

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

WRIT PETITION No.16618 of 2009

ORDER :

In this Writ Petition, the petitioner alleges that she is the absolute owner of agricultural land admeasuring Ac.0.39 cents covered by S.No.122/1 situated at Tunlam village of Gajuwaka, Visakhapatnam; that it was purchased by her husband in her name; that she was residing in Guntur; that 4th respondent utilised a portion of the said land for formation of road to Visakha Dairy Hospital managed by the 5th respondent in the year 2000; that this was done without following any proceedings under the Land Acquisition Act, 1894; and this is arbitrary, illegal and violative of Article 14 and 300-A of the Constitution of India and that the petitioner is entitled to either compensation for the said land or alternative land in lieu thereof.

2. The 5th respondent filed a counter-affidavit denying that the land of the petitioner was taken for formation of road for providing approach road to its hospital. It contended that there is no question of paying any compensation for the said land to the petitioner. It was also contended that 5th respondent is different from the Milk Producers and Employees Educational, Health and Medical Welfare Trust and that the hospital is run by the said Trust and the 5th respondent had nothing to do with it.

3. The 4th respondent i.e., Greater Visakhapatnam Municipal Corporation also filed a counter-affidavit denying that petitioner's land was utilised for formation of approach road. It denied that it had any connection with the laying of the road and stated that the said road was formed by the Visakha Dairy.

4. The District Collector, Visakhapatnam initially filed a counter-affidavit in November, 2011 stating that Visakha Cooperative Dairy, a mutually Aided Co-operative Society, is a private organisation and if it had taken some land of the petitioner to form approach road to its hospital, it will have to pay the compensation and the Government cannot be compelled to pay compensation or to give land in exchange.

5. Later, another counter-affidavit has been filed on 30-12-2016 by the District Collector, Visakhapatnam stating that there is no exact record and material available in his office on the formation of road and in particular as to when and who formed the road and what funds were utilised in that regard.

6. Though learned counsel for petitioner contended that Janmabhoomi funds were used for laying the road, the District Collector doubts whether such funds could be utilised for Visakha Co-operative Dairy, which is a private organisation.

7. The District Collector, Visakhapatnam also contended that the petitioner ought to have made her claim with the available recorded evidence at the time of formation of the road and that there is also a

doubt whether petitioner is the rightful owner. He contended that the road was said to have been formed in the year 2000, but the petitioner kept quiet for about 5 years upto 2005, and therefore she is not entitled to any relief.

8. Learned counsel for petitioner produced a copy of gift settlement deed presented for registration on 13-11-2006 and registered as document No.3665 of 2007 in support of her title to the land of Ac.0.39 cents in S.No.122/1 situated at Tunglam village of Gajuwaka, Visakhapatnam.

9. Even according to the petitioner, a road was laid for the benefit of Visakha Dairy Hospital in the year 2000. At that point of time, admittedly, the petitioner was not the owner of the subject land.

10. In any event, the question whether petitioner is the owner of the said land and whether any portion of the said land was utilised for the purpose of laying a road for the purpose of Visakha Dairy hospital are disputed questions of fact, which cannot be gone into in this Writ Petition.

11. Therefore the Writ Petition is dismissed granting liberty to petitioner to approach competent Civil Court to establish her title to the said property and also for recovery of the subject land or in the alternative compensation from the Visakha Dairy Hospital or any other parties. No costs.

12. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date : 03-10-2017

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