

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.19715 OF 2007

ORDER:

The writ petition is filed seeking a direction to pay compensation to the petitioner for acquiring his lands admeasuring an extent of Ac.0.47 cents in Sy.No.1715/2, Kothapalem Village, Kota Mandal, Nellore District.

The brief facts of the case, according to the petitioner are that the petitioner is the owner of land admeasuring Ac.0.98 cents in Sy.No.1715 of Kothapalem Village, Kota Mandal, Nellore District. The said survey number was subdivided into 1715/1 and 1715/2. Out of the two survey numbers, an extent of Ac.0.47 cents situated at Sy.No.1715/2, was acquired for "Construction of HLB across Challakalava Road". Notice was not served on the petitioner and when the petitioner approached the respondent authorities, he was assured that the compensation amount would be paid to him. When compensation amount was not paid, petitioner filed W.P.No.27844 of 1995 before this Court and the same was disposed of on 13.12.2004 observing that the "copy of the letter of the Executive Engineer, Gudur dated 31.5.1989 addressed to the writ petitioner stating that some of the land situated in S.No.1715 of Kothapalem Village was taken possession for laying of Thupilipalem-Gudur Road and if the said land belongs to the writ petitioner, respondents assured for payment of proper compensation". The said writ petition was disposed of by giving liberty to the petitioner to make appropriate application before the 1st respondent for appropriate relief within a period of eight weeks from the date of receipt of copy of the order and on

such application, the 1st respondent was directed to dispose of the same within a period of eight weeks thereafter. Pursuant to the said direction, petitioner made a representation to the respondents. The 1st respondent addressed a letter dated 9.5.2005 to the 2nd respondent-RDO to take appropriate action. As no action was taken, petitioner again got issued legal notice dated 5.6.2006 and the same was received by the respondents. To the said legal notice, Executive Engineer gave a reply stating that the entire process of land acquisition was done through the Special Tahsildar, Nellore and they have to take necessary action and report compliance as to the orders of this Court. When the revenue authorities have not taken any action, petitioner got issued another legal notice dated 27.1.2007.

The writ petition was admitted on 23.10.2007.

Counter affidavit has been filed on behalf of the respondents 1 and 2 stating *inter alia* that the draft notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, “the Act”) and the draft declaration under Section 6 of the Act were published in District Gazette and two daily news papers. In view of the urgency, enquiry under Section 5A of the Act was dispensed with duly invoking the urgency clause under Section 17(4) of the Act. The land in Sy.No.1715/2 admeasuring an extent of Ac.0.190 Hec.(Ac.0.47 cents) was notified in the name of Enukonda Krishnaiah as Pattadar and Enukonda Venkata Rathanaia as enjoyer in both the draft notification and draft declaration. Notices under Sections 9(3) and 10 of the Act and general notice under Sections 9(1) and 10 of the Act was also issued informing the public in general to attend the Award

enquiry and file the statements before the Land Acquisition Officer if they are interested in the land and claim compensation for the land. The award enquiry was conducted on 27.3.1986. Sri Erukonda Venkata Ratnaiah, who is a notified enjoyer, has attended the Award enquiry and stated that the land in question is in his possession and enjoyment. Award was passed on 10.8.1986. Compensation has been paid to Sri Erukonda Venkata Ratnaiah, son of Kistaiah of Kothapalem Village immediately after passing of the award. The petitioner did not attend the award enquiry. It is also stated that the petitioner herein had filed W.P.No.27844 of 1995 before this Court and the said writ petition was disposed of by directing the petitioner to file a claim petition with evidence, but the petitioner did not turn up and file any claim petition and no such petition is available in the office of the District Collector as claimed by him. However, there is correspondence between the District Collector, Nellore, Revenue Divisional Officer, Gudur and Tahsildar, subsequent to the orders passed by this Court in W.P.No.27844 of 1995 dated 13.12.2004. Since the petitioner did not file any representation, Revenue Divisional Officer could not take any action. The petitioner without filing any claim petition as per the directions of this Court, once again filed the present writ petition, after a lapse of three years.

A reply affidavit has been filed by the petitioner to the counter affidavit filed by respondents 1 and 2 stating that as on the date of the notification and declaration, the petitioner's family members names were reflected in the village records, but not Erukonda Krishnaiah as pattadar and Erukonda Venkata

Rathnaiah as enjoyer as stated in the counter and as such the publication of Section 4(1) notification and Section 6 declaration in the names of persons, who are not pattadar and enjoyer, is illegal and nonest in the eye of law.

It is further stated in the reply affidavit that the averments in the counter affidavit that after disposal of W.P.No.27844 of 1995, there is no representation from the writ petitioner is false and the petitioner has submitted his representation as per the direction of this Court and when there is no response, the petitioner even got issued two legal notices on 5.6.2006 and 27.1.2007 and the petitioner has postal acknowledgements to the same. That revenue records for the relevant period clearly show that the petitioner is the owner and enjoyer of the said land. Along with reply affidavit, adangals have been filed.

Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition.

Admittedly, the award was passed on 10.8.1986 and the first writ petition i.e. W.P.No.27844 of 1995 which was filed by the petitioner in the year 1995, was disposed of on 30.12.2004, observing thus:

“I have perused the averments and the material available on record. A copy of the letter addressed by the Executive Engineer, Gudur, dated 31.5.1989, to the writ petitioner is found from the material papers, informing him that some land situated in S.No:1715 of Kothapalem village was taken possession for laying of Thupilipalem Gudur Road and in that connection, if the said land belonged to the writ petitioner, they assured for payment of proper compensation taking into consideration the potential value of the land in question.

In view of the letter, it is for the writ petitioner to prove before the authorities concerned that the land in question belongs to him. At this stage of the proceedings, the scope of the writ petition is very limited and as such, the aspects as to whether the

land in question belongs to the petitioner or not etc., facts cannot be decided in this writ petition.

However, in the facts and circumstances of the case and in view of the copy of the letter addressed by the Executive Engineer, I feel that it would suffice, if the petitioner is afforded liberty to make an appropriate application before the first respondent for the appropriate relief within a period of eight weeks from the date of receipt of a copy of this order and on such application, the 1st respondent shall dispose of the same within a period of eight Weeks thereafter, in accordance with law”.

Even by the time of filing of the first writ petition, about ten years back, the award has been passed. Petitioner sought to rely on the letter of the Executive Engineer dated 31.5.1989 which was mentioned in the order of the first Writ Petition No.27844 of 1995. Even by the time, this letter is addressed by the Executive Engineer, the award was passed and compensation has also been paid. Admittedly advance possession of the land was taken in this case, but the petitioner did not choose to make appropriate representation/application within a reasonable time. The second writ petition was filed in the year 2007 stating that even though the petitioner made a representation to the respondents and even though the 1st respondent addressed a letter dated 9.3.2005 to the 2nd respondent to take appropriate action, no action has been taken. Though the award was passed in the year 1986 and compensation was paid to the persons whose names were notified in Section 4(1) notification and Section 6 declaration, petitioner filed writ petition in the year 1995. Admittedly, there is delay and latches on the part of the petitioner in approaching this Court as the first writ petition itself was filed about ten years after taking possession of the land and passing of the award.

The learned Government Pleader for land acquisition relies upon the judgment of the Hon'ble Supreme Court reported in **Swaika Properties (P) Limited and another vs. State of Rajasthan and others**¹ and submits that as the award was passed and possession was taken, the writ petition is liable to be dismissed on that ground alone. Hon'ble Supreme Court in the above cited judgment relied upon the judgment in **Municipal Corporation of Greater Bombay v. Industrial Development Investment Co. (P) Limited**², wherein their lordships held as follows:

“29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. but it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third party right were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches.”

Even on the ground of delay and laches, the writ petition is liable to be dismissed.

Apart from the delay, Writ Petition No.27844 of 1995 was disposed of observing that, it is for the petitioner to prove before the authorities concerned that the land in question belongs to him. As the petitioner did not file any claim petition as per the

¹ (2008) 4 SCC 695

² (1996) 11 SCC 501

directions of this Court in W.P.No.27844 of 1995, the respondents could not take any action. Letter dated 9.3.2005 addressed by the 1st respondent to the 2nd respondent also directed 2nd respondent to take appropriate action according to the order dated 13.12.2004 in W.P.No.27844 of 1995. It is for the petitioner to prove his title in accordance with the directions of this Court in W.P.No.27844 of 1995 dated 13.12.2004. Copy of the representation filed by the petitioner dated 5.6.2006 and copy of legal notice dated 27.1.2007 are filed along with the present writ petition. But there is no acknowledgment whatsoever to the said representations. Letter dated 20.6.2006 addressed by the 4th respondent to Sri L. Ramachandra Rao, Advocate, Kota in reply to legal notice issued by the petitioner, which was filed along with the writ petition, also shows that no objection has been filed by the petitioner for making payment to E. Venkata Ratnam. It also states that petitioner also approached District Consumer Form, Nellore in C.D.No.409 of 1992 for payment of compensation and that Special Tahsildar (LA), Nellore has furnished detailed report in letter dated 22.6.1992 to the District Consumer Form, Nellore. Both the representations of the petitioner dated 5.6.2006 and 27.1.2007 do not contain any details about his ownership over the land.

For the reasons stated above, the writ petition is dismissed. No order as to costs. Miscellaneous Petitions, if any pending in this writ petition shall also stand closed.

KONGARA VIJAYA LAKSHMI,J

Date:30.11.2017.
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HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

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