

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.6026 of 2012

ORDER:

The petitioner claims that she is the absolute owner and possessor of an extent of Ac.2.20 cents out of an extent of Ac.4.40 cents in R.S.No.462 of Rustumbada Village, Narsapur Mandal, West Godavari District, having got Ac.1.20 cents registered under gift deed dated 23.03.1992 executed by her mother. The balance extent of Ac.1.00 was also got registered through another gift deed dated 01.04.1992 by her mother. It was mutated in the revenue records and the said extent of Ac.2.20 cents was given subdivision No.462/3 in R.S.No.462. While so, respondents issued notification, under Section 4(1) of the Land Acquisition Act, 1894, on 18.05.2007 showing the names of the parents of the petitioner in respect of an extent of Ac.4.45 cents in R.S.No.462/1. Section 6 declaration was also published in respect of an extent of Ac.1.95 cents in R.S.Nos.462/1A and 461/1C. When the second respondent issued notice on 13.09.2011 asking the persons, whose names were mentioned in the said notice, to vacate and deliver possession of the land since they wanted to take advance possession of the land, the petitioner filed W.P.No.26400 of 2011 before this Court challenging the said notice. After issuing notice in the said Writ Petition,

the second respondent issued an endorsement dated 21.09.2011 withdrawing the proceedings dated 13.09.2011. In view of the same, W.P.No.26400 of 2011 was closed. Then the petitioner got issued notice dated 25.09.2011 to the respondents stating that she is the owner of the said property and requested to drop all further proceedings. Even after receipt of the said notice, it appears that award proceedings were taken up and award was passed on 17.01.2012. While passing the said award, appropriate notices under Sections 9(3) and 10 were issued on 22.11.2010 to the parents of the petitioner. Since the parents of the petitioner could not establish their ownership, notice was issued on 16.02.2012 intimating that compensation amount awarded in the award would be deposited in the Court. At that stage, the present Writ Petition was filed.

This Court granted an order of status quo on 06.03.2012. The above facts are not in dispute. In the meanwhile, when the Writ Petition is pending, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act 30 of 2013') came into force with effect from 01.01.2014.

In the instant case, all proceedings were taken under the provisions of the Land Acquisition Act, 1894. Section 11A of the Land Acquisition Act, 1894, directs the Collector

to pass an award under Section 11 within a period of two years from the date of publication of declaration and, if no award is made within that period, the entire proceedings for acquisition of land shall lapse. In computing the said period, the period of stay granted by the Court, pursuant to the declaration, shall be excluded. In the instant case, declaration, under Section 6 of the Land Acquisition Act, was published on 07.01.2009. There was no stay granted pursuant to the said declaration. As a result of which, award was passed on 17.01.2012. The said award dated 17.01.2012 is clearly beyond the period of two years provided under Section 11-A of the Land Acquisition Act, 1894. Section 24(1)(b) of Act 30 of 2013 states that, if the award is made, then the proceedings shall continue under the provisions of the Land Acquisition Act, 1894, as if the said Act has not been repealed. The provisions of Section 11A of the Land Acquisition Act, 1894 and the provisions of Act 30 of 2013 came up for consideration before the Supreme Court in **Laxmi Devi v. State of Bihar**¹ and the Supreme Court held that acquisition proceedings would lapse and, if possession was already taken, it is open to the State Government to issue a fresh notification. But, in the instant case, possession was not taken till today.

In the circumstances, the Writ Petition is allowed and the award passed in respect of the land of the petitioner, in

¹ (2015) 10 SCC 241

an extent of Ac.1.95 cents in R.S.No.462 of Rustumbada Village, Narsapur Mandal, West Godavari District, is set aside.

Miscellaneous applications, if any, shall also stand disposed of. No order as to costs.

A. RAMALINGESWARA RAO,J

Date:04.01.2017
usd

