

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

W.P.NO.25516 OF 2006

ORDER:

This writ petition is filed seeking a direction to the respondents to consider the representation of the petitioner, dated 11.07.2005, for payment of compensation under Land Acquisition Act, 1894 (for short 'the Act'), for taking possession of his lands in Sy.Nos.44, 45, 46 and 47 of Romipur village, Jaipur mandal, Manchiryal Division, Adilabad District, for formation of Kotha Cheruvu, Romipur village, Jaipur Manndal, Adilabad District (for short, 'the tank') by Respondent Nos. 1 to 3.

2. Brief facts of the case, so far as relevant for the disposal of the present writ petition, are that the petitioner's land in Sy.Nos.44 and 45 and the lands of one Chakali Pochaiah in Sy.Nos.46 and 47, were forcibly taken possession for the formation of the subject tank in the year 1969. Originally, the Irrigation Department took possession of the lands for formation of the subject tank. Subsequently, the Panchayat Raj Department had taken over the said tank for irrigation of lands. The petitioner started giving representations to the Irrigation Department, but the said Department asked him to approach the Panchayat Raj Department. As the respondents took possession of the land without paying any compensation, the petitioner filed writ petition in W.P.No.8799 of 1998. The said writ petition was dismissed on 01.04.1998 on the ground of maintainability. However, it was observed that it does not preclude the authorities from considering the representations of the petitioner. As the respondents failed to consider his representation, dated

10.02.1998, the petitioner again filed W.P.No.15968 of 2002. The same was disposed of on 26.08.2002, directing the respondents to consider and dispose of the representation of the petitioner, dated 10.02.1998. As the respondents did not pass any order on the said representation, the petitioner filed a contempt case in C.C.No.1017 of 2003. Thereafter, the Executive Engineer, I.B. Division, Mancherial, vide letter No.D.B/ D2-906, dated 12.09.2003, rejected the claim for payment of compensation on the ground that the petitioner had approached after thirty years. In similar circumstances, the District Collector, Adilabad District, issued Notification under Section 4(1) of the Act on 04.03.2005 for the lands of Nambal Village, Rebbena mandal of Adilabad District, which were submerged in 1965. Therefore, the petitioner again submitted a representation dated 11.07.2005. However, no orders have been passed on the said representation. Hence the present writ petition is filed.

3. This writ petition was admitted on 08.12.2006.

4. Counter affidavit has been filed by the 1st Respondent—Executive Engineer, Irrigation & CAD, IB Division, Manchiryal, contending *inter alia* that the irrigation source was formed as 'Kunta' (tank) prior to 1969 by the landholders. The said tank was breached and later restored by the Irrigation Department during the year 1969. The landholders under submergence have freely forgone their lands, as the tank would benefit the villagers at large, and the petitioner remained silent till 1998 and filed writ petition in W.P.No.8799 of 1998, stating that he filed representation and it is pending with the

Government. The petitioner did not submit any representation, except filing writ petition, which was dismissed. There is no representation pending either in the Irrigation Department or in the Revenue Department. The tank was not formed by the Irrigation Department, but it only restored the breach in 1969. The representation given by the petitioner on 11.07.2005 was disposed of by the Executive Engineer on 06.02.2007, based on the instructions given by the District Collector, Adilabad. The said letter dated 06.02.2007, is filed along with the counter affidavit as Ex.R-1, which is addressed by the Executive Engineer to the petitioner herein.

5. Another counter affidavit has been filed on behalf of Respondent Nos. 4 and 5 – District Collector and Revenue Divisional Officer, Manchiryal, stating *inter alia* that the petitioner remained silent till 1998 and filed W.P.No.8799 of 1998. But there is no representation pending in the Irrigation Department or in the Revenue Department. The contention of the petitioner that Revenue Divisional Officer, Mancherial and the Executive Engineer, IB Division, Mancherial have inspected the lands that were submerged in the subject tank and did not pass any orders is not correct. The tank at Rampur was not formed by the Irrigation Department, and the said Department only restored the breach in 1969 and, therefore, prayed to dismiss the writ petition.

6. However, no reply-affidavit whatsoever is filed by the petitioner, denying the averments made in the counters filed by the respondents-authorities.

7. Heard the learned counsel for the petitioner, the learned Government Pleaders appearing for the respondents, and considered the material on record.

8. In W.P.No.8799 of 1998, the petitioner herein sought for a direction to the respondents to pay reasonable compensation as per the Act for forcefully taking the possession of the land. The said writ petition was disposed of by this Court on 01.04.1998 observing thus:

"I am not inclined to interfere in the matter and propose to dismiss the writ petition at the admission stage, for the simple reason that the petitioner had kept quiet without any mur-mur and protest since 1969. It is settled that this court would come to the rescue of only such persons, who are diligent in prosecuting their constitutional remedy. It is rather difficult to appreciate as to how and why a person could have kept quiet for a long period of thirty years, having lost his land in the hands of the respondents.

The petitioner is stated to have made a representation and the same is not yet considered and stated to be pending in file No.B/ 12/ 1969. No opinion need be expressed on this question.

I do not find any merit in the writ petition. It is accordingly dismissed. No costs.

However, this order would not preclude the respondents from considering the representation of the petitioner, if any, stated to have been already filed by him."

The said writ petition was dismissed on the ground of laches, since the petitioner kept quiet since 1969 and filed writ petition only in the year 1998. As the petitioner has contended that he made a representation and the same is pending for consideration, the learned Judge observed that the said order would not preclude the respondents from considering the representation of the petitioner, if any, stated to have been filed by him.

9. The petitioner filed his second writ petition i.e., W.P.No.15968 of 2002, seeking a direction to the respondents to consider and dispose of his representation dated 10.02.1998. The said writ petition was disposed of on 26.08.2002. As the petitioner made a representation that his representation has not been disposed of even after lapse of four years, this Court disposed of the writ petition directing the respondents to pass appropriate orders on the representation said to have been made by the petitioner, within three months from the date of receipt of a copy of that order.

10. Alleging non-implementation of the orders of this Court in W.P.No.15968 of 2002, the petitioner filed contempt case in C.C.No.1017 of 2003. In the counter affidavit filed by Respondent No.4 to the said contempt case, it is stated that representation of the petitioner said to have been made on 10-02-1998 was not found in any files and that the claim of the petitioner for payment of compensation was considered and since the tank was constructed in the year 1969 itself, the petitioner was informed through proceedings dated 12-09-2003 that he is not entitled for any compensation. In view of the same, the contempt case was closed accordingly.

11. The learned Government Pleader appearing for Respondent Nos.4 and 5 submits that even in the affidavit filed along with the writ petition, the petitioner did not give any particulars, whatsoever as to how much of his land was forcibly taken, or the particulars of land of one Chakali Pochaiah. The learned Government Pleader would submit that as no land whatsoever has been taken from the petitioner, the question of initiation of land acquisition proceedings does not arise.

12. The learned Government Pleader appearing for the 1st Respondent also submits that the tank was formed prior to 1969 by the farmers themselves, and that the possession of the land of the petitioner was not at all taken by the officials.

13. During the pendency of the writ petition, the petitioner filed WPMP No.14407 of 2017 on 30.03.2017 seeking amendment of the prayer to the main writ petition stating that he did not receive the rejection orders dated 06.02.2007 passed by the 1st respondent. Admittedly, the said letter dated 06.02.2007 was filed along with the counter-affidavit in February, 2007 itself after duly serving the same on the counsel for the petitioner. The contention of the petitioner in WPMP.No.14407 of 2017 seeking amendment of the prayer is that his case is squarely covered by judgment dated 30.04.1999 in *Executive Engineer, I.B. Division, Nirmal & Others v. C.Shankar & Others*¹. This WPMP is filed seeking to replace the prayer in the main writ petition with the following prayer:

“...to issue a Writ of Mandamus declaring the impugned Notice, vide Letter No.HD/ 1526, dated 06.02.2007 issued by the 1st Respondent as bad in law and violative of principles of natural justice as the Petitioner has not been served the impugned notice till today and further direct the Respondents herein to pay compensation under Land Acquisition Act, 1894 or under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 for taking possession of the lands in Sy.No.44, 45, 46 and 47 of Rummipur village, Jaipur mandal, Mancherial district for formation of “Kotha Cherufu”, Rummipur village, Jaipur mandal, Mancherial District in 1969 and consequently declare the inaction of the Respondents in taking steps to pay compensation under Land Acquisition Act, 1894 or under the Right to Fair Compensation and Transparency in Land

¹ 2000(3) ALD 363 = 2000(3) ALT 1 (WA.No.1506 of 1997)

Acquisition, Rehabilitation & Resettlement Act, 2013, as violative of 300 A of Constitution of India”.

Original prayer in the writ petition is to direct the respondent to dispose of the representation dated 11.07.2005 for payment of compensation under the Act. The said representation dated 11.7.2005 was disposed of by the 1st respondent, during the pendency of the writ petition by letter dated 6.2.2007. Vide the said letter dated 6.2.2007, the representation of the petitioner was rejected on both the grounds that breach filling was done in the year 1969 and also on the ground of laches. As the above amendment sought for leads to a new cause of action, this Court dismissed the same today, by a separate order.

14. Counsel for the petitioner contends that under Article 300A of Constitution of India ‘no person shall be deprived of his property except by the authority of law’, and relies on the judgment in *Executive Engineer, I.B. Division, Nirmal & Others v. C.Shankar & Others* (1 supra). That is a case where the lands were taken and the compensation was not paid. In that case, the Sub-Collector, Asifabad by his letter dated 30.08.1995 directed the Executive Engineer, I.B.Division, Nirmal to deposit Rs.14,00,000/- for passing the Award, and the Irrigation Department failed to deposit the same. Thus, it is alleged that the petitioners’ rights guaranteed under Art.300A of the Constitution of India have been infringed. In that case, a representation was made on behalf of the Respondent-State before the learned single Judge stating that the land acquisition proceedings have already been initiated and the possession was already taken on 10.08.1971 by the officials, and the learned single Judge passed the

order impugned therein directing the respondents to make a representation to the Collector, seeking initiation of the proceedings under the Land Acquisition Act. It is observed in the said judgment (1 *supra*) that the fact of taking possession of the land of the petitioner on 10.08.1971 was not disputed. It is observed in the said judgment, as follows:

"In fact, in the material papers filed on behalf of the respondents herein, there are certain letters addressed by responsible officers of the Government. A letter Rc.No.B1/ 1960/ 85, dated 4-5-1993 addressed by the Sub-Collector, Asifabad to the Executive Engineer, I and CAD, IB Division, mentions that the probable land compensation amount required in this case has been worked-out which came to the tune of Rs.8, 14,924/- . The Sub-Collector, therefore, requested the Executive Engineer to deposit the said amount at an early date to enable him to process the land acquisition proceedings. The work-sheet which forms part of this letter mentions the extents of land proposed to be acquired. Another letter dated 29-9-1997 of the Collector and District Magistrate, Adilabad, contains revealing information. This letter was addressed in response to the letter calling for point-wise replies. It is firstly stated that the MRO has reported that although the lands are shown as cultivated entirely in pahanies/adangals, actually the cultivation was done in Rabi season only after the water receded in the tank. It makes a categorical statement that during kharif season it is not possible to cultivate the lands as the water is stored in the tank. It is emphatically stated that the petitioners in WP No.4769 of 1997 are covered by the land acquisition case already initiated, except two petitioners, namely (i) Sndam Mallakka and (ii) Karnathapu Ammakka, who were said to be Pattedars of Sy. No.47/ 1 extent of Ac.4.00 and Sy.No.6/ 4 extent of Ac.5.00 respectively. It is also stated that the Irrigation Department filed requisition for acquisition of lands to an extent of Ac.49.20. The sub-division work was completed and the SD records were received for Ac.49.20. It, however, mentions since Ac.2.31 gts. of land was surrendered by the pattedar under the ceiling as surplus lands this area was

excluded from the total area to be notified under [Section 4\(1\)](#) of the Act. It also mentions that the draft notification and draft declaration proposals were submitted for Ac.46.72 cts. equal to Ac.46 and 29 guntas for approval. It is stated that there was no change in this area. It also mentions that during the joint inspection of the District Collector and the Superintending Engineer, Irrigation Circle, Nirmal, fresh peg-marks on the spot were fixed showing the lands under submergence. Accordingly, the Surveyors deputed by the Assistant Director (S and Lr) Adilabad, have resurveyed the lands and measured the area to Ac.44.26 gts., only. Apart from a few minor discrepancies, this document clearly shows that the Irrigation Department desired acquisition of substantial extents of land belonging to the petitioners for which proposals were addressed to the District Collector. These documents conclusively establish that the proposal for acquiring the lands belonging to the petitioners whether wholly or excluding certain areas was made by the Irrigation Department and the Revenue Department intimated the Irrigation Department about the probable compensation amount required to be paid so that the land acquisition proceedings could be processed. In the light of this material, it is deplorable that the appellants should have come up in this appeal with a plea that no land was submerged at all and that there was no proposal for acquisition and that there was no need for payment of compensation for any extents of lands to any of the petitioners.”

In those circumstances, the writ appeal was allowed observing that the land was taken in 1971, the proceedings were not initiated and as such there was violation of fundamental rights guaranteed by the Constitution of India. In this case, it is the case of the Respondent Nos.4 and 5 that ‘kunta’ was not formed by the Irrigation Department, but only restored the breach in 1969. The 1st respondent also in his counter stated that “..irrigation source was formed as Kunta prior to 1969 by the landlords. The kunta was breached and later restored by the Irrigation Department during the year 1969.”

15. The learned counsel for the petitioner also relied upon a judgment in *Annadi Linga Reddy v. District Collector & Ors.*², wherein this Court directed the 3rd respondent therein to submit proposals to the 1st Respondent-District Collector relating to the land which had been taken possession, within certain period. In the said judgment it is observed as under:

“The petitioner is the owner, possessor and pattadar of land bearing SNo.785 and the respondents had acquired an extent of 20 guntas of land belonging to him from the said Survey Number for construction of Diver Pipe 416 ft. length, 75 ft. width and 8 ft. cutting (deep) in the said land beginning from the main canal and hence the said canal had become distributory channel from the main canal in DP-4 in D/ 86 in the village limits of Regadimaddikunta. At present the canal is being utilized for the purpose of 150 acres in surrounding and the respondents had taken possession of the land without payment of any compensation and hence the same is contrary to the Act.

... ..
... ..

When the land through which the field channel passes, is not benefited therefrom, the owner of such land shall be paid an amount calculated at the rate at which the land required for construction of field channel at the nearest point from which the pipe outlet has been taken, has been acquired:

Provided that where the question arises as to whether the amount payable under this sub-section corresponds to the market value of the land, it shall be referred to the District Collector, whose decision thereon shall be final.”

The said judgment is not applicable to the facts of the present case, as the respondent-authorities did not take the possession of the land of the petitioner herein.

² 2005(2) ALD 40 (WP.No.5749/1997,dt.20.01.2005)

16. The learned counsel for the petitioner also relied upon a judgment of the Supreme Court in *Dhiraj Singh v. Harayana State*³, wherein the Hon'ble Supreme Court held that if other similarly situated land owners were given enhanced compensation, there was no reason to pay compensation to the appellants at much lesser rate, and thus, enhanced the compensation. The said judgment is not at all relevant to the facts of the case.

Relying on the above judgments, the counsel for the petitioner submits that the villagers in our country are by and large illiterate and are not conversant with the intricacies of law, and therefore, the petitioner shall not be thrown away on the ground of laches or delay.

17. Admittedly, the first writ petition i.e., W.P.No.8799 of 1998, filed by the petitioner herein was disposed of specifically stating that "the petitioner had kept quiet and without any protest since 1969; it is settled that the Court would come to the rescue of only such persons, who are diligent in prosecuting their constitutional remedy; and it is difficult to appreciate as to how and why a person could have kept quiet for a period of thirty years, having lost his land in the hands of the authorities." As, no appeal whatsoever has been filed by the petitioner, challenging the said order and the observations made therein, the same has become final. Therefore, now this Court cannot go into the said issue of the laches again.

18. The second writ petition i.e., W.P.No.15968 of 2002 was filed by the petitioner again for the same relief, and it was disposed of on 26.08.2002 directing the respondents to pass appropriate orders on

³ 2015(22) RCR (Civil) 507

the representation said to have been made by the petitioner. Alleging non-disposal of the representation of the petitioner, dated 11.07.2005, again the present writ petition is filed. During the pendency of this writ petition the said representation was disposed of on 06.02.2007 by the 1st respondent. In the counter-affidavit filed by the 1st respondent, it is specifically stated that the Tank was existing prior to 1969 and that it was breached and restored by the Irrigation Department in 1969 itself. Even in the letter dated 06.02.2007, the 1st respondent specifically stated that the tank was a long breached one and therefore breach filling was done in the year 1969. Even according to the petitioner, he approached the Court after 29 years.

19. In view of the facts and circumstances stated above, I see no merit in the present writ petition and the same is liable to be dismissed accordingly. However, if the petitioner is so advised, he is at liberty to avail the appropriate remedies in accordance with law.

20. Accordingly, the writ petition is dismissed. As a sequel, the miscellaneous petitions pending, if any, shall stand closed accordingly. No costs.

KONGARA VIJAYA LAKSHMI, J.

Date: 06.12.2017
Avs/ Kv