

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.2909 OF 2007

ORDER:

This writ petition is filed questioning the notification issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the old Act"), proposing to acquire the agricultural land admeasuring Ac.1.40 cents situated in Sy.Nos.2/5B and 3/2B at Ramakotipuram Village, Avanigadda Mandal, Krishna District for providing house sites to the poorer section.

The brief facts of the case according to the petitioner so far as they are relevant for the purpose of disposal of this writ petition are that the petitioner is the owner and possessor of the subject land having purchased the same under the registered sale deeds dated 11.03.1960 and 17.09.1964. The said land was proposed for acquisition for allotment of house sites under "Indiramma Scheme". A notification under Section 4(1) of the old Act has been issued and as Section 5A enquiry was dispensed with, petitioner filed a Writ Petition No.714 of 2007 before this Court seeking a direction to conduct enquiry under Section 5A of the Act and this Court by order dated 11.01.2007 directed the respondents to conduct enquiry under Section 5A of the Act. Petitioner is holding small extents of agricultural lands and these small extents of agricultural lands cannot be taken by the Government for the purpose of providing house sites and that in and around the notified area there is plenty of Government land available.

Counter affidavit and additional counter affidavits have been filed on behalf of the respondents stating *inter alia* that as the petitioner has not chosen to file objections to Section 5A enquiry, it

has been presumed that the petitioner has no objections for acquisition of the land and therefore, the District Collector has approved the draft declaration and the said declaration has been published in the official Gazette. The petitioner has not attended the award enquiry held on 10.11.2006 and hence the award was passed on 3.1.2007 and the compensation amount was deposited in the Court of Senior Civil Judge, Avanigadda and thereafter the possession was taken on 8.3.2007.

Additional affidavit has been filed by the petitioner stating that the petitioner is still in possession and enjoyment of the land and that she has been cultivating the same without any disturbance whatsoever. It is also stated that the petitioner raised paddy crop in the said land and her name is also being continued in the revenue records, Adangal, Pahanis etc. The copies of the revenue records like Form-1B dated 4.12.2017, Pahani dated 4.12.2017 are filed to show that the land is still in possession of the petitioner. It is also stated that the petitioner is not aware of the passing of the award and that he did not receive any notice whatsoever. It is specifically stated that the possession of the said land is still with him and no compensation whatsoever has been received.

Heard the learned counsel for the petitioner and the learned Government Pleader for Land Acquisition.

Writ Petition was admitted on 15.02.2007 and an order of status quo was passed on 09.05.2007.

On 28.02.2008, when the matter came up for hearing, this Court passed the following:

“Heard Sri K. Srinivas, learned counsel for the petitioner and the learned Assistant Government Pleader for Land Acquisition.

The main grievance of the petitioner is that she was not given an opportunity of personal hearing in the purported enquiry held under Section 5A of the Act because no notice was served on her to attend the enquiry scheduled to be held on 22.9.2006.

Sri T. Appa Rao, Revenue Divisional Officer and Land Acquisition Officer, Bunder, Krishna District filed a counter affidavit in which he asserted that notices under Section 5A of the Act in Form-3 were issued by him on 1.9.2006 and served on the petitioner on 2.9.2006 requesting her to file objections before 19.9.2006 and to attend enquiry on 22.9.2006 at Mandal Office.

Today at the hearing, learned Assistant Government Pleader for Land Acquisition produced record, a perusal of which shows that on the reverse of Form-3 it is endorsed in Telugu that as the petitioner refused to receive the Form-3 notice, the same was affixed to the house of the petitioner apart from putting the notice to wooden-post on the land. The material discrepancy in the averments of the Land Acquisition Officer contained in the counter affidavit and the record prima facie suggests that the Land Acquisition Officer filed the counter affidavit contrary to record. This Court is also of the prima facie opinion that he indulged in making false averments to mislead this Court.

This Court is therefore, of the prima facie opinion that Sri T. Appa Rao, Revenue Divisional Officer & Land Acquisition Officer, Bandar, Krishna District committed contempt of Court by making a false and misleading statement and thereby seeking to interfere or obstruct the administration of justice within the meaning of Section 2(c)(iii) of the Contempt of Courts Act, 1971. He is directed to show cause why contempt proceedings shall not be initiated against him.

Post on 07.03.2008.”

After filing of the additional affidavit and tendering apology, the said suomotu contempt case was closed. On 8.12.2017 to ascertain whether the possession has been taken by the respondents or not, the learned Government Pleader for Land Acquisition was directed to produce the record. Today, the learned Government Pleader for Land Acquisition produced the record which does not contain any documents to show that the possession has been taken by the respondents. Learned Government Pleader for Land Acquisition also admits that there is no record available to show that the possession of the land has been taken. The record only contains the list of the beneficiaries and the lay out which is prepared by the Mandal Revenue Officer.

According to Sub Section 2 of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, "the new Act") where an award under Section 11 of the old Act has been made five years or more prior to the commencement of this Act, but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed. In this case, admittedly, the award was passed on 26.7.2006 that is five years prior to the commencement of the new Act. As seen from the record produced and also as seen from the Adangals and Form-1B certificates produced by the petitioner, it is clear that the possession of the land is still with the petitioner. As the award was passed on 26.7.2006, five years prior to the commencement of the new Act and as admittedly the record does not show taking over the possession of the land from the petitioner, the impugned land acquisition proceedings initiated by way of Section 4(1) of the old Act shall be

deemed to have been lapsed in accordance with Sub Section 2 of Section 24 of the new Act and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

Accordingly, the writ petition is allowed setting aside the impugned notification issued under Section 4(1) of the Act by the respondents. No order as to costs.

Consequently, Miscellaneous petitions, if any pending in this writ petition shall also stand closed

Date:27.12.2017.
Gk.



KONGARA VIJAYA LAKSHMI,J

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