

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.24429 of 2006

ORDER :

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

2. This Writ Petition has been filed by petitioner, who is the Manager of Sri Malleswara and Sitarama Swamy Temples, challenging the action of respondents in taking over an extent of Acs.13.28 cents in Survey No.283/1 and Acs.7.72 cents in Survey No.284 situate at Chandarlapadu Village and Mandal, Krishna District, for the purpose of providing house-sites to the poor.

3. Admittedly, notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the 1894 Act') was published in the District Gazette on 07.02.2004 and draft declaration under Section 6 of the 1894 Act was published on 09.02.2004. Notices under Sections 9 (3) and 10 of the 1894 Act were also issued by the 3rd respondent, and according to respondents, a consent award was passed under Section 11 (2) of the Act on 31.03.2004. It is stated in the counter-affidavit that possession of the land was taken on 26.02.2004 from the petitioner.

4. The counsel for petitioner contended that no enquiry under Section 5-A of the 1894 Act was conducted by respondents; that respondents invoked Section 17(4) of the 1894 Act and dispensed with such enquiry; and that in the facts and circumstances of the case,

there was no necessity at all to invoke Section 17 (4) of the 1894 Act since there was no imminent urgency warranting dispensing of the enquiry under Section 5-A of the Act. He contended that no compensation has been paid to the petitioner-Institution till date.

5. This fact is also admitted in the counter-affidavit filed by respondents at para no.10 wherein it is stated that the Assistant Commissioner of Endowments had given consent for acquisition and for taking possession of the land, and that even though notices under Section 12 (2) of the 1894 Act were issued to petitioner to receive compensation it did not come forward to receive compensation. It is stated that even now it is open to petitioner to attend the Office of the Land Acquisition Officer and receive compensation.

6. The counsel for petitioner further contended that the 1894 Act has since been repealed by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-Settlement Act, 2013 (for short, 'the 2013 Act'); that sub-Section (2) of Section 24 thereof states that where an award has been passed under Section 11 of the 1894 Act, five years or more prior to the commencement of the 2013 Act, but physical possession of the land had not been taken or compensation has not been paid, the acquisition proceedings would lapse.

7. The counsel for petitioner relied on a decision of the Supreme Court in **Pune Municipal Corporation and Anr. vs. Harakchand**

Misirimal Solanki and Ors.¹, wherein the Supreme Court held that if notices were issued to land owners to receive compensation and yet they did not receive it, the acquisition authority has to deposit the compensation in the Court where reference under Section 18 can be made and if the respondents retain the amount with themselves, it is not equivalent to paying compensation to the land owners.

8. The counsel for petitioner also relied on a judgment of a Division Bench of this Court in WP.No.10547 of 2006 dt.30.05.2006 that lands of Hindu Religious Institutions shall not be acquired without obtaining permission of the Court, and that the said order is still subsisting.

9. The legal position, as laid down in **Harakchand Misirimal Solanki** (1 supra) by the Supreme Court, is that for the purpose of Sub-Section (2) of Section 24 compensation would be regarded as paid if the compensation has been offered to the person interested and it is deposited in Court where reference under Section 18 can be made on the happening of the contingencies contemplated under Section 31(2) of the 1894 Act. It held that compensation can be said to have been paid within the meaning of Section 24(2) only when the Collector or the Land Acquisition Officer had discharged his obligation and deposited the amount of compensation in Court and made that amount available to the interested person to be dealt with as provided in Section 32 and 33. It further held that the 1894 Act is an

¹ 2014 (3) SCC 183

expropriatory legislation and has to be strictly followed and the procedure, mode and manner for payment of compensation are prescribed in Para-V (Sections 31 to 34) of the 1894 Act, and the Collector, with regard to the payment of compensation, can only act in the manner so provided and other methods of performance are forbidden. It further held that if compensation is deposited in the Government Treasury it is not the same as payment of compensation to the land owners or persons interested.

10. This legal position is not disputed by the learned Government Pleader for Land Acquisition, appearing for respondents.

11. In the present case, admittedly, it is not the case of respondents that they have made the deposit of the compensation payable to the petitioner-Religious Institutions in the Court where reference under Section 18 can be made. Therefore, it cannot be said that any compensation has been paid to the petitioner within the meaning of Section 24 (2) of the 2013 Act. Therefore, the proceedings for acquisition pursuant to Section 4(1) Gazette Notification dt.07.02.2004 and the draft declaration under Section 6 dt.09.02.2004 would stand lapsed under sub-Section (2) of Section 24, since admittedly the award has also been passed five years prior to the commencement of the 2013 Act, and compensation has not been paid.

12. However, in view of the order in WP.No.10547 of 2006 dt.30.05.2006 of this Court prohibiting acquisition of lands of Hindu Religious Institutions without seeking its permission, the respondents,

unless they obtain such permission from this Court in that case, shall not issue any fresh notification for acquisition of the land of petitioner-Religious Institutions. If such permission is not obtained within three (03) months from today, the respondents shall restore the land of the petitioner-Religious Institutions to the said Institutions.

13. Accordingly, the Writ Petition is allowed as above. No order as to cost.

14. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-10-2017

Ndr/*

