HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.43988 OF 2017

ORDER:

This writ petition is filed challenging the Notice of Attachment dated 15.12.2017 issued by the 4th respondent under Section 27 of the A.P.Revenue Recovery Act, 1864, without considering the explanation dated 06.12.2017 submitted by the petitioner to the notice dated 22.11.2017 in Rc.No.B/27/2016.

Learned counsel for the petitioner states that the petitioner was paid compensation determined by the authority under the provisions of the Land Acquisition Act in respect of the lands mentioned in the impugned notice; and that now the respondents cannot invoke Section 5 of the Revenue Recovery Act, 1864 since the compensation amount, awarded for acquisition of land, cannot come within the purview of the Revenue Recovery Act. He also submits that if at all any compensation is wrongly paid, they have to initiate action under Section 33A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. He further submits that the respondents without any prior notice straight away passed the impugned proceedings.

On the other hand learned Government Pleader for Land Acquisition supports the action of respondents in invoking the provision under Section 5 of the Revenue Recovery Act.

It is to be seen that the State Government has introduced Section 33A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which reads as follows;

> 33A.'**Recovery' of the amount wrongfully paid:-** Notwithstanding anything contained in any other law, the authority in a reference under Section 64 or the High Court in appeal under Section 74, or any other authority in any legal proceedings find that the money has been wrongfully paid to any person under this Act, the State Government or its authorised person or Collector shall recover the same as arrears of land revenue.
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> Sections 4 and 5 of the **A.P.Revenue Recovery Act, 1864**, reads as follows;
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> **4. Arrears of Revenue:-**
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> When the whole or portion of a kist shall not be so paid, the amount of the kist or of its unpaid portion shall be deemed to be an arrear of revenue.
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> **5. Arrears of revenue how recovered:**
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> Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and costs of process, by the sale of defaulter's moveable and immovable property, or by execution against the person of defaulter in manner hereinafter provided.

A reading of the aforesaid provisions goes to show that payment of excess compensation or wrongly paid compensation can be recovered under Section 33A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Admittedly, before issuing notice dated 22.11.2017 under Section 5 of the A.P.Revenue Recovery Act, no prior notice was issued to the petitioner.

In view of the same, the impugned Notice of Attachment dated 15.12.2017 and notice dated 22.11.2017 issued under Section 5 of the A.P.Revenue Recovery Act, are set aside and it is open for the respondent authorities to invoke Section 33A of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and take action for recovery of the amounts which are alleged to be wrongly paid to the petitioner.

The writ petition is allowed to the extent indicated above. No order as to costs.

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

A.RAJASHEKER REDDY, J

26.12.2017
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