

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

WRIT PETITION No.9540 OF 2017

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for respondents.

2. An order passed by the Arbitrator-cum-District Collector, Medak at Sangareddy in Appeal No.G1/147/2016-1, dated 17.09.2016, under Section 3G (5) of the National Highways Act, 1956 (for short, 'the Act'), is under challenge in the present Writ Petition, filed under Article 226 of the Constitution of India.

3. According to the learned counsel for the petitioner, the said order passed by the Arbitrator-cum-District Collector-3rd respondent herein, is erroneous and contrary to law and opposed to the very spirit and object of the Act and violative of Articles 14 and 300-A of the Constitution of India.

4. On the contrary, it is submitted by learned Government Pleader that there is no illegality nor there exists any procedural infirmity in the impugned order and the order under challenge is strictly in accordance with the provisions of the Act. It is further submitted that the writ petition, filed under Article 226 of the Constitution of India, is not maintainable in view of express provisions of National Highways Act, 1956 and the judgment of this Court in the case of **Nekkalapudi Ramakrishna Pratap v. District Collector-cum-Arbitrator, West Godavari District, A.P. and another**¹. In order to adjudicate the present issue on hand, it may be appropriate to refer to the relevant provisions of the Act.

¹ 2006 (1) ALD 511

The competent authority, in the instant case, determined compensation payable to the petitioner herein under Section 3G (5) of the Act. Not satisfied with the quantum of compensation granted by the competent authority, the petitioner herein filed an application before the Arbitrator-cum-District Collector, the 3rd respondent herein under Sub Section 5 of Section 3G of the Act. Section 3G(5) of the said Act reads as follows:

“3G. Determination of amount payable as compensation

- (1).....
- (2)
- (3)....
- (4)...

“(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.”

5. When a similar question cropped up for adjudication, learned Single Judge of this Court, in the case of **Nekkalapudi Ramakrishna Pratap's** at paragraphs 3 to 6 held as under:

“3. When the land is acquired under the Act, the competent authority shall determine the amount which shall be payable to the land owners in accordance with the principles contained in Sub-section (7) of Section 3G of the Act, the aggrieved person may approach the Arbitrator appointed by the Central Government in accordance with Section 3G(5) of the Act. The Act provides that the provisions of the Arbitration and Conciliation Act, 1996 (for short 'the Arbitration Act') shall apply to every arbitration under the Act. In this case, there is no denial that the District Collector is appointed by the Central Government as Arbitrator for the purpose of redetermination under Section 3G(5) of the Act. Applying the procedure under the Arbitration Act, therefore, a person aggrieved by the proceedings of the Arbitrator under Section 3G(5) of the Act

has to necessarily invoke the provisions of Section 34 of the Arbitration Act, and a writ petition is not a proper remedy.

4. It is also brought to the notice of this Court by the learned Assistant Government Pleader for Revenue (Land Acquisition) that as per Section 3J of the Act the provisions of Land Acquisition Act, 1894, shall not apply for the acquisition under the Act, and therefore, Section 3G of the Act alone is a comprehensive provision. If any person is aggrieved by the compensation determined or redetermined by the authorities under Section 3G(3) of the Act or Section 3G(5) of the Act, a remedy lies under Arbitration Act, and in a writ petition this question cannot be adjudicated. It is settled law that when statute provides for depriving a citizen of his/her rights and also provides the necessary procedure to be followed for redressal of such grievance, the same procedure should be followed. Therefore, the writ petition cannot be entertained.

5. Though the learned Counsel for the petitioner made submissions for some time, having regard to the clear provisions of the Act as contained in Section 3G(6) of the Act, he seeks permission to withdraw the writ petition with a liberty to file an appropriate application under Section 34 of the Arbitration Act before the civil Court.

6. The writ petition, with the above observation, is dismissed as withdrawn with a liberty to file an appropriate application under Section 34 of the Arbitration Act before the civil Court. No costs.”

6. The instant case also stands on the same footing. Therefore, the present Writ Petition is also dismissed with a liberty to file appropriate application under Section 34 of the Arbitration Act. Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

APRIL 17, 2017

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Date: 17.04.2017

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