

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.13797 of 2008

ORDER:

Petitioners have filed this Writ Petition assailing the Memo No.B/3698/06 of the 1st respondent.

2. Land admeasuring Ac.74.01 to Nedunoor in the Thimmapur Mandal of Karimnagar District was taken for construction of 2100 MW Gas based Thermal Power Project at Karimnagar by the State under the provisions of the Land Acquisition Act, 1894 (for short “the Act”). It included Ac.2.06 gts in Sy.No.537/A, Ac.2.06 gts in Sy.No.537/B, Ac.0.39 gts in Sy.No.538/B and Ac.0.04 gts in Sy.No.539/B of the said village.

3. It appears that in the notification, the 2nd respondent is shown as the owner of the said land. Petitioners, who are sisters of 2nd respondent, contend that the property is not the self-acquired property of 2nd respondent and that it is ancestral property. They got issued a legal notice to the 1st respondent and to the 2nd respondent making such a claim.

4. On 18-05-2008, the impugned order was passed by the 1st respondent rejecting the said request on the ground that the 2nd respondent is the pattedar, that it is not ancestral land and it is his self-acquired property.

5. Learned counsel for petitioner contends that 1st respondent is not empowered under the provisions of the Act to decide the said issue and under Section 30 of the said Act, if such an issue is raised, he is bound to refer the matter to the competent Civil Court and so this orders need to be set aside.

6. The 2nd respondent filed a counter-affidavit supporting the order passed by the 1st respondent and asserting that he alone is the owner of the property and that petitioners have no right, title and interest therein. He contended that the petitioners should approach the Civil Court for declaration of their right over the property and they cannot maintain the Writ Petition.

7. No counter-affidavit is filed by 1st respondent.

8. Neither the 1st respondent nor the 2nd respondent disputed the legal position that when there is any dispute raised as to the apportionment of compensation payable, the Collector has to refer the dispute to a Civil Court, which is admittedly not done in the present case. Therefore, the impugned order cannot be sustained and deserves to be set aside and it is accordingly set aside.

9. It has to be noted that the Act has been repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and under Section 76 of this enactment, a similar provision as is contained in Section 30 of the

Act exists. Under Section 76 of the new enactment, if any dispute as to the apportionment of compensation arises, the Collector should refer the dispute to the Land Acquisition, Rehabilitation and Resettlement Authority established under Section 51 of the said Act. Vide G.O.Ms.No.40 Revenue (JA & LA) Department dt.22-02-2017, such authority has been constituted.

10. Accordingly, the Writ Petition is allowed, the impugned order dt.18-05-2008 of the 1st respondent is set aside and the 1st respondent is directed to refer the dispute as to whether the petitioners are entitled to a share in the compensation or not and whether the property in question is ancestral property or self-acquired property of 2nd respondent to the said authority within four (04) weeks from the date of receipt of a copy of this order and on receipt of such reference, the said authority shall decide the said issue in accordance with law after giving opportunity to both sides within four (04) months thereafter.

11. Pending decision of the said authority, no further disbursement of any amount shall be made to the 2nd respondent. No costs.

12. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-10-2017

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