

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.6291 of 2011

ORDER:

Heard Smt V.Sujatha for petitioners and the Assistant Government Pleaders for Land Acquisition and Irrigation.

2. One Suravarapu Ganga Raju filed the writ petition and after his demise, his sons have been brought on record as petitioners 2 to 4, and are pursuing the writ prayer.

3. The petitioners pray for *mandamus* declaring the action of respondents in not paying compensation to petitioners for the agricultural land in Sy.No.114/1 to an extent of Ac.6.82 cents at Polavaram Village, West Godavari District in terms of Section 4(1) notification under Land Acquisition Act, 1894 (for short 'the Act') dated 15.03.2007, as illegal, arbitrary and violative of principles of natural justice.

4. The 1st petitioner averred that an extent of Ac.6.82 cents in Sy.No.114/1 and an extent of Ac.5.14 cents in Sy.No.658/1 were allotted to Kademma Devasthanam by Endowments Department vide order dated 04.03.1953. Petitioners claim to be in possession from 1953 and are rendering services to the temple. In the year 2005, the subject land was taken over by respondents for delivering advance possession to

2nd respondent for construction of Indira Sagar Project. On 15.03.2007 Section 4(1) notification was issued. The Government of Andhra Pradesh sanctioned an amount of Rs.1,40,000/- per acre to be paid towards compensation to all the acquired lands. The important averment on the non-payment of compensation for subject land reads thus:

“The said compensation has been paid to all other land losers in the year 2007 itself but the 5th respondent failed to pay the same to petitioner though the amount is still lying with him. The total compensation amount of Rs.9,54,800/- payable to him is lying with the RDO since 2007, the same has not been disbursed for the reasons best known to him.”

5. The case of the petitioners is that the petitioners are entitled to receive the compensation payable for acquiring the land in Sy.No.114/1 to an extent of Ac.6.82 cents. The petitioners' family is dependent on the subject land and acquiring the subject land by respondents without payment of compensation is illegal, arbitrary and unconstitutional.

6. The petitioners rely on representation dated 18.02.2011, and the details set out in Section 4(1) notification dated 15.03.2007, compromise order No.133D, dated 04.03.1958 and Ryotwari Patta dated 19.11.1960. The details as set out in Section 4(1) notification of subject land reads as follows:

Sl. No.	Nature of land	Particulars of Owner/Enjoyer	Extent of land to be acquired Acs - cents
114/1	dry	Sri Kademmathimmavaru Trust, Suravarapu Gangaraju(1 st petitioner), Satyanarayana,Venkateswar rao	6.82

7. Let me refer to the last document first, to appreciate the claim of the petitioners for compensation. Ex.P-5 Ryotwari patta dated 19.11.1960 issued under Andhra Pradesh Inams (Abolition and Conversion into Ryotwari) Act, 1956 in favour of Sri Kademmma Ammavaru Devasthanam but not in the name of the petitioners. Therefore, the regrant under Estates Abolition Act is in favour of Institution but not individuals. The compromise entered before Commissioner refers to enjoyment of property covered by compromise order between Archakas and the Endowment Department. The said compromise order cannot and could not be relied on, for the purpose of claiming entire compensation and when the subject matter of acquisition stands in the name of Kademmma Ammavaru Devasthanam.

8. Now coming to Section 4(1) notification dated 15.03.2007, the name of institution is shown in the ownership column and not only the name of 1st petitioner but names of two other individuals are also noted. The 1st petitioner apparently by referring to inclusion of his name in

under Section 4(1) notification prays for payment of compensation or questions land acquisition proceedings as violative of Article 300-A of Constitution.

9. Counsel for petitioners has substantially canvassed the stand taken in the affidavit and the documents relied on by the petitioners. For brevity, I am not proposing to refer to these submissions once again.

10. This Court on 06.04.2011 in WPMP.No.7829 of 2011 directed the respondents as follows:

“Pending further orders, it is directed that in case the possession of the land in Sy.No.24 of Pydapaka Village, Polavaram Mandal, West Godavari District was taken over by the Government in pursuance of the notification under Section 4(1) of the Land Acquisition Act and no award was passed, the respondents shall pay 80% of the tentative provisional compensation, within a period of four (04) weeks from today”

11. Respondent Nos.1 to 3 filed counter affidavit and also petition to vacate the interim direction granted in WPMP.No.7829 of 2011.

12. Briefly stated, the case of the respondents is that the land in acquisition is held and owned by the diety Kademamma Ammavaru of Polaravaram and held by Endowment

Department. The Endowment Department granted lease to one Suravarapu Rama Dandu, father of 1st petitioner vide order in 133 D, dated 04.03.1958. The petitioners are allowed to take share and render services to the institution.

13. The respondents further allege that in response to notices under Section 9(3) and 10 of the Act, the land owners covered under Section 4(1) notification appeared before Revenue Divisional Officer and gave consent for passing Award. The consent Award insofar as subject land is concerned is passed basing on the consent given by 6th respondent. A copy of Award dated 11.03.2008 is placed before the Court and operative portion reads thus.:

“M/s. Sri Kadamma vari trust has attended the Award enquiry and claimed for compensation for an extent of Ac.6.82 cents of land in the schedule. They deposed that their having right vide 317/78 dated 02.06.1997. They stated that the land is in possession and enjoyment and bores and trees and structures compensation also they accepted to receive the compensation for an amount of Rs.1,40,000/- per annum, for the land involved in the acquisition and also depend a sworn statement to that extent. There are no counter claims.”

14. According to respondents, the subject land belongs to Endowment Department and accordingly compensation is

paid to the institution. The respondents further allege that the 1st petitioner attended enquiry on 31.05.2011 and gave statements that subject matter of acquisition is devolved on him from Zamindars. According to respondents, the subject land is recorded in favour of Kademamma Ammavari Devasthanam in revenue records.

15. The respondents claim to have considered the petition dated 18.02.2011 and rejected the claim of petitioners. The counter affidavit no doubt does not contain the date or proceeding through which the petition is considered and rejected by respondents. The objection of counsel for petitioners and reply of respondents merely are stated to sensitize the respondents that little more care is taken in meeting the averments in affidavit filed by the petitioner while filing counter affidavit.

16. Having heard, the counsel for the parties and perusing the record, the following point is framed for consideration.

(i) Whether the petitioners are entitled to receive the compensation and whether with the passing of consent Award dated 11.03.2008, the complaint at the instance of petitioners that the acquisition is illegal and unconstitutional, is maintainable or not.

17. The 1st petitioner claimed compensation in individual capacity for acquiring the subject land. The documents relied on by 1st petitioner, on the other hand show that the owner of the acquired land is the institution but not the individual. From the consent Award dated 11.03.2008, it is clear that DD proposals were submitted on 09.03.2007 and Draft Declaration was approved on 18.03.2007.

18. The case of the respondents is that the compensation is paid to institution represented by Department. The consent Award was passed on 11.03.2008. The petitioner is not challenging the consent Award but filed representation on 18.02.2011. Once the Award is passed and proceedings have gone that far, filing representation dated 18.02.2011 is not the proper and right remedy. Even assuming that the date of disposing of representation is not given in the counter affidavit, still having regard to the details contained in Ryotwari Patta, description of institution as owner under Section 4(1) notification and consent award dated 11.03.2008, this Court is not persuaded to interfere with the challenge against the acquisition of land in Sy.No.114/1. The 1st petitioner or for that matter petitioners 2 to 4 as persons rendering services can establish that they are tenants of

acquired land and can work out the grievance in accordance with law, before authority or Court.

19. The liberty prayed for by Smt Sujatha for working out grievance as stated above, is placed on record and accepted.

20. Writ Petition fails and is dismissed with the above observations. No order as to costs.

21. Miscellaneous petitions, if any, pending, shall stand closed.

Dt: 09.10.2017
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S. V. BHATT, J

