

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.19381 OF 2007

ORDER:

This Writ Petition is filed to issue a Writ of Mandamus declaring the inaction of the respondents in referring the applications of the petitioner dated 24.12.2005 and 06.02.2007 filed under Section 18 of the Land Acquisition Act, 1894 (for short 'the Act') in respect of land to an extent of Acs.10.00 in survey No.50/A2 situated in Gorakallu Village, Panyam Mandal, Kurnool District, to the Civil Court, as illegal and arbitrary and consequently direct the respondents to refer the claim of the petitioner to competent Civil Court for grant of just and proper compensation.

2. The case of the petitioner is that he is the owner of the land to an extent of Acs.10.00 in survey No.50/A2 situated at Gorakallu (V), Panyam (M) of Kurnool District (for short 'the subject land'). The second respondent proposed to acquire the subject land of the petitioner along with other lands for construction of Gorakallu Balancing Reservoir. Accordingly, the lands were acquired and the second respondent passed award No.27 dated 31.08.2005 awarding compensation of Rs.6,66,116/- towards the subject land. Petitioner received the compensation amount by way of cheque dated 31.08.2005 on 19.11.2005. As the validity of the cheque expired, the cheque was revalidated up to 19.12.2005. The petitioner received the said cheque from the second respondent on 28.11.2005 under protest as the compensation paid was very meagre when compared with existing market value of the land, which was at Rs.3,50,000/- to

Rs.4,00,000/- per acre. The petitioner submitted application on 24.12.2005 to the second respondent to refer the matter under Section 18 of the Act to competent Civil Court for enhancement of compensation and fixation of the market value of the land acquired by the second respondent. Thereafter, the petitioner got issued legal notice on 06.02.2007 giving details of the application filed seeking reference under Section 18 of the Act to competent Civil Court for re-determination of the compensation amount. When the second respondent failed to refer the matter to Civil Court, the petitioner filed the present writ petition.

3. A counter affidavit has been filed on behalf of respondents 1 and 2 stating that the lands in survey Nos.50/A2B1 and 50/A2B2 for an extent of Acs.0.80 and Acs.9.05 respectively of the petitioner were acquired along with other lands vide Award No.27/2005 dated 31.08.2005 for construction of Gorakallu Balancing Reservoir and petitioner was paid compensation of Rs.6,66,116/- vide cheque No.043478 dated 31.08.2005 and the cheque was handed over to the petitioner on 31.08.2005. The petitioner received the cheque under protest on 31.08.2005. However, the petitioner brought the cheque to the office of the second respondent on 18.11.2005 for re-validation. Accordingly, the cheque was re-validated by the Land Acquisition Officer/Special Deputy Collector (LA & Reh.SSP), Kurnool, on 19.11.2005 by granting further time up to 19.12.2005 for en-cashing the said cheque and the same was also handed over the petitioner on 18.11.2005 itself. The contention of the petitioner that he received the cheque on 28.11.2005 was denied. The petitioner gave representation dated 24.12.2005 requesting for

reference to the Civil Court for enhancement of compensation for the acquired land. The petitioner has not submitted the application under Section 18 of the Act within the prescribed period from the receipt of notice under Section 12 (2) of the Act. Hence, his application was not taken into consideration and an endorsement dated 18.01.2006 was made to that effect and was communicated to the petitioner. It is further stated that the Land Acquisition Officer on 27.12.2005 received petitioner's representation dated 24.12.2005. As the said application is submitted after lapse of prescribed period of six weeks from the date of passing of award, the application was not referred to Civil Court. Hence, there is no illegality or irregularity on the part of the second respondent in not referring the petitioner's representation dated 24.12.2005 received on 27.12.2005 to Civil Court for enhancement of compensation under Section 18 of the Act.

4. Heard both sides and perused the material on record.

5. Learned counsel for the petitioner would contend that the subject land of the petitioner was acquired by the second respondent for construction of Gorakallu Balancing Reservoir. The second respondent passed award on 21.08.2005 awarding compensation of Rs.6,66,116/- to the petitioner for the subject land. The second respondent handed over the cheque dated 31.08.2005 to the petitioner only on 18.11.2005 and the petitioner submitted the same for re-validation on 18.11.2005, the second respondent re-validated the cheque on 19.11.2005 up to 19.12.2005 and the cheque was handed over to the petitioner, which was received by the petitioner on protest. As very meagre

compensation was awarded to the petitioner, he submitted a representation dated 24.12.2005 seeking to refer the application to the Civil Court for enhancement of compensation. When the second respondent failed to refer the same to Civil Court, he got issued a legal notice dated 06.02.2007 to the second respondent giving details of the application dated 24.12.2005. Petitioner received the cheque dated 31.08.2005 and re-validated the said cheque on 19.11.2005 up to 19.12.2005. On that date i.e. on 19.11.2005 only, the petitioner came to know that very meagre compensation was paid to the petitioner. As the petitioner was not served with any notice under Section 12 (2) of the Act, he submitted application on 24.12.2005 seeking reference to the Civil Court under Section 18 of the Act. As per Section 18 of the Act, the application has to be submitted within two months from the date of receipt of 12 (2) notice. As per Section 31 (2) of the Act, the cause of action to submit application arises only from the date when the petitioner received the compensation. In view of the same, the application is well within time and action of the second respondent in refusing to refer the application to the Civil Court for enhancement of the compensation under Section 18 of the Act is arbitrary.

6. Per contra, the learned Assistant Government Pleader while reiterating the contents of the counter of the second respondent would submit that the petitioner submitted application on 24.12.2005 to refer the matter to the Civil Court under Section 18 of the Act and the petitioner has not submitted the application within time after receipt of the 12 (2) notice dated 31.08.2005. Accordingly, an endorsement dated 18.01.2006 was also issued to

the petitioner and there is no illegality or irregularity on the part of the second respondent.

7. In the facts and circumstances of the case, in considered view of this Court, it is found that the petitioner's land in survey Nos.50/A2B1 and 50/A2B2 for an extent of Ac.0.80 guntas and Acs.9.05 guntas respectively was acquired along with other lands for construction of Gorakallu Balancing Reservoir and award No.27/2005 dated 31.08.2005 was passed by the second respondent and a cheque bearing No.043473 dated 31.08.2005 for Rs.6,66,116/- was issued by the second respondent. But, as seen from the re-validation endorsement dated 19.11.2005 made on the cheque, it appears that the cheque was not handed over to the petitioner on 31.08.2005. On representation by the petitioner on 08.11.2005 the cheque was re-validated on 19.11.2005 up to 19.12.2005 for encashment. Along with the writ petition, the petitioner filed xerox copies of the cheque dated 31.08.2005, representation of the petitioner dated 24.12.2005, postal receipts, legal notice dated 06.02.2007 along with pattedpar pass books. Along with counter, the second respondent filed copy of notice under Section 12 (2) of the Act dated 31.08.2005 issued to the petitioner to receive the compensation within seven days therefrom. Copy of pages 2 and 3 of annexure indicating the names of the land owners, survey numbers, extents of land, cheque number, compensation amount paid and signatures/thumb impressions of the persons who received the cheque, is also filed along with counter. In the said document, the name of the petitioner is shown at Sl.No.101. But, the date of service of the notice under Section 12 (2) of the Act was not

indicated therein. Further, as seen from the said copies, it is clear that the cheque was handed over to the petitioner but there is no mention of the date on which the cheque was handed over to the petitioner. Hence, it could easily be construed that notice under Section 12 (2) of the Act was not served on the petitioner. Therefore, though the cheque is dated 31.08.2005, it cannot be concluded that the cheque was served on the petitioner on 31.08.2005 itself. The petitioner received the re-validated the cheque on 28.11.2005 and submitted application on 24.12.2005 seeking reference, under protest.

8. It would be necessary to extract Sections 18 and 31 (2) of the Act, which read thus:

18. Reference to Court:- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made:-

- (a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award;
- (b) in other cases, within six months of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

CLAUSE (b) IN ITS APPLICATION TO THE STATE OF A.P.

*[(b) in other cases, within two months from the date of service of the notice from the Collector under Section 12 sub-Section (2)]

* amended by A.P. Act 20 of 1959.

31 (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under Section 18 would be submitted.

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under Section 18:

Provided also that nothing herein contained shall effect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

9. From a conjoint reading of Sections 18 and 31 (2) of the Act, it is clear that the cause of action to seek reference under Section 18 of the Act would arise only on receipt of compensation, that too under protest. The period of two months for seeking reference under Section 18 must be calculated from the date on which the amount of compensation was received under protest, as held by this Court in **Singareni Collieries Company Limited rep. by its General Manager v. C.Raghavender Rao**¹. When that be so, the application filed by the petitioner herein seeking reference

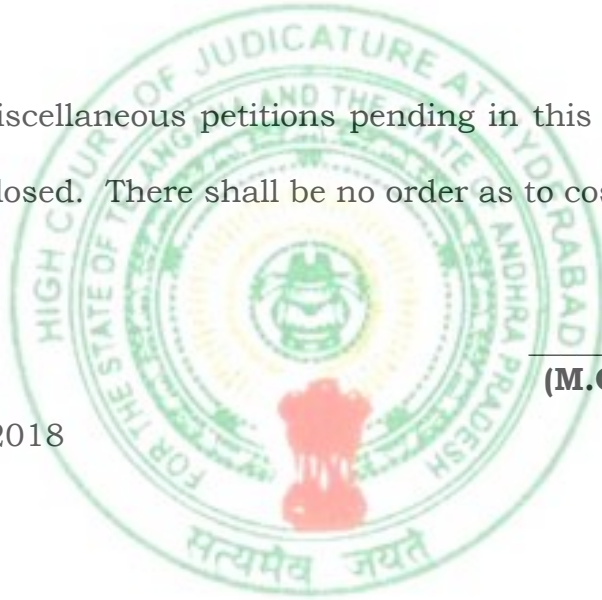
¹ 2008 (1) ALT 256

is well within time and the petitioner is entitled to seek reference under Section 18 of the Act to the Civil Court.

10. In view of the above discussion, the Writ Petition is allowed directing the second respondent to refer the application of the petitioner dated 24.12.2005 to competent Civil Court under Section 18 of the Act for enhancement of compensation, without reference to the endorsement said to have been made on 18.01.2006 rejecting the petitioner's application for reference, within a period of two months from the date of receipt of a copy of this order.

11. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

16th March, 2018
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(M.GANGA RAO, J)