

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.10070 OF 2017

ORDER:

The present Writ Petition, under Article 226 of the Constitution of India, is filed for the following relief:

“to issue an Order or a Direction or a Writ more one in the nature of Writ of Mandamus by declaring the action of the 4th respondent herein for not implementing Fair Compensation and transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, while determining the compensation to pass award, as illegal, arbitrary, autocratic, ultravires and against to the principles of natural justice and consequently direct the 4th respondent herein to pass award by following sections 28 and 94 of the Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, while determining the compensation to pass award, pertaining to the petitioners' land in survey No.9/4 of Veeravalli Village, Nallajarla Mandal of West Godavari District.”

2. The grievance of the petitioners, precisely, in the writ petition is that the respondents herein are not adhering to the provisions of Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, while determining the compensation in respect of the subject properties.

3. On the other hand, learned Government Pleader for Land Acquisition has placed on record the written instructions furnished by the Competent Authority (LA) NHAI 16(5) & Revenue Divisional Officer, Eluru, vide ROC No.487/EGK/NHAI/2016/2, dated

22.03.2017. The said instructions to the extent of their relevance to the present case read as under:

“On the above publication the petitioners filed Objection petition as per the section 3C(1) of the N.H. Act hearing the case on i.e., 04.10.2016 at Tahsildar's Office, Nallajerla by calling the petitioners. The objections heard U/s 3C(2) of the Act and Orders passed on 04.11.2016.

After Conducting and Survey and Sub division the Petitioner Land only Ac.0.68 cts only fallen in Acquisition out of Ac.4.00. It is denoted as 9/4C3. The Petitioner having 4.00 cents land in R.S.No.9/4C the total Ac.11.13 cts as per the NH Act 1956 U/S 3G Notification was published on 13-2-2017 in Local News Paper on 8-3-2017 the Petitioner attended Award enquiry and submitted document and request acquire the land under section 28 and 94 of RFLARR Act 2013.

The said land Acquisition is existing Road widening only. Land Acquisition was taken up under N.H. Act, 1956. As per the instruction of the Central Government determination of the Market value U/s 26 of the RFLARR Act 2013 only. No other sections are not covered under N.H. Act, 1956. Moreover, the petitioner requested to implement the section 28 and 94 of the Act and considered his representation.

As per the section 28 of the RFLARR Act 2013, at the time of disbursement of the compensation any standing crops or trees in the acquired lands damages should be payable. In this case there is poultry farm established in the above acquired land. As per the survey only 0.68 cents proposed for acquisition including poultry farm structures. As per the Act, the structure values are payable together with land compensation. The R & B officials inspected the structures on valuation proposals are under preparation.

Hence the question of damages payable under section 28 does not arise.

As per the section 94 of the RFLARR Act 2013 any part of the land acquired by the authorities any damages occurred to the remaining part are due to acquisition any livelihood disturbed it should be considered. In this case only 0.68 cents acquired out of 4.00 acres of land of the petitioner and also damages for the structures also included in the award. The question of disturbed of the livelihood does not arise. Though it is linear project only road widening from 2 lanes to 6 lanes. The compensation will be paid land value+tree value + structure value and + other values as per Act 26 of the RFLARR Act 2013.

In the circumstances explained the above, I request to bring these facts to kind notice of the Hon'ble High Court of A.P., Hyderabad and to see the Writ Petition is dismissed at the admission stage.”

4. During hearing, it is submitted by the learned Government Pleader for Land Acquisition, appearing for R.2 and R.4, and Sri Alisetty Laxmi Narayana, learned Standing Counsel for R.3, that if the petitioners herein are aggrieved by the quantum of compensation to be determined by the competent authority, they have statutory remedy under the provisions of Section 3G(5) of the National Highways Act, 1956 (for short, 'the Act').

Section 3G(5) of the Act, reads as under:

“(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.”

The above provision of law in clear and unequivocal terms stipulates that if the amount of compensation determined by the competent authority is not acceptable, the parties can make an application to the arbitrator.

5. Having heard the learned counsel for the petitioner and the learned Government Pleader and taking into consideration the written instructions submitted by the learned Government Pleader, this Court is of the considered opinion that the ends of justice would be served if the writ petition is disposed of by placing on record the written instructions furnished by the competent authority and by permitting the petitioner herein to avail the remedy under Section 3G(5) of the Act, if any award is passed contrary to law.

6. With the above observation, the Writ Petition is disposed of.

Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE A.V. SETHA SAI

Date:06.04.2017
INL