

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.10451 OF 2007

Date 07.12.2017

Between:

Mr.Velagapudi Pitcheswara Rao.

... Petitioner

AND

District Collector, Krishna District and others.

.....Respondents



HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.10451 of 2007

ORDER:

The Writ Petition is filed questioning notification dated 10.05.2007 issued under Section 4(1) of the Land Acquisition Act, 1894 (the Act).

Brief facts of the case, according to the petitioners, are that petitioner No.1 is the owner and possessor of Ac.0.56 cents in Sy.No.179/22; petitioner No.2 is the owner and possessor of Ac.0.08 cents in Sy.No.179/16; and petitioner No.3 is the owner and possessor of Ac.0.05 cents in Sy.No.179/17 of Akunur Gram Panchayat, Vuyyur Mandal, Krishna District. The impugned notification was issued intending to acquire the subject lands for the purpose of burial ground for Christian –Madigas. Since the petitioners' lands fall within the purview of Akunur Gram Panchayat, respondent No.2 – Gram Panchayat is the competent authority to take decision on the burial ground to the people of the Gram Panchayat but the impugned notification has been issued by respondent No.1. While Section 89 of the A.P. Gram Panchayat Act contemplates that there should not be any burial ground within 200 mtrs. of a dwelling house or any source of drinking water supply, petitioners states that residential houses were constructed within 50 mts. and 100 mts. away from their lands; and there exists a burial ground

in the Gram panchayat on Gannavaram road which is being used since many years by the villagers.

Respondent No.1 filed counter affidavit *inter alia* contending that Christian – Madiga people of Akunuru Village, Vuyyur Mandal, Krishna District represented to the Revenue Divisional Officer, Nuzvid for providing a separate burial ground to them as the existing burial ground is being used by Malas who are objecting the Christian Madigas for using the same burial ground; notices, under Section 5A of the Act, were served on petitioners on 07.05.2007 asking them to attend 5A enquiry, and file objections; the petitioners without filing objections, filed the writ petition, and obtained interim order. It is further stated that petitioners are having other lands apart from the lands proposed for acquisition i.e. petitioner No.1 owns Ac.1.03 cents in Sy.No.56/4; petitioner No.2 owns Ac.0.81 cents in Sy.No.180/6, Ac.0.50 cents in Sy.No.179/16 and Ac.0.20 cents in Sy.Nos.181/1, 3; and petitioner No.3 owns an extent of Ac.0.33 cents and Ac.0.46 cents in Sy.Nos.179/17 and Ac.181/19 respectively. It is stated that petitioners are not small and marginal farmers, and the dwelling houses are beyond 200 mts from the lands proposed for burial ground. Respondent No.1 is the competent authority to acquire private lands under the Act and the Gram Panchayat has no power to acquire private patta lands.

This Court, while admitting the writ petition on 16.05.2007, suspended the impugned notification.

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

Learned Counsel for the petitioners contends that petitioners are small farmers, and their lands cannot be acquired. The other contentions raised by the petitioners are not relevant for the purpose of disposing of the writ petition.

Learned Government Pleader for Land Acquisition contends that, apart from the land proposed for acquisition, petitioners are having other lands, as has been mentioned in the counter affidavit.

As seen from the pleadings, petitioners are small farmers holding small extents of lands. Even though petitioners come under the definition of small farmers, the lands of small farmers should not be acquired in usual course. Petitioners are having the following lands apart from the lands proposed for acquisition, which are mentioned hereunder:

Sl.No	Name of the petitioner	Sy.No.	Total Extent Ac.Cts.
1.	Velagapudi Pitcheswara Rao	56/4	1.03
2.	Chagarlapudi Venkateswara Rao	180/6 179/16 181/1,3	0.81 0.50 0.20
3.	Karampudi Omkara Lakshmi	179/17 181/19	0.33 0.46

Even according to the counter affidavit filed by the respondents, the petitioners are having the above lands apart

from the lands proposed for acquisition. If the extents mentioned in the counter affidavit are taken to be true, still, the petitioners are the small farmers. As the petitioners are small farmers, their lands cannot be acquired unless they form part of contiguous piece of land.

In view of the same, the impugned notification is set aside and, if the respondents still proposes to acquire the lands of petitioners, they are at liberty to proceed in accordance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,

The Writ Petition is, accordingly, allowed. No order as to costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Dt:07.12.2017
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