

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.12644 of 2004

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking to declare the action of the 2nd respondent in misusing his official position as 1st respondent in paying the entire land compensation amount to the 4th respondent in respect of the lands acquired by the Government, *in spite* of protest, as illegal and arbitrary.

2. The case of the petitioner is that the first respondent-Government acquired petitioner's joint family land admeasuring Acs.2-05 guntas in survey No.2142, 2142/6 and 2143 of situated at Nizamabad Shivar (for short 'subject land') along with other lands to the extent of Acs.63.38 ½ guntas in Nizamabad Shivar for providing house sites. The subject land is the joint family property of the petitioner and the petitioner is having 1/5th share therein. But, the 1st respondent, *in spite* of objection raised by the petitioner for payment of entire compensation amount to the 4th respondent, passed an award vide proceedings No.132/4495/2014 dated 04.06.2004 and paid the compensation amount of Rs.3,63,675/- to the 4th respondent through cheque, in spite of strong protest by the petitioner. Hence, the present Writ Petition is filed to direct the first respondent to refer the dispute to the Civil

Court under Section 30 of the Land Acquisition Act, 1984 (for short 'Act') and direct the respondents to deposit the entire compensation amount in the Civil Court under Section 31 of the Act.

3. The first respondent filed a counter affidavit stating that the patta lands to an extent of Acs.63-38 ½ guntas in survey Nos.2124 to 2129, 2134 to 2138, 2141, 2142, 2144, 2145, 2150 to 2154, 2097 and 2098 situated at Nizamabad Shivar with consent of the land owners @ Rs.1,71,000/- per acre, were acquired for providing house sites to the weaker sections. The final consent award for an extent of Acs.60.23½ guntas @ Rs.1,71,000/- per acre as package deal under Section 11 (2) read with second proviso under Section 31 (2) of the Act was passed duly following the procedure under the Act. Due to title dispute, the remaining extent of land i.e. Acs.3-15 cents was not acquired. Out of the land acquired to the extent of Acs.63-38 ½ guntas, the patta land to an extent of Acs.2-05 guntas in survey Nos.242/2, 2143 was acquired pertaining to R-4, after following due procedure under the Act. Thereafter, the award enquiry was conducted, Award in Proc.No.B2/4495/2004 dated 04.06.2004 was passed and the compensation amount of Rs.3,63,375/- was paid to the 4th respondent. In pursuance to the objection petition made by the petitioner, a notice was issued to him to appear before the first

respondent. Accordingly, he appeared before the first respondent at Nizamabad. But, he has not produced any proof of ownership in support of his claim over the acquired land. Hence, his claim over the compensation was rejected and there is no reason to refer the case under Sections 30 and 31 of the Act. The Collector had rightly exercised his discretion.

4. Heard both sides and perused the material on record.

5. *In spite* of interim direction passed by this Court on 20.08.2004 in WPMP No.18370 of 2004, it appears the respondent had already paid the compensation amount to the 4th respondent.

6. The compensation amount is awarded in respect of the subject land, which is said to be the joint family property of the petitioner, wherein the petitioner had 1/5th share in the lands and the entire compensation amount was paid to the 4th respondent. In these circumstances, the relief prayed by the petitioner to direct the respondents to refer the dispute to Civil Court under Section 30 of the Act and deposit the compensation amount under Section 31 of the Act cannot be ordered. Hence, the petitioner is given liberty to approach the competent Civil Court by instituting a suit for recovery of his share amount out of the compensation, from the 4th respondent.

7. Accordingly, the Writ Petition is disposed of.

8. Miscellaneous petitions pending in this writ petition,
if any, shall stand closed.

M.GANGA RAO, J

29th December, 2017.
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