

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Contempt Case No.1761 of 2015

Between:

Poosarla Narasimha Rao and others

...Petitioners

And

S. Venkateswarlu,
Revenue Divisional Officer,
Visakhapatnam, Visakhapatnam district and another.

...Respondents

JUDGMENT PRONOUNCED ON

: 10.03.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

:

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : No
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment : No

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Contempt Case No.1761 of 2015

Order:

This Contempt Case was filed alleging non-implementation of the order in Writ Petition No.13171 of 2005 dated 01.07.2014.

The petitioners state that they are the absolute owners of the property covered by Survey Nos.6 to 10 of Dondaparthi village, Visakhapatnam. The Tahsildar issued a notification declaring an extent of Ac.0.40 cents as 'slum area' by notification in the District Gazette dated 07.04.2005. Challenging the same, the above Writ Petition was filed. In the said Writ Petition, a counter affidavit was filed by the second respondent stating that no one claimed the land for all these years and a Dhobhikhana was already constructed in the land where 24 beneficiaries were living. The second respondent proposed to construct pucca houses to Washermen by removing Dhobhikhana on the request made by the Tahsildar, vide his letter dated 14.03.2005, to notify the land under the provisions of the A.P. Slum Improvement (Acquisition of Land) Act, 1956 (for short 'the Act'). The Council of Visakhapatnam Municipal Corporation passed a resolution on 20.04.2005 resolving to acquire the land in Survey No.8/1A part and 8/1 A2. Accordingly, a notification was issued with regard to said extent of Ac.0.40 cents or 1920 sq. yards declaring it as 'slum'. Though the names of the petitioners were written as owners of the property, they were not the original owners. The final orders are to be passed after hearing objections of the land owners/interested persons, if any. Individual show cause notices were sent under certificate of posting on 27.05.2005 and compensation would be determined and paid as per the provisions of the Act by the Revenue Divisional Officer,

Visakhapatnam, the first respondent herein in the capacity of the prescribed authority under the Act. In view of the said statement, the Writ Petition was disposed of directing the first respondent herein to determine the compensation and pay the same to the rightful owners within a period of three months. The said order was not complied with and the petitioners filed the above Contempt Case on 25.08.2015.

After issuing notice before admission, a counter affidavit was filed by the first respondent on 22.09.2015. He stated that he issued notices to all the interested parties to come and participate in the enquiry to be held on 23.09.2015 for passing appropriate orders determining the compensation. Since this Court was not satisfied with the said counter affidavit, the Contempt Case was admitted and thereafter he filed additional counter affidavit stating that he determined the compensation payable to the rightful owners of the land under acquisition basing on the details given by the Sub-Registrar Office, Visakhapatnam, passed an award on 03.12.2015 and the compensation would be paid soon after receipt of funds from the Commissioner, Greater Visakhapatnam Municipal Corporation, Visakhapatnam. It is also stated that the second respondent was addressed a letter to provide sufficient funds for payment of compensation.

Since the funds are not provided and have to be provided by the second respondent, the second respondent was impleaded on 17.03.2016. Since the second respondent in the Writ Petition filed a counter stating that no notice under Section 3(2) of the Act was issued and the learned counsel for the petitioners produced a copy of notice issued under Section 3(2) of the Act on 23.05.2005, the record was called for. After perusing the record it is noticed that no Gazette publication was made under

Section 3(2) of the Act and the Act provides for vesting of the land from the date of publication in the A.P. Gazette. The second respondent was directed to take steps for publication in the official Gazette, in view of completion of construction of the building in the absence of any interim order in the Writ Petition.

The second respondent filed a counter affidavit stating that he was under the *bona fide* impression that the first respondent would take further course of action for determination and payment of compensation to the rightful owners, but the first respondent addressed a letter to the second respondent on 03.12.2015 requesting the Corporation to send requisition proposal to his office. It is also stated that he also enclosed copy of award proceedings determining the compensation to the petitioners without there being any notice under Section 3(2) of the Act. It is stated that the said award was not in consonance with the provisions of the Act and bad in law. He further stated that after receiving the notice, he made local enquiry and came to know that the A.P. Housing Corporation constructed houses in an extent of Ac.0.12 cents out of Ac.0.40 cents to the weaker section people in the year 2007 and the petitioners have sold the land in Survey No.8/1 A2 way back in the year 2008 pending Writ Petition before this Court and suppressed the said fact. The said sale took place after issuing notice under Section 3(1) of the Act. Ultimately, it is stated that the petitioners are not the owners of the land as on the date of award of the first respondent and no compensation is payable to them.

Since the counter affidavit filed by the respondents 1 and 2 did not disclose the true facts regarding the ownership of the land and the entitlement of the petitioners to the compensation, this Court was

constrained to pass an order on 10.08.2016 directing the Principal Secretary to Government, Municipal Administration Department, Government of Andhra Pradesh, to submit a status report with regard to ownership of the land admeasuring Ac.0.49 cents claimed by the petitioners. Pursuant to the same, the Principal Secretary to Government, MA and UD Department, Government of Andhra Pradesh submitted a report stating that he inspected the site on 09.02.2017 along with the officials including the Commissioner, Greater Visakhapatnam Municipal Corporation, the Revenue Divisional Officer, Visakhapatnam, the Tahsildar, Visakhapatnam Urban and Greater Visakhapatnam Municipal Corporation officials. He also stated that he verified the revenue records. He further stated that Survey No.8/1 A2 is having a total area of Ac.0.58 cents, out of which an extent of Ac.0.11 ½ cents was covered by the houses constructed under VAMBAY scheme. The remaining Ac.0.46 ½ cents is vacant and covered by boundary walls/fencing. The VAMBAY houses were constructed during the year 2005-06. The petitioners also appeared before him and agreed to receive Transferable Development Rights (TDRs) in lieu of compensation for the said extent of Ac.0.11 ½ cents. He further stated that in view of the above fact, the notification under Section 3(1) of the Act issued earlier has to be withdrawn or restricted to an extent of Ac.0.11 ½ cents for which the second respondent has to take further action. So far as the land covered by the houses under VAMBAY scheme constructed by the A.P. State Housing Corporation is concerned, the same has to be acquired and compensation has to be paid. Since the petitioners agreed to receive Transferable Development Rights for the land lost and undertook to take the same in writing, the Commissioner, Greater Visakhapatnam Municipal Corporation was directed to initiate

action for providing the said rights to the extent of land acquired for construction of VAMBAY houses. Thus, the issue was closed.

The dispute should have been resolved by the second respondent pursuant to the order passed by this Court. But, this Court had to spend much time because of non-resolution of the dispute by the second respondent. The first respondent appears to have not understood the legal implication of the case and in order to avoid the contempt proceedings hurriedly passed an award without complying with the provisions of the Act. This Court places on record the appreciation for the services rendered by the Principal Secretary to Government, GA and UD Department, Government of Andhra Pradesh, for the pains he has taken and efforts made for resolving the dispute to the satisfaction of the parties. The same spirit should have been shown by the second respondent, which would have saved the time and expenses of this Court as well as that of the Government. In any event, in view of the acceptance of the Transferable Development Rights by the petitioners for the land lost by them due to construction of houses, the further proceedings in the present Contempt Case are dropped.

The Contempt Case is, accordingly, closed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous applications, if any, pending in this Contempt Case shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 10th March 2017
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