

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.2619 of 2018

ORDER :

Heard the counsel for petitioner, the learned Government Pleader for Municipal Administration for 1st respondent, and Sri V. Satyam Reddy, counsel for 2nd respondent.

2. In spite of two opportunities having been granted to the 2nd respondent to file a counter-affidavit with a specific mention on the last occasion that if counter-affidavit is not filed by to-day the matter will be treated that there is no counter, still no counter-affidavit is filed by the 2nd respondent till date.

3. Though the counsel for 2nd respondent seeks further time to file counter-affidavit, the said request is rejected in view of the fact that twice time was granted to him earlier and no counter-affidavit is filed by the 2nd respondent.

4. In any event, the issue raised in the Writ Petition is the correctness of the proceedings dt.10.11.2017 issued by the 2nd respondent, fixing compensation at Rs.6,35,598/- allegedly for an area of 20 Sq.Yds. taken from the petitioner's property for road-widening on 24.06.2012.

5. As per the judgment of the Supreme Court in **Mohinder Singh Gill v. Chief Election Commr**¹, and the judgment of the Supreme Court in **Commissioner of Police, Bombay vs. Gordhandas**

¹ 1978 (1) SCC 405

Bhanji², the validity of an order must be judged on the reasons mentioned in it and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. The Supreme Court held that otherwise, an order in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out.

6. This legal position is not disputed by Sri V. Satyam Reddy, learned Standing Counsel for 2nd respondent.

7. Therefore, I see no reason to grant further time to the 2nd respondent to file a counter-affidavit since any such counter-affidavit cannot improve the order dt.10.11.2017 passed by the 2nd respondent.

8. It is the contention of the counsel for petitioner that having deprived the petitioner of the land out of his property for the purpose of road-widening on 24.06.2012 highhandedly without paying any compensation, a paltry amount is now offered to be paid by the 2nd respondent.

9. The counsel for petitioner states that the petitioner had earlier approached this Court in WP.No.35457 of 2015 which was disposed of on 10.12.2015, directing the 2nd respondent herein to consider the petitioner's request for payment of compensation, and that the impugned order had been passed pursuant to the said direction.

10. C.C.No.605 of 2017 filed by the petitioner alleging willful disobedience of the order dt.10.12.2015 in WP.No.35457 of 2015 was

² AIR 1952 SC 16

closed on 17.11.2017 in view of the issuance of the impugned proceedings dt.10.11.2017 passed by the 2nd respondent.

11. The counsel for petitioner contended that the basis for fixing market value by the 2nd respondent in the impugned order is a certificate obtained from Registration Department certifying the market value to be Rs.12,000/- per Sq.yd. as on 24.06.2012. He contends that it is settled principle that such certificates issued by the Registration Department cannot be the basis for fixing market value of land taken from the petitioner, (see **Jawajee Nagnatham v. Revenue Divisional Officer**³) and that it was incumbent on the part of the 2nd respondent to consider sale transactions of lands in the vicinity around the date of deprivation, i.e., 24.06.2012, and determine market value and other benefits payable to petitioner on the said basis. He also disputes the area of land utilized by the 2nd respondent for the purpose of road-widening.

12. Sri V. Satyam Reddy, learned Standing Counsel for 2nd respondent, has not been able to show any judgment of any Court permitting fixation of market value of land taken from a citizen on the basis of value given by the Sub-Registrar. He also does not dispute that in cases arising under the Land Acquisition, the best basis of award of compensation to a land-loser is normally the rate at which lands in or about the subject land are sold at, or about the date of deprivation of the subject land of the citizen in question.

³ (1994) 4 SCC 595

13. This principle has been recognized in several decisions of the Supreme Court including **Union of India v. Pramod Gupta**⁴ and **Mehrawal Khewaji Trust v. State of Punjab**⁵

14. Therefore, I am satisfied that the impugned order passed by the 2nd respondent cannot be sustained in law, since the very basis of fixing market value for the land alleged to have been acquired for road widening is contrary to the principles for determination of compensation laid down by several precedents of this Court and the Supreme Court.

15. Accordingly, the impugned order is set aside, and the 2nd respondent is directed to determine by way of award in accordance with law under the Land Acquisition Act, 1894 by complying with the principles for payment of compensation under the said statute taking the date of acquisition of the land as 24.06.2012, after giving notice to the petitioner; and communicate the same to petitioner within a period of four (04) months from the date of receipt of copy of the order.

16. The 2nd respondent shall also pay costs of Rs.10,000/- to the petitioner.

17. Accordingly, the Writ Petition is allowed as above, with costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 21.03.2018

Ndr/*

⁴ (2005) 12 SCC 1 Para no.25

⁵ (2012) 5 SCC 432