

HONOURABLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.15495 OF 2010

ORDER:

Heard Mr.P.V.Ramana for petitioner and the Government Pleader (Revenue) for respondents 1 to 4.

Petitioner prays for Mandamus declaring the action of first respondent in constructing High School building in R.S.N.165/5 in an extent of Ac.2-00 at Rangapuram village, Lingapalem Mandal, West Godavari District, without acquiring the land under the provisions of Land Acquisition or paying compensation to petitioner, as illegal and violative of Article 300 (A) of the Constitution of India. Petitioner prays for a declaration that the petitioner is entitled for compensatory reliefs in lieu of the land with interest at 12% per annum with all consequential benefits.

The case of petitioner is that the petitioner is the owner and possessor of an extent of Ac.2-00 cents in R.S.No.165/5 at Rangapuram village, Lingapalem Mandal, West Godavari District (for short referred as 'petition land') and claims to have acquired the petition land in the year 1958 through a registered sale deed from Obilineni Venkateswara Rao, Satyakameswari, Suryavaraprakash Rao etc., In the year 1969, the village elders of about 15 villages in and around Rangapuram village requested petitioner to consider giving the petition land for construction of a school in the petition land as the land is abutting the main road. The petitioner alleges that he requested village elders to provide alternative site or compensation to

transfer the land for constructing a school. He admits to have signed on a few papers and further asserts that the transfer of land agreed by him is subject to the condition of payment of compensation or provide Ac.4.00 cents of alternative land through first respondent. Thereafter, the petitioner executed a registered sale deed in favour of Zillaparishad-first respondent. A High School by Zillaparishad was constructed in the petition land in the year 1980. It is further stated that since the petitioner was not paid compensation or land was not transferred by respondents to him, the petitioner continuously represented to all the authorities either for payment of compensation or allotment of alternative land. The petitioner claims to be a landless poor person.

Briefly reiterated the grievance of petitioner is that a school building is constructed in subject matter of Writ Petition without paying compensation to him. Therefore, the construction of school building by respondents violates property right of petitioner, is illegal and violative of Article 300 A of the Constitution of India.

The first respondent filed counter affidavit and first respondent denies the acquisition of petition land through a registered sale deed by petitioner in the year 1958. The first respondent denies that petitioner is the owner of petition land. By way of reply, it is stated that the village elders of 15 villages represented to the then District Board for construction of High School building to promote education not only at Rangapuram village but also in the cluster of 15 villages. The villagers agreed with first respondent and expressed their

willingness to donate land free of cost for construction of Zilla Parishad High School and one Parasa Subbaiah and Parasa Venkamma have donated an extent of Ac.1.00 cents of land each and the villagers have donated balance extent of Ac.2.00 cents of land in R.S.No.165/5 and 165/6 of Rangapuram village.

The first respondent claims that possession of the land was taken and a school building was also constructed in the year 1980. Therefore, according to him, the petition land is in possession and enjoyment of Zillaparishad for over 30 years. The petition land is classified as Government Land.

In reply to the allegations in para 4 of the affidavit, the first respondent contends that the petitioner has coined the present version to have undue gain from respondents. The petitioner, having kept quite for several decades admittedly after executing document in the year 1958, cannot now press for compensation or allotment of alternative land by filing the instant writ petition. According to respondents, the land was donated by villagers, one Parasa Subbaiah and Parasa Venkamma. The petitioner has moved the Legal Services Authority and the authority after examining the material on 16-10-2004 closed the matter brought before it by the petitioner. The first respondent further contends that the age of the petitioner as shown in the writ affidavit, the alleged purchase in the year 1958 which was transferred in the year 1968 prima facie show that the petitioner at best could be 10 years at the time of transfer etc., As

there is title dispute, it is stated that the writ remedy pursued by the petitioner is not available and prays for dismissing the writ petition.

Along with counter affidavit, 1st respondent filed a few annexures to show classification of land and it is treated as Government land for several decades. The petitioner filed W.P.M.P.No.7681 of 2017 to receive additional material papers. In the affidavit filed along with this W.P.M.P., the petitioner refers to the following documents.

- 1) Sale Deed dated 25-3-1958.
- 2) Will dated 19-1-1963.
- 3) Certificate of Encumbrance, 2008.
- 4) Copies of 10(1) Adangal 1994-1995.
- 5) Representation of petitioner to the Chief Minister dated 26-2-2000.
- 6) Representation to the R.D.O. dated 6-7-2004.
- 7) Complaint to the Lokayukta and District Collector dated 1-8-2005.
- 8) Representation for mutation of name in the revenue records dated 18-3-2013.

Sri P.V.Ramana, counsel for petitioner contends that the documents filed along with writ petition and also the documents filed through W.P.M.P.No.7681 of 2017 prima facie show that the petitioner is the owner of the land. He further contends that even assuming that the petition land was transferred in favour of the first respondent for construction of a High School building, according to

him, the transfer of petition land was made without consideration, but according to him, the petitioner agreed to transfer the land subject to paying compensation or allotment of alternative land and therefore, the construction of a High School building in petition land is violative of Article 300 A of the Constitution of India. He submits that the petitioner is entitled for payment of compensation or allotment of Ac.4.00 of land. He places strong reliance upon a decisions of apex court reported in *SWAIKA PROPERTIES (P) LTD., AND ANOTHER vs. STATE OF RAJASTHAN AND OTHERS* ⁽¹⁾, *TUKARAM KANA JOSHI AND OTHERS Vs. MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION AND OTHERS* ⁽²⁾ and *ASSAM SANMILITA MAHASANGHA AND OTHERS Vs. UNION OF INDIA AND OTHERS* ⁽³⁾ for the proposition that once the propriety right of a citizen is breached without paying the compensation, the same is violative of Article 300 A. He further contends that it is not the case of respondent that acquisition proceedings was initiated for divesting proprietary right of petitioner to the petition land. Therefore, he prays for allowing the writ petition.

Mr.Cheemalapati Ravi, for respondents contends that the writ was filed in the year 2010, hence prayer suffers from laches and according to him, the respondents are not accepting that the land was donated by petitioner to first respondent for constructing a school building, according to him, the land was donated by one Parasa Subbaiah and Parasa Venkamma. and other villagers in the

¹ (2008) 4 SCC 695

² (2013) 1 SCC 353

³ (2015) 3 SCC 1

year 1969. Therefore, it is not a case of compulsory acquisition either from the petitioner or from the donors of the land. It is a simple and voluntary transfer by way of donation of land in favour of first respondent for construction of high school building. He further contends that the respondent is disputing the right, title and entitlement of petitioner to the petition land. Unless and until, even assuming that the respondents are under an obligation to pay any amount or allot land to petitioner and unless and until the title is established in a suit filed for proper reliefs, this court in exercise of its jurisdiction under Article 226 of the Constitution of India now cannot take up the responsibility of declaring the title of the petitioner, thereafter, examine whether the right under Article 300-A of Constitution of India is violative or not and consider granting compensation by direct allotting land to petitioner. Therefore, he prays for dismissing the writ petition.

He contends that even assuming that some right vested in the petitioner still with the lapse of 30 years, no relief can be considered by this court.

Now the point for consideration is whether the petitioner has made out a case for granting of relief of paying compensation or for directing to allot alternate land.

At the out set, I would like to observe that the ratio of the Honourable Supreme Court of India in the decisions referred to above is applicable, if the respondents have either forcibly taken possession of petition land or deprived his proprietary right without recourse to

procedure stipulated under the Land Acquisition Act, Then, there is no difficulty in applying the ratio laid down by the apex court. But in the case on hand, respondents are joining in issue that the petitioner does not have right, title and the owners at the request of villagers voluntarily transferred petition land as early as 1969 and a school was constructed in 1980. There is also dispute on the identity of property claimed by petitioner and the petition land.

Having regard to these facts in issue and particularly, the averments in the affidavits viz. the petitioner signed on a few papers for transfer and also executed a registered deed, this court has difficulty in accepting the prayer particularly at this point of time either for payment of compensation or issue a direction to allot an extent of Ac.4.00 cents of land to the petitioner.

For the above reasons, I am not inclined to exercise the discretion or jurisdiction under Article 226 of the Constitution of India for grant of the reliefs as sought by the petitioner. The petitioner, if advised, can work out remedies before competent court in accordance with law.

The Writ Petition fails and is accordingly dismissed. No order as to costs.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.V.BHATT

Dated 6-4-2017.

Dvs

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