. It is not the case of the State that there was any Land Acquisition Act in 1939 when the said publication was allegedly issued by the then Nizam, who was the Ruler. To say the least, this is a dubious document clearly setup to deny compensation to the petitioner.

38. Though the contentions questioning the title of the petitioner to the land in question are sought to be again raised, it is not open to the respondents to raise such contentions having regard to the statement of the District Collector, Warangal recorded in the order dt.22.04.2002 in W.P.No.12023 of 1992 that the petitioner had undisputed title over the property. That apart, the fact that the State admitted petitioner's title in the two Notifications under Section 4(1) of the Act issued on 19.01.1987 and 03.10.1991, is also not disputed. Also the decree dt.25.03.1986 in O.S.No.315 of 1984 of the II Additional District Munsif, Warangal, also restrained the 2nd respondent's predecessor from interfering with the right, title and possession of the petitioner's father in respect of the subject property.

39. From the above, it is clear that the respondents have no respect for the law or the statements made before the Court or the judicial orders either of the Civil Court or this Court.

40. The Court finds it shocking that one Commissioner of Municipal Corporation on 24.06.2004 admits that 1000 sq. yards of the petitioner's property had been acquired for the purpose of road widening, but his successor, six months later, makes a volte-face and states that there is no master plan road and only 150 sq. yards was used for laying a CC road in an existing B.T.Road which is of 13 feet width. Admittedly no objections had been filed by respondents to the Advocate-Commissioner's report which is part of this Court's record in W.P.No.12023 of 1992, at any point of time.

41. It is not open to the respondents to take such a stand, since according to the report of the Advocate-Commissioner, out of 1000 sq. yards belonging to the petitioner, he is left with only 97.8 sq. yards. From this it has to be presumed that 902.2 sq. yards of the petitioner's property was utilized for laying master plan road of 80 feet width. Therefore, the petitioner cannot be denied compensation for the said land on any pretext by the State or other respondents.

42. Accordingly, this Writ Petition is allowed. The proceedings in G.O.Rt.No.1445 dt.20.10.2005 issued by the 1st respondent as well as the proceedings dt.07.12.2005 of the

2nd respondent communicating the same to the petitioner, are set aside with costs of Rs.50,000/- to be paid by the 2nd respondent to the petitioner within a period of six (06) weeks from the date of receipt of a copy of this order. The respondents are directed to initiate proceedings under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay compensation to the petitioner as per the market value existing as on the date of said fresh notification within a period of four (04) months from the date of receipt of a copy of this order. Petitioner is also granted liberty to file a suit for compensation for use and occupation of the petitioner's land by the respondents from 1995 in an appropriate forum.

43. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

05th September, 2017.

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