

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.225 OF 2007

Date 21.12.2017

Between:

Rapeti Venkata Ramanamurthy.

... Petitioner

AND

The District Collector, E.G.District, Kakinada and others.

.....Respondents



HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.225 of 2007

ORDER:

The Writ Petition is filed to declare the action of respondent Nos.1 to 4, in seeking to take possession of land belonging to Jagapathi Nagaram Dharmasatram @ Yellapu Narasaiah Annasatram of an extent of Ac.19.57 cents in Sy.Nos.179, 181/1 181/2, 183/2, 184 and 365 situate in Jagapathinagaram Village, Kirlampudi Mandal, East Godavari District, though acquisition proceedings lapsed, as being illegal and arbitrary.

Brief facts of the case, according to the petitioner, are that Yellapu Veeraswamy and Yellapu Appalaraju, who are brothers, own various extents of land at different places, including Ac.19.57 cents; the two brothers divided the properties except Ac.29.30 cents situate in Jagapathinagaram Village, Kirlampudi Mandal, East Godavari, which includes the land under acquisition; while Yellapu Appalaraju died, Yellapu Veeraswamy executed a registered trust deed dated 10.02.1926, whereunder the income derived from Ac.29.30 cents be set apart for offering prayers in favour of his father, late Yellapu Narasaiah; after the death of Yellapu Veeraswamy, his adopted son, Yellapu Narasa Rao and his wife Bapirajamma were managing the affairs of the trust; subsequent to their demise, their minor son was appointed as trustee and petitioner was appointed as guardian under the

will. So also, in the case of Appala Raju, on the death of his adopted son, Satyanarayana Rao, trusteeship devolved on his wife Suryanarayanaamma, who executed will dated 02.06.1966 bequeathing the managerial rights in favour of the petitioner. When the Commissioner of Endowments, Hyderabad and Assistant Commissioner of Endowments, Rajahmundry tried to declare the trust as a public trust, late Narasaraju filed O.S.No.57 of 1981 on the file of II Additional District Judge, East Godavari District, Rajahmundry, and the suit was decreed on 04.04.1983 declaring it as private trust.

Respondent No.1 issued notification, under Section 4 of the Land Acquisition Act, 1894 (the Act), seeking acquisition of Ac.19.57 cents situate in Jagapathinagaram Village, Kirlampudi Mandal, East Godavari, for providing house sites to poor. Draft declaration was issued, under Section 6 of the Act, on 10.07.1999. Petitioner contends that, though Section 17(4) of the Act has been invoked, and enquiry under Section 5(A) has been dispensed with, neither possession was taken nor award was passed till date. Petitioner claims to have made a representation dated 12.11.2005 on behalf of minor trustee stating that more than 1200 house sites, which were given for construction of houses in Kirlampudi Mandal, are lying vacant as the respective beneficiaries have not constructed houses. The action of respondents, in seeking to allot land to landless poor even though acquisition proceedings lapsed, is highly illegal and arbitrary.

In the counter affidavit filed by the respondents, it is stated that, in view of the urgency, enquiry, under Section 5-A of the Act, was dispensed with invoking urgency clause under Section 17(4) of the Act; the Executive Officer of Jagapathinagarm Dharma Satram, vide letter dated 13.04.1999, had given written consent to the Mandal Revenue Officer, Kirlampudi for acquisition of the subject land; the Mandal Revenue Officer had taken possession under a cover of panchanama and by way of beat of tom-tom in the village on 24.07.1999; notices, under Sections 9(1) & (3) and 10 of the Act, were issued for conducting award enquiry; possession has since been taken, house site pattas were issued to 43 eligible beneficiaries on 11.10.2006 for an extent of Ac.1.40 cents out of Ac.19.57 cents and physical possession was given to the beneficiaries; and the remaining extent of land is kept vacant with the government for providing house sites to weaker section people of Jagapahinagaram, Chillangi and Kirlampudi villages in the second phase of Indiramma Programme. They relied on **Vanga Narsaiah v. District Collector**¹ to contend that, once possession of lands was taken by Government, under Section 17(1) of the Act, the proceedings would not lapse if award is not made within the period prescribed under Section 11-A of the Act.

While admitting the writ petition on 04.01.2007, this Court stayed the impugned notification dated 09.07.1999.

¹ 1996 (2) ALT 28

Heard the learned counsel for the petitioner, learned Government Pleader for Land Acquisition and learned counsel for official respondent. Learned Government Pleader made available Xerox copy of the record.

Notification, under Section 4(1) of the Act, was issued dispensing with enquiry under Section 5-A of the Act duly invoking urgency clause under Section 17(4) of the Act. Advance possession was taken on 24.07.1999, and 80% of the compensation was already paid to the Executive Officer of Jagapathinagarm Dharma Satram. Out of the total land 43 house site pattas were issued to eligible beneficiaries on 11.10.2006 and physical possession was handed over to beneficiaries and also to Housing Department in S.No.181/1 to an extent of Ac.1.55 cents. As the award has not been passed, the provisions of Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to determination of compensation shall apply. The amount, if any, paid shall be deducted from the amount payable to the petitioners.

The Writ Petition is, accordingly, disposed of. No order as to costs.

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

KONGARA VIJAYA LAKSHMI, J

Dt:21.12.2017
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