

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 35390 of 2015

Order:

Though this Writ Petition was initially filed through a counsel, the vakalat was revoked and the petitioner himself argued the matter.

The petitioner is heard, learned counsel for the impleaded party respondents 5 and 6 and the learned Government for the respondents 1 to 4 are heard.

It is the case of the petitioner that his father purchased an open plot admeasuring 2080 sq. yards in the year 1948 and constructed a building thereon along with temporary sheds in the year 1949. He died intestate leaving behind him the petitioner and his three brothers as well as his mother to succeed his estate on 04.07.1982. Subsequently, his mother died on 01.12.2008. Before the death of his mother, she executed a Will bequeathing her property in favour of the petitioner, his surviving brother and children of another brother on 03.01.2002 and the Will was registered. While so, a notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 22.09.2012 and it ultimately culminated in an Award dated 25.08.2015. The present Writ Petition is filed challenging the said Award stating that the said Award is illegal as the entire proceedings under the provisions of the Land Acquisition Act, 1894 stood lapsed by virtue of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

The third respondent filed a counter affidavit stating that on receiving requisition from the Executive Engineer, R & B, Kakinada an extent of Ac.2.34121 sq. feet including Endowment land was proposed for

acquisition for construction of ROB at LC-7 Kondayyapalem, Kakinada Urban to regulate the traffic and minimize the accidents. A draft notification was published for the said extent on 22.09.2012 and the land of the petitioner in an extent of 0.2390 sq. feet was involved in the said acquisition. The petitioner filed an objection for the acquisition and personal enquiry was conducted on 07.08.2013 on the objections filed by the petitioner. Along with the petitioner, six other land owners also filed their objections. The objections of the land owners were referred to the Revenue Divisional Officer, Kakinada for enquiry and, after considering the objections, an order was passed by the Collector, East Godavari District, Kakinada, on 26.08.2013. Thereafter, a draft declaration was published on 02.09.2013. After publication of draft declaration, notices were issued for conducting Award enquiry, but the petitioner did not attend the Award enquiry. The compensation was calculated as per the provisions of Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The market value for the land was fixed at Rs.10,325/- per sq. yard for the land in TS Nos.80, 81, 160, 168, 169, 170, 171, 173, 174 and 211 and Rs.11,000/- for the land in TS Nos.179, 252, 253, 257, 258, 262, 263, 264, 270, 277, 279 and 280 under Section 26 of the Act 30 of 2013. The Award was passed on 25.08.2015, but the petitioner has not filed any document to receive the amount in spite of issuing a notice by the Land Acquisition Officer to the petitioner on 01.09.2015 to attend on 03.09.2015 to receive the compensation. However, the petitioner filed a petition on 03.09.2015 requesting to pay an amount of Rs.17,000/- per sq. yard as per the market value mentioned by the Sub-Registrar as on that date, though the Award was passed on 25.08.2015. The petitioner was informed to make

an application for reference of his matter to the competent authority for determination of the market value under Section 64 of the Act 30 of 2013, but the petitioner did not file such an application and filed the present Writ Petition.

The impleaded party respondents 5 and 6 filed an affidavit stating that the petitioner suppressed various facts relating to the House bearing Door No.7-2-13, Nageswar Rao Street, Ramaraopeta, Kakinada. They stated that the said property originally belonged to the father of the petitioner, but it is a joint family property. The original owner had four sons and six daughters and the petitioner is one among them. During the life time of the petitioner's father, the four sons divided the properties on 01.01.1955 and a registered partition deed was executed on 15.06.1957. After the death of original owner, 1/5th share devolved upon his wife and almost all the properties were acquired by the Government for Eleru Reservoir Project and the only property that was available for partition is House No.7-2-13. The second petitioner in the implead petition is the daughter of one of the sons who died on 03.03.2001. They also state that they filed O.S.No.99 of 2010 on the file of the IV Additional District Judge, Kakinada seeking partition and the petitioner herein is one of the defendants therein. In I.A.No.1704 of 2014, filed in the said suit, the Revenue Divisional Officer, Kakinada was directed to deposit the compensation amount in the Court.

In view of the above averments, it is clear that the Award dated 25.08.2015 was passed in accordance with Section 24(1)(a) of the Act 30 of 2013 and there is a claim of third parties on the amount of compensation in view of pendency of O.S.No.99 of 2010. It is also clear that the learned IV Additional District Judge, Kakinada directed the

Revenue Divisional Officer, Kakinada in I.A.No.1704 of 2014 in O.S.No.99 of 2010 to deposit the compensation amount in the Court.

In view of the dispute by the petitioner claiming higher compensation amount and also share in the compensation amount between the petitioner and the third parties, the second respondent is directed to refer the matter to the competent authority under Section 64 of the Act 30 of 2013 within a period of eight (8) weeks from the date of receipt of a copy of this order and it is for the competent authority to determine the amount of compensation to which the petitioner and the plaintiffs in O.S.No.99 of 2010 are entitled to.

The Writ Petition is, accordingly, disposed of. There shall be no order as to costs.

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

Date: 10.10.2017
Note:
Issue CC in one week
(B/O)
Nsr

A. RAMALINGESWARA RAO, J