

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.25999 OF 2009

ORDER:

The petitioners in all seven members claimed that they were the owners of the agricultural lands situated in Venkat Nagaram, Rajanagaram, Atchayapeta, Bonalanka Villages of Addateegala Mandal, East Godavari District of various extents ranging from Ac.1.24 cents to about Acs.49.29 cents. The lands owned by the petitioners are nearer to the proposed construction of "Indira Sagar Polavaram Project". The lands were acquired for the purpose of rehabilitating the displaced families under various projects being constructed in Rampachodavaram Division. As the lands were situated in the agency area, the lands were acquired invoking the provisions of A.P Scheduled Areas Land Transfer Regulation 1 of 1959 as amended by Act 1 of 1970 and the Rules made there under. The petitioners were also paid the compensation and the possession of the lands was taken by the Government. The present writ petition is filed alleging that the lands were taken by the respondents 3 to 5 forcibly, fraudulently and by coercion invoking the provisions of APSALT and thereby they have deprived of just compensation. They seek a declaration that the acquisition to be arbitrary, illegal and colourable exercise of the power and thus seek setting aside of the awards made under the APSALT provisions with consequential direction to pay appropriate market value by following the terms of the G.O.Ms.No.10 Social Welfare (TW.GCC.1) Department dated 07.03.2007.

Sri K.B. Ramanna Dora, learned counsel appearing for the petitioners while reiterating the contentions raised in the writ affidavit, the reply affidavit and by making a reference to additional material papers contents submits that:

- i) The acquisition made by the respondents of the petitioners properties is in violation of Article 300A depriving the petitioners of their valuable property rights.
- ii) The respondents ought to have invoked the provisions of Land Acquisition Act, 1894 (for short, "the Act") instead of invoking the provisions of APSALT Regulations and the Rules. Petitioners being non tribal s and the lands being situated within the agency area they were threatened and coerced to accept the compensation offered by the respondents and there was no alternative to the petitioners other than to sign on the dotted lines and thus the petitioners were entitled to a direction to be paid compensation in terms of the market value.
- iii) The market value as evidenced from the certificate of market value issued under the A.P. Court Fees and Suits Valuation Rules, 1987 (filed along with the additional material papers) in 2006 is much more than the compensation which was paid to the petitioners.
- iv) The market value determined under the Land Acquisition proceeding with respect to similarly situated under Award 7 of 2011 dated 8.7.2011 and also under the other consent awards made from time to time in 2008 disclose the market value to be anywhere ranging from Rs.89,000/- above with further attendant benefits under the Act which would go to show that the petitioners are not paid the just compensation.
- v) The element of coercion is evident from the fact that the respondents have failed to follow the mandatory rules thereby there is a clear violation of the procedure prescribed under the APSALT Rules which is evident from the very material filed by the respondents particularly Form-G, Form-H, Form-I, Form-J in addition to the certificate of handing over possession.
- vi) The petitioners were made to sign the blank forms and possession certificate and the contents were filled up by the authorities themselves which is evident from the hand writing and further they were all filled up on a single date by putting different dates. Further even assuming for argument sake that they were filled up on different dates, there is a clear violation of adhering to time frame and time lines prescribed under the Rules, which would vitiate the very consent and the consequent acquisition. In those circumstances, learned counsel for the petitioners by placing reliance on the G.O.Ms.No.10 dated 7.3.2007 pleads for adoption of the rates notified in the said G.O, which is up to Rs.1,00,000/- per acre.

Or alternatively direct the respondents to pay the market value adopting the consent awards made in 2008 under the provisions of the Act.

Learned Government Pleader for Land Acquisition while refuting the allegations and by making specific reference to the various documents filed along with the counter affidavit along with the material documents contends that the petitioners had voluntarily offered to sell the lands at a particular price which was infact accepted by the respondents; that as the compensation paid to the petitioners was on account of acceptance of their offer, there is a mutuality in the transaction and thus the acquisition was being considered on consent terms, the same cannot be reopened and the grounds raised by the petitioners are all illusory. He would also further contend that there was a strict adherence to the Rules and in that context he draws the specific attention to the details of the steps taken from time to time as set out in para 3(iii) of the counter affidavit; that the G.O.Ms.No.10 has no application and the said G.O is for the purpose of purchase of lands by the Tribal Corporation (TRICOR Scheme) for assignment for the landless persons; that the lands were not acquired for "Indira Sagar Project" and the provisions invoked are not under the provisions of the L.A.Act and as such the awards made under the Act have no relevance; that the compensation payable is to be worked out in terms of Section 3 of A.P. Scheduled Areas Land Transfer Rules, 1969 (for short, "the Rules") read with Section 10 of AP Ceilings' on Agricultural Holdings Act, 1961; that there was no coercion and the sale and surrender of the lands by the petitioners was voluntary and the allegations of coercion are invented only for the purpose of filing this writ petition; that there are no grounds and prayed for dismissal of the writ petition.

Having perused the pleadings, material documents and on consideration of the respective arguments, the question which falls for determination in the present writ petition is as to whether there was any force coercion or undue influence in acquiring the lands of the petitioners under the provisions of Regulations and as to whether the petitioners are entitled for a direction to re-determine the compensation amount payable either under G.O.Ms.No.10 or as per the market value determined under consent awards made in 2008 under the provisions of the Act.

There is no dispute that the lands acquired by the Government are situated in agency areas of East Godavari District to which APSALT Regulations (Regulation 1 of 1959) as amended from time to time and the rules made there under are applicable. It is well settled that an allegation of force, undue influence and coercion cannot be assumed but would have to be specifically pleaded and established. In a given case depending on the circumstances, the Court may draw, based on the material on record, inferences of there being coercion, force and undue influence. In the case on hand the petitioners being non-tribal have limited rights with respect to properties situated in the agency area. The rights and restrictions are contained in the Regulation 1 of 1959. In that context it can be said that when the land is required in the agency area by the Government, there is a choice with the Government either to invoke the provisions of the Act or take recourse to the provisions of Regulation 1 of 1959. In the case on hand the provisions of Regulation 1 of 1959 were invoked by the Government. In a way, it can be said that there is a possibility of inability on the part of the petitioners to resist the land acquisition by the Government. However, the question is the acquisition being compulsory whether petitioners were paid the just compensation or not, is the issue. The provisions of Section 3(1)(c) of

A.P. Scheduled Areas Land Transfer Regulation, 1959 read with Rule 14 to 16 of the Act read A.P Scheduled Areas Land Transfer Rules, 1969 (for short, “the Rules). The person intending to sell the land in a given circumstances can offer the land to the Government in the agency area in terms of Regulation 3 read with Regulation 15 and by applying in prescribed Form-G. Form –G reads as under:

FORM –G

(See Rule 15)

Application for acquisition of land by the State Government.

To

The Agent/Agency Divisional Officer/Prescribed Officer under Clause (c) of sub-section (1) of Section3.

Sir,

Whereas I..... (name of the applicant), S/o.....(address) am the rightful owner of the land described in the schedule below.

Whereas I intend to sell the land;

And whereas no member of a Schedule Tribe is willing to purchase the said land on the terms offered by me;

Now, therefore, I hereby apply to you under Section 3(1) (c) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959 for the acquisition of the said land by the State Government.

A Court Fee stamp worth Re.1 is affixed.

THE SCHDULE

District	Taluq	Village	R.S.No.	Classification	Areas	Remarks (here indicate trees and permanent structures on the land if any)
1	2	3	4	5	6	7

Rough Sketch of the area shall be attached.

Place:

Date:

Signature of the Applicant

In the case on hand, while filling up of the details of the extent of the land etc., the petitioners had also specified the rate of Rs.35,000/- per acre as their offer price. The notice calling for objections in Form-H was published and thereafter the notice of enquiry specifying the date of enquiry was issued in Form-I and having received no objections either in response to notice in Form-H or on the date of enquiry the certificate of taking over in Form-J was issued finally. It is the specific contention of the learned counsel for the petitioner that the procedure is not followed as prescribed in terms of Rule 14 to 16, more precisely the time lines specified in the Rules have not been followed. For appreciation of this contention and the effect of not following the time frames may be considered with reference to a specific case of one of the petitioners viz., the 1st petitioner Adimulam Kanakavijay. Form-G is dated 25.4.2006. Form-H is dated 23.04.2006. Form-I is dated 23.4.2006. The prescribed format are designed to serve specified purpose. In Form-G an individual intending to sell lands declares his intention, with a further declaration that there is no tribal who is ready to purchase the lands and seeks the Governments to acquire the same. On receipt of such application, the designated authority is required to call for objections in Form-H from any person objecting to the acquisition by the Government pursuant to which the competent authority is required to conduct enquiry for which notices required to be given to the applicant in Form -I. Rule 16(1) of the Regulations mandates a minimum of 15 days time to be given for filing objections with respect to the request of an applicant. Minimum of 15 days notice is for the benefit of the objectors and not to the petitioners. In the case on hand the Form-H dated 22.4.2006 and the enquiry was conducted on 5.5.2006. Though in Form-H 14 days has been specified as a matter of fact the enquiry date was fixed as 5.5.2006. Notwithstanding the fact that in the Form-H only 14 days time was

specified, enquiry date having been fixed as 5.5.2006 has caused no prejudice to the petitioners. Further, as a matter of fact, no objections were received from any quarters. There being no prejudice caused to the petitioners and as a matter of fact the curtailment of the time for receiving objections is only to the advantage of the petitioner. In those circumstances, merely because in the notice in Form-H, it was specified as 14 days instead of 15 days, the acceptance of the offer of the petitioners by issuance of Form-J on 15.5.2006, especially when there are no objections received, cannot be found fault. It is not in dispute that the compensation amount payable has been determined in conformity with the mandate of Section 3(1)(c) of the Regulations.

It may also be noted that it is the petitioners' offer which has been accepted at the offer price. There being no other material to support the claim of the petitioners of force, coercion or undue influence of the respondents in their accepting the offer made by the petitioners, the allegations of the petitioners of force, coercion or undue influence are liable to be rejected. Once this Court finds that the acquisition made was not vitiated and the amounts paid are in conformity with the Regulations 3(1)(c) of the Regulations, there being no irregularity, the claim of the petitioners in terms of G.O.Ms.No.10 or in terms of the award under the provisions of the Act is not tenable. It may also be noted that the G.O.Ms.No.10 is intended for the purpose of enhancing the eligibility to enable a tribal to acquire lands through financing arrangement and the same is not intending to fix the market value or the purchase price when the land is to be acquired invoking the provisions of the Regulations.

In those circumstances, there being no merits in the writ petition, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. However, as stated supra, it cannot be said that there is some element of coercion, leaving no option to the persons holding lands in agency area other than to sell to the Government in given circumstances, and considering the fact that the petitioners have made a detailed representation voicing their grievances on 14.9.2009, the same shall be considered and appropriate orders be passed in accordance with law within a period of three months from the date of receipt of copy of the order.

The Miscellaneous Petitions, if any, pending in this writ petition, shall stand closed. No order as to costs.

Date:22.08.2017,
Gk.



CHALLA KODANDA RAM,J

THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM



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Gk.