

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.13446 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners requesting to issue a Writ of Mandamus declaring the action of the respondents in not paying compensation to the petitioners as per the terms of G.O.Rt.No.484, dated 26.6.2003, and in terms of the Award no.3/2003-04, dated 15.03.2004, of Chenduvoy village, Atloor Mandal, Kadapa District, as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India; and, to direct the respondents to pay compensation with interest in terms of the Award from the date of the Award till the date of payment.

2. I have heard the submissions of Sri P. *Venugopal*, learned senior counsel representing Sri Y. *Venkata Satyam*, learned counsel for the petitioners, of the learned Government Pleader for Irrigation & Command Area Development appearing for the 1st respondent, and of the learned Government Pleader for Land Acquisition appearing for the respondents 2 to 4. I have perused the material record.

3. The case of the petitioners is as follows:

Government have taken acquisition proceedings of villages coming under submersion of the Somasila project so as to store 78 TMC of water in Somasila Reservoir. The lands of all the petitioners were acquired for the said project as their lands in the villages, including the villages, are coming under the submersion of the project. As per the provisions of the Land Acquisition Act,

1894 [‘the Act’, for short] whenever any private lands are required for acquisition for public purpose, the provisions of the said Act have to be followed till the culmination of the acquisition proceedings by an Award. The Award is also not final as it is subject to the scrutiny by the civil Court on a reference under Section 18 of the Act. Further appeal and writ petitions are also the remedies available to the persons whose lands are acquired under the provisions of the Act. The petitioners were made to understand that if consent is given for acquisition, amounts would be paid to the petitioners immediately and in a fair manner and that such course would give a solace to the petitioners and would enable them to have properties elsewhere. When the respondents asked for the consent of the petitioners, consent was given by the petitioners. A consent Award was also passed, on 15.03.2004, *vide* Award no.3/03-04 by the Spl.Deputy Collector, Land Acquisition, Telugu Ganga Project – 3rd respondent. The consent Award reflects the names of the petitioners, the details of their properties, and the amounts that are payable to the petitioners in respect of their respective properties, which are acquired. The petitioners were informed that if they give consent, they will be paid 50% of the compensation forthwith and that the balance 50% would be paid within a reasonable time. Thus, the petitioners were lured into giving their consent for acquisition and for passing a consent Award. Till the date of institution of the writ petition, no steps were taken by the respondents to make payment in terms of the consent and the Award, except paying 25%. The respondents have violated the terms of G.O.Rt.no.484 and further failed to pay compensation for the Awardees who consented. The said acts of the respondents are unjust, illegal and unconstitutional. In respect of those villagers whose lands were also acquired

under the Somasila project, awards have been passed and reference Courts have enhanced the compensation by 80%. The petitioners who gave consent for consent Award are put to loss. Whether consent is given or not, the payment of compensation should be on par and there shall be parity in payment of compensation to the land owners whose lands are acquired. The respondents have not chosen to pay balance compensation of 75% to the petitioners. The consent was obtained by invoking the power of the State. Had the petitioners not given consent, they would have also got compensation enhanced by 80% like the other villagers, who did not give consent. The petitioners have a right to receive compensation for their respective lands, enjoyment of which was deprived on account of the submersion of their lands in the project. Hence, the writ petition is filed.

4. The case of the respondents as stated in the counter affidavit of the Spl. Deputy Collector (LA) - 3rd respondent is in the nature of denial of the claim of the writ petitioners. In the counter, it is further stated as follows: - 'A consent award under Section 11(2) of the Act *vide* award no.3/03-04 was duly passed after issuing a notification and following the procedure laid down under the Act and G.O.Rt.No.802 I & CAD (PW.TWP-II) Dept., dated 30.10.2003, & the guidelines given in Memo No.13959/T.g.P-II/2003 I & CAD (PW) Dept., dated 24.11.2003, and in the common orders, dated 27.08.2003, of this Court passed in WP.No.14246 of 2002 and batch. The writ petitioners accepted the compensation along with 25% enhanced compensation offered by the District Empowered Committee and they have not sought reference under Section 18 of the Act in view of the passing of the consent Award. Before passing the consent Award, the then District Collector and Chairman, Empowered

Committee held negotiations with the village committee members of Chenduvai, on 20.03.2003, at Sabha Bhavan, Collector's Office, Kadapa. The minutes of the meeting were also recorded. In the minutes, it is clearly mentioned that the District Empowered Committee is willing to enhance the compensation by 25% for the persons who did not make a request for reference under Section 18 of the Act. The Special Collector was asked to take appropriate action on all the representations received from such claimants from the villages, which are liable for submersion. The structures owners demanded 45% of enhancement of compensation; and, the District Empowered Committee offered 25% enhancement of compensation. The awardees entered into an agreement for accepting package deal for an amount of Rs.5,48,51,670/- with the Land Acquisition Officer. Accordingly, consent Award has been passed and the amount was duly disbursed. The Government constituted an Empowered Committee under the Chairmanship of District Collector since some unscrupulous elements are seeking to make illegal gains to the detriment of public interest by constructing flimsy structures. Such elements resorted to doing so to make unlawful gains. It is also true that G.O.Rt.No.484, dated 26.06.2003, mentioned supra permitted the District Collector to negotiate with the village community and to arrive at suitable enhancement upto maximum of 50% to facilitate passing of a consent Award. The Government on the proposals of the District Collector, Kadapa, issued G.O.Rt.No.802, dated 30.10.2003, permitting the Special Collector, T.G.P., Nellore, to notify the left out genuine structures and permitted the District Collector, Kadapa, to finalise the consent award package by offering 25% enhancement over and above the estimated value of the structures following

2002-03 SSR rates for structures. As per the said GO.Rt.no.484, dated 26.06.2003, necessary and relevant aspects have been considered. It is incorrect to say that the Government or the District Empowered Committee or the LAO have consented for paying 50% of enhancement over and above the market value fixed by the LAO. The wording employed in the GO is that the District Collector is permitted to negotiate upto maximum of 50%; that does not mean that the LAO or the District Empowered Committee are precluded to negotiate at 25% of enhancement of compensation. This Court, by common orders, dated 27.08.2003, disposed of W.P.No.14646 of 2002 and batch. In the said orders, it is categorically observed that if any of the petitioners therein or other persons whose lands and structures are proposed to be acquired are not willing to accept consent Awards, all necessary steps under the Act shall be taken. Having accepted for the consent Award and taken the compensation awarded with 25% enhancement as a package, the petitioners are now turning around and claiming compensation for which they are not entitled to. The petitioners accepted the package deal which includes 25% of the enhancement of compensation without protest and without making a request for reference under Section 18 of the Act. There is no existing liability on the part of the respondents to make further payment to the petitioners in this regard. The petitioners are not entitled for payment of any further compensation having entered into an agreement and having accepted 25% of compensation as a package deal and as the consent award has become final. If the petitioners' wrongful claim for compensation is to be allowed, it results in shooting up further claims in the remaining 23 villages for which consent

Awards under Section 11(2) of the Act were passed by the LAO. Hence, the writ petition is liable to be dismissed.'

5. Submissions are advanced in line with the pleadings.

6. I have given detailed and thoughtful consideration to the facts and submissions. The fact of the matter is that a consent Award has been passed. Now, the petitioners submit that their consent was not a free consent and that they were lured and that their consent was obtained by invoking the power of the State. According to them, in respect of the villagers whose lands were also acquired for the same reason that the villages are coming under submersion of the project and who had not given consent, awards have been passed and reference Courts have enhanced the compensation by 80% and that the petitioners were informed that in the event they give consent 50% of enhancement of compensation would be considered and that they would be paid forthwith 50% of the compensation and that the balance 50% of the compensation would be paid within a reasonable time and that is how they were lured to give consent and that though the Award was passed in March, 2004, till the date of the institution of the writ petition, the respondents did not make the payment in terms of the consent Award excepting paying 25% of the compensation.

7. Learned counsel for the petitioner submitted that the petitioners are not seeking 50% of enhancement of compensation but they are only seeking the balance 25% enhanced compensation having received 25% of enhanced compensation than the market value fixed by the LAO. It is undisputed that as per the consent award, compensation was paid and received. Further, from the

contents of the counter filed on behalf of the respondents, it is noticeable that the respondents are submitting that the Award is a consent Award and the consent was given voluntarily and in the circumstances stated in the counter and that due procedure under law and the terms of the Government Orders as well as the Court orders are duly followed and that as per the agreements made before the LAO under Section 11(2) of the Act, the accepted package deal includes 25% of enhancement of compensation and that the writ petitioners are not entitled to claim any further compensation having given consent for passing of consent Award and having agreed to enter into agreement accepting 25% of the enhancement of compensation as a package deal and as eventually the consent Award which was passed has become final and was implemented.

8. Learned senior counsel for the petitioners submitted that having given consent, the petitioners were made to suffer loss and that even the enhancement of compensation was not given as per terms of G.O.Rt.No.484 and that even though reference Courts have enhanced the compensation by 80% to those villagers who have not given consent, the petitioners are only claiming 50% enhancement instead of 25% enhancement which was granted to them. Whereas, the respondents are contending that the terms of the said G.O are followed. In this backdrop, it is necessary to refer to the relevant portion of the said GO, which reads as under:

‘.....Government after taking into consideration of the recommendation of the Cabinet Sub-Committee, order the following instructions to the District Collector, Cuddapah/Special Collector, Telugu Ganga Project, Nellore/Chief Engineer, Telugu Ganga Project, Srikalahasti.

1. Acquisition of land and structures in the balance villages shall be expedited through passing consent awards;
2. Structures which need to be compensated and missed in the current D.N. should be covered through a supplementary notification:
3. Valuation of these structures as per current SSR should be arrived at:
4. The District Collector, Cuddapah is permitted to negotiate with the Village Community and arrive at suitable enhancement upto a maximum of 50% to facilitate consent award.
5. The entire negotiations exercise is to be conducted in a transparent way to the knowledge of everyone concerned.
6. Should there be any structures that have come up due to efflux of time and with an objective of improving the standards of living, they need not be precluded from the current notification, unless and otherwise the District Empowered Committee has strong reasons to exclude them. No structure that is non-existing shall be paid for:
7. While fixing the basic rate and while negotiating the enhancement for consent award, the District Empowered Committee may offer different values/levels of enhancement taking into consideration the nature and the circumstances relating to the structure in question.
8. The District Collector, Cuddapah and the Special Collector, TGP, Nellore, are directed to ensure photography of all the structures using digital camera from various dimensions.
9. The entire remaining land acquisition steps should be completed within next three months period.
10. Payment of compensation to the awardees shall be done in a transparent manner by delivering the cheques in the Gramasabhas.'

Under the terms of the above G.O, the District Collector, Kadapa, is permitted to negotiate with the village community and arrive at suitable enhancement upto a maximum of 50% to facilitate consent award. The petitioners basing on

this term are contending that they are entitled for enhancement of compensation of 50% and that the respondents also informed them that they would be given 50% enhancement if they give consent and therefore, they have given consent and otherwise they would not have given consent. Per contra, respondents submit that the GO permitted the Collector to negotiate upto maximum of 50% and, therefore, the Collector is not precluded from negotiating at 25% of enhancement of compensation and, therefore, on consent, the consent Award has come to be passed. The further case of the respondents is that if the petitioners are allowed to claim the present relief, it would give rise to further claims in the remaining 23 villages for which consent Award under Section 11(2) of the Act was passed by the LAO. In reply to the submission that in the event the relief is granted to the petitioners it will give rise to further claims by the others in the remaining 23 villages in respect of which consent Award was passed, learned counsel for the petitioner submitted that the relief in this case can be confined to the petitioners herein observing that it shall not be considered as a precedent for similar claims by the others whose lands are also covered by the consent Award. This submission itself shows that there are many villagers of many villages who are not before this Court and in whose cases consent Awards were passed by enhancement of compensation by 25% as was done in the case of the present petitioners.

9. Therefore, the short question is – ‘Whether, at this distance of time, the petitioners are entitled to the relief claimed in the writ petition filed in the year 2008 disputing the consent Award passed in the year 2003-04?’

10. Learned Government Pleader placed reliance on the decision of the Supreme Court in **State of Karnataka and another v. Sangappa Dyavappa Biradar and others**¹ and an unreported decision, dated 20.08.2010, of this Court passed in WP.No.1603 of 2007 and batch, which was rendered following the afore-stated Supreme Court decision. This Court in the above mentioned batch of writ petitions, while dismissing the writ petitions, held that pursuant to the consent of the writ petitioners therein the Award came to be passed and thereupon the petitioners received compensation and that it is well settled that if once land holders received compensation without any protest pursuant to the consent Award, they cannot be permitted to contend that the method of calculation of the Award is discriminative and violative of Article 14 of the Constitution of India. The legal position is that when once consent is given and a consent Award is passed and amount of compensation awarded in terms of consent Award is received by the claimants, they are estopped from filing applications for reference to civil Court under Section 18 of the Act for claiming enhancement of compensation. When once the statutory remedy is barred, in the considered view of this Court, such claimants cannot invoke writ jurisdiction of this Court. In the afore-said decision of the Supreme Court, it was held as follows: -

‘A right of a landholder to obtain an order of reference would arise only when he has not accepted the award. Once such award is accepted, no legal right in him survives for claiming a reference to the Civil Court. An agreement between the parties as regards the value of the lands acquired by the State is binding on the parties. So long as such agreement and consequently the consent awards are

¹ (2005) 4 SCC 264

not set aside in an appropriate proceeding by a court of law having jurisdiction in relation thereto, the same remain binding.’

11. On the analysis of the facts and in the light of the legal position obtaining, this Court finds that the writ petition is devoid of merit and is, therefore, liable to be dismissed.

12. In the result, the Writ Petition is dismissed.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

03.10.2018
Vjl



M.SEETHARAMA MURTI, J