

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.3892 OF 2006

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking to declare the action of the 1st respondent in issuing proceedings No.B/5/2005 dated 02.02.2006 declining to apportion the compensation amount for the acquired lands admeasuring Acs.2-28 guntas in survey No.85 and admeasuring Ac.1-70 cents in survey No.88 situated at Katrapally Village, Makthal Mandal, Mahabubnagar District, as illegal and arbitrary and consequently to direct the 1st respondent to make a reference under Sections 30 and 31 of the Land Acquisition Act, to the Civil Court.

2. The claim of the petitioner is that himself and respondents 2 and 3 had inherited the agricultural lands admeasuring Acs.2-28 guntas in survey No.85 and land admeasuring Ac.1-70 cents in survey No.88 (for short 'subject lands') along with other lands situated at Katrapally Village, Makthal Mandal, Mahabubnagar District, when they were in possession and enjoyment of the land. The first respondent acquired the subject lands and issued notices to respondents 2 and 3 and proceeded to pass an award in the matter. But, no notice was issued to the petitioner though he was also holding 1/3rd share in the subject lands. After coming to know about the said acquisition, petitioner sent a notice dated 12.01.2006 to respondents 2 and 3 and also filed an objection petition on 12.01.2006 before the 1st respondent for apportionment of compensation amount. However, even without conducting any

enquiry or issuing any notice to respondents 2 and 3, the 1st respondent issued an endorsement bearing No.B/58/2005 dated 02.02.2006 stating that no action could be taken on the objection petition filed by the petitioner as the award was already passed on 07.01.2006 in favour of respondents 2 and 3. The endorsement further states that the stipulated time for filing the objections is available up to six months to a person, who is not served with notice or present at the time of passing of award. The petitioner further states that he filed objections on 12.01.2006 for payment of compensation to respondents. As such, the 1st respondent is supposed to consider his objections and make a reference to Civil Court by depositing the amount under Sections 30 and 31 of The Land Acquisition Act. However, the 1st respondent is proposing to disburse the compensation amount to respondents 2 and 3 in violation to the provisions of the Land Acquisition Act. Aggrieved by the said action of the 1st respondent, the present writ petition came to be filed.

3. The first respondent filed a counter affidavit stating that lands admeasuring Acs.2-28 cents in survey No.85 and an extent of Ac.1-70 cents in survey No.88 situated at Katraopally village along with other lands were acquired for excavation of left main canal from K.M.0.536 to K.M.1.934 of Budpur Balancing Reservoir of RLISP Unit-I. According to the entries in Record of Rights and Pahanies, the names of Venkat Reddy S/o.Bal Reddy, Smt.Devendramma W/o.Baghavanth Reddy and Chakali Jayamma W/o.Rayanna were shown as absolute pattadars and occupants of the lands. As such, the names of said persons were notified in Draft Notification and the Draft Declaration was published under

Section 4 (1) and 6 of the Land Acquisition Act. Award enquiry was conducted on 27.10.2005 after service of notice No.B/58/2005 dated 10.10.2005 to all the persons interested in the land. The pattadars had appeared for the Award enquiry and also gave consent to receive the compensation amount. Except the pattadars, no persons appeared before the Land Acquisition Officer during Award enquiry and filed any objections. Thereafter, Award No.41/2005 was passed vide Proceedings No.B/58/2005 dated 07.01.2006 for payment of compensation to the pattadars. After passing the Award, the petitioner had filed objection petition before the respondent on 12.01.2006 claiming share in the acquired lands. Thereon, the impugned order came to be passed.

4. Though this Court admitted the Writ Petition on 02.03.2006, no interim order was passed.

5. Heard both the counsel and perused the material on record.

6. The learned counsel for the petitioner would submit that, *in spite* of objections, the respondents disbursed the amounts, illegally passed the impugned proceedings and sought for a direction to R-1 to refer the dispute to the Civil Court.

7. The learned AGP would submit that compensation amount was already disbursed to respondents 2 and 3 and hence the dispute cannot be referred to Civil Court under Sections 30 and 31 of the Land Acquisition Act, as prayed by the petitioner.

8. The power under Section 30 of the Land Acquisition Act, 1894, is a discretionary power and it has to be exercised based on the evidence available on record. Hence, this Court cannot find fault the issuance of the impugned proceedings.

9. Therefore, the writ petition is disposed of giving liberty to the petitioner to approach the competent Civil Court, if he so advised, for apportionment of the compensation amount and recover the same from respondents 2 and 3.

10. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

11th December, 2017
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M.GANGA RAO, J

