

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.22565 of 2017

ORDER:

In this writ petition, under Article 226 of the Constitution of India, the petitioners are requesting to grant a writ of mandamus declaring the following actions of the respondents 1 to 3 as illegal, arbitrary and violative of the provisions of Central Act 30 of 2013, the Rules made thereunder and Articles 14, 21 and 300-A of the Constitution of India.

- (i) Notifying petitioners' lands for acquisition by proceedings in Pbc.No.E136215/ 2016/ R&R, dated 02.07.2016, issued under Section 11(1) of Central Act 30 of 2013, by recording the names of respondents 5 to 9 as pattadars and possessors;
- (ii) Not entertaining the petitioners' objections and claims for compensation for the lands of Ac.8.45 cents, Ac.13.94 cents and Ac.2.48 cents respectively covered by Survey Nos.100/ 1, 44/ 2 and 113/ 4 of Powthugudem Revenue Village in Jeelugumilli Mandal of West Godavari District.

The petitioners are also seeking a consequential direction to the 3<sup>rd</sup> respondent to receive the objections & conduct an enquiry and pay compensation in respect of the above said lands to the petitioners without disbursing the amount of compensation to the respondents 5 to 9.

2. I have heard the submissions of *Sri K.Anil Kumar*, learned counsel appearing for the petitioners; learned Government Pleader for Land Acquisition (AP); and, of *Sri V.S.R.Anjaneyulu*, learned counsel appearing for the respondents 5, 8 and 9. I have perused the material record.

3. The case of the petitioners, as per their pleadings and submissions made on their behalf, in brief, is as follows:

The petitioners are the absolute owners, possessors and enjoyers of agricultural lands admeasuring Ac.8.45 cents, Ac.13.94 cents and Ac.2.48 cents

respectively covered by Survey nos.100/ 1, 44/ 2 and 113/ 4 of Rowthugudem Revenue village in Jeelugumilli Mandal of West Godavari District. The said lands originally belonged to their ancestor, namely, Pallapu Venkaiah. On 18.02.1927, the said Pallapu Venkaiah executed a registered Will and bequeathed all his properties in favour of Nallapu Chinna Ramaiah @ Chinnavadu and Gopina Gangamma. As per the recitals in the said Will, a half share in each of his properties was bequeathed to Nallapu Chinna Ramaiah. And, the remaining half share is bequeathed to Gopina Gangamma to be enjoyed by her for life; and the vested remainder rights were given to her sons. After her demise, her sons, Gopina Pedda Venkanna and Gopina Chinna Venkanna took possession of the said properties and enjoyed the said properties during their life times. Gopina Pedda Venkanna had only one son by name Gopina Pullaiah. Gopina Chinna Venkanna died as a bachelor. Therefore, he had no issues. Gopina Pullaiah succeeded to the entire property, which was bequeathed under the said Will originally to Gopina Gangamma, to be enjoyed by her during her life time. Gopina Pullaiah, the 2<sup>nd</sup> petitioner, had three sons, namely, Gopina Ramu, Gopina Korraju and Gopina Venkateswara Rao, petitioners 1, 3 & 4. Thus, all the writ petitioners acquired rights in the aforesaid lands by succession and are jointly enjoying the same. While so, the 2<sup>nd</sup> respondent issued a Notification in Form-6 (A), vide Pbc.No.E136215/ 2016/ R&R, dated 02.07.2016, notifying the said lands of the petitioners for acquisition for the purpose of providing rehabilitation to the persons displaced from the properties involved in the construction of Polavaram Irrigation Project. Having come to know about such Notification, the 1<sup>st</sup> petitioner rushed to the Land Acquisition Officer/ 3<sup>rd</sup> respondent herein and requested to receive the claims/ objections. The 3<sup>rd</sup> respondent orally refused to receive the claims/ objections. The petitioners learnt that the 3<sup>rd</sup> respondent is preparing to pay away to the respondents 5 to 9, the compensation in respect of the lands, which belonged to the petitioners. The

3<sup>rd</sup> respondent has no authority under law to do so. He is under a legal obligation to receive the objections, conduct enquiry and pay compensation as contemplated under the provisions of Sections 15 to 23 of Central Act 30 of 2013. The petitioners are having title and possession over the aforesaid lands. Hence, the writ petition is filed.

4. On 14.07.2017, while ordering notice before admission, this Court directed the Pay & Accounts Officer not to credit the amounts to the respective accounts of the interested persons, that is, respondents 5 to 9 herein, and that in the event, the amounts are already credited, the Bank may be intimated not to release the amounts.

5. Respondents 5, 8 and 9/unofficial respondents filed W.V.M.P.3315 of 2017. The official respondents 2 to 4 also filed W.V.M.P.No.5 of 2018 to vacate the interim order, dated 14.07.2017, passed in the writ petition.

6. At the hearing, a request is made by the learned counsel appearing on either side and also the Government Pleader that instead of the vacate petition, the writ petition may be heard and disposed of on merits.

7. The case of the non-official respondents 5, 8 & 9 as stated in the counter affidavit of the 5<sup>th</sup> respondent and the submissions made on their behalf, are as follows:

The land of an extent of Ac.8.45 cents in Sy.No.100/ 1 of Rowthugudem village, Jeelugumilli Mandal, West Godavari District was purchased for a valuable consideration from Gangamma and others by Jayavarapu Subbaiah, the grandfather of the 5<sup>th</sup> respondent, through a sale deed, dated 30.08.1934, bearing registration no.619/1934, duly registered in the office of the Sub Registrar, Polavaram. In the partition between the family members of late Subbaiah, through a partition deed, dated 09.10.1957, bearing Document no.1061/ 1957, registered in the office of the Sub Registrar, Polavaram, the

above said Ac.8.45 cents was divided into five equal shares among the sharers and each sharer was allotted Ac.1.69 cents. By virtue of the said deed of partition, the respective shares of the sharers were mutated in their names in the revenue records. In recognition of their right, title and possession over their respective shares, pattadar passbooks and title deeds were given to them by the competent authority. Their names were also entered in Form-1B Register maintained by the revenue authorities, Jeelugumilli Mandal. The Special Deputy Collector, Tribal Welfare No.1, R.K.Puram, filed a complaint under Section 3(2)(a) of A.P.SALT Regulation no.1 of 1959 as amended by Regulation no.1 of 1970 stating that the subject property in an extent of Ac.8.45 cents in Sy.no.100/ 1 is in an agency area and that the possession and enjoyment of the non-tribal of such land is in contravention of Section 3(1) of the Regulations; and, that therefore, possession of the land may be taken, declaring the transactions stated by the 5<sup>th</sup> respondent as above, as null and void. The said complaint was filed against one J.Somasekhara Rao, one of the sharers. On contest, the Special Deputy Collector dismissed the complaint by an order, dated 20.10.1990, holding that the subject property belongs to non-tribals from the inception and was not held by tribals at any point of time. The said order has become final. Gopina Pullaiah filed O.S.no.1/ 2016/ F2 before the Agent to the Government & District Collector, West Godavari at Eluru, praying to grant permanent injunction restraining the family members of this respondent and their followers not to interfere with their possession and enjoyment of the property in an extent of Ac.8.45 cents in Sy.no.100/ 1. On contest, the said suit was dismissed, by an order, dated 26.03.2016, recording a finding that these respondents are the absolute owners of the said property. On consideration of the above facts, it is clear that the respondents 5, 8 & 9 having succeeded to the title of the original owner, Subbaiah, are continuing in possession of the said property having got marketable title thereof. The writ petitioners have not traced their title over the subject property in any manner.

They have also not filed any document as a material paper in support of their contentions that they are the owners and possessors of the property being claimed by them. The allegation that the writ petitioners are the owners, possessors and enjoyers of Ac.8.45 cents in Sy.no.100/ 1 of Bowthugudem village is absolutely false. The allegation that they filed objections and made a claim and that the 3<sup>rd</sup> respondent orally refused to receive the same is false. The further claim of the petitioners that they have got a *prima facie* title & possession over the aforesaid Ac.8.45 cents in Sy.no.100/ 1 is false. The respondents 6 & 7, namely, Pullaiah @ Chinna Pullaiah and Veerabhadra Rao, died long back even to the knowledge of the 1<sup>st</sup> petitioner, who filed the affidavit in support of the writ petition. On a perusal of the cause title in O.S.No.1/ 2016/ F2, it is clear that Pullaiah @ Chinna Pullaiah and Veerabhadra Rao died and the said fact is within the knowledge of the said deponents and other writ petitioners. The contents of the affidavit filed by the 1<sup>st</sup> writ petitioner are a bundle of misstatement of facts. The deponent shall be dealt with for perjury. The payment of compensation amount of Rs.90,00,000/- is stalled by virtue of the interim order passed by this Court. The writ petition is liable to be dismissed.

8. The Project Officer, ITDA, in his counter affidavit filed on behalf of the official respondents 1 to 3 stated as follows:

The land in an extent of Ac.8.45 cents covered by R.S.no.100/ 1, Ac.2.96 cents covered by R.S.No.44/ 2 and Ac.2.53 cents covered by R.S.No.113/ 4 of Bowthugudem village were notified by the R&R Officer in the preliminary Notification as the interested persons filed consents duly enclosing their documentary evidence proving their title. The said extent covered by R.S.No.100/ 1 of Bowthugudem village was notified in the name of the respondents 5 to 9 whereas the extents covered by R.S.nos.44/ 2 and 113/ 4 were notified in the name of Nallapu Nageswara Rao and Uppala Pavan Kumar,

as they have filed consents with respect to the subject property to part with their lands to receive R & R package to the STPDFs of Velairpadu Mandal villages. The writ petitioners neither filed any objections within the stipulated time of 60 days nor attended to the VI B enquiry held at Gram Panchayat office, Mulagalmpalli. All the objections filed by the interested persons within the stipulated time of 60 days from the date of preliminary Notification were enquired into in the VI B enquiry that was held, on 13.09.2016, in the village. Only after disposing of all the objections and after conducting enjoyment survey, declaration proposals were submitted by the R & R Officer to the Collector, West Godavari District, Eluru. As per the declaration, the respondents 5 to 9 and others are in enjoyment and possession of R.S.No.100/ 1, whereas, Nallapu Nageswara Rao and Uppala Pavan Kumar are in enjoyment and possession of R.S.Nos.44/ 2 and 113/ 4 of Powthugudem village. The writ petitioners are therefore, put to strict proof of their enjoyment and possession of the subject lands. It is open to the petitioners to file objections before the R & R Officer after initiating the land acquisition proceedings. It is incorrect to say that the 3<sup>rd</sup> respondent has refused to receive the objections. Due procedure as contemplated under the new Act 30 of 2013 is followed. As per the award, the lands and details of lands are as follows:

| S. No. | Name of the interested person         | Father/husband's Name | Respondent or other | R.S. No. | Extent awarded (Ac.cts) |
|--------|---------------------------------------|-----------------------|---------------------|----------|-------------------------|
| 1      | Jayavarapu Nageswararao               | Pullaiah              | R-5                 | 100/ 1   | 1.69                    |
| 2      | Jayavarapu Leela Venkateswararao      | Veerabhadrarao        | Son of<br>R-7       | 100/ 1   | 1.69                    |
| 3      | Jayavarapu Somasekhara Rao            | Subbaiah              | R-8                 | 100/ 1   | 1.69                    |
| 4      | Jayavarapu Sarveswararao              | Subbaiah              | R-9                 | 100/ 1   | 1.69                    |
| 5      | Gunda Lakshmi Kumar                   | Saibaba               | Other               | 100/ 1   | 0.24                    |
| 6      | Chinni Durgamba                       | Srinivas              | Other               | 100/ 1   | 0.24                    |
| 7      | Madula Bharamaramba @ Uma Sri Lakshmi | Nageswara Rao         | Other               | 100/ 1   | 0.25                    |

|    |                           |                |       |        |      |
|----|---------------------------|----------------|-------|--------|------|
| 8  | Duggara Devanki           | Mukteswararao  | Other | 100/ 1 | 0.24 |
| 9  | Madu Narayana Vara Prasad | Chalapathi Rao | other | 100/ 1 | 0.24 |
| 10 | Perumalla Nageswara Rao   | Seethaiah      | Other | 100/ 1 | 0.24 |
| 11 | Kunkumalla Lakshmi Tayaru |                | Other | 100/ 1 | 0.24 |
| 12 | Nallapu Nageswararao      | Venkatarao     | Other | 44/ 2  | 2.96 |
| 13 | Uppala Pavan Kumar        | Satyanarayana  | Other | 113/ 4 | 2.53 |

Nallapu Krishna filed W.P.No.3829 of 2017 and obtained interim orders in respect of Sy.No.100/ 1 for Ac.8.45 cents. Hence, payment with respect to the total extent of Ac.8.45 cents covered by R.S.No.100/ 1 of Rowthugudem was kept in hold by R & R Officer, as the said extent covered by interim orders of this Court in W.P.M.P.No.4546 of 2017 in W.P.No.3829 of 2017. The petitioners neither filed any objections within the stipulated time after issuance of preliminary notification nor attended to the award enquiry. Hence, the interim order may be vacated.

9. The case of the writ petitioners in the reply affidavit is this: 'They are not aware of the notification, dated 02.07.2016. The allegation that they did not file objections within stipulated time of 60 days and did not make a claim and failed to attend VI B enquiry is false. When the petitioners made an attempt to submit their objections, the 3<sup>rd</sup> respondent did not entertain their objections, after arbitrarily recording the names of respondents 5 to 9 by denying an opportunity to the writ petitioners to file their objections. Hence, this writ petition is filed and the interim order was obtained.'

10. I have given earnest consideration to the pleadings and reply submissions to the pleadings.

11. To begin with, it is to be noted that in the writ petition, the petitioners claimed rights in respect of three extents of lands, viz., Ac.8.45 cents, 13.94 cents and Ac.2.48 cents respectively covered by Survey nos.100/ 1, 44/ 2 and

113/ 4 of Bowthugudem Revenue village in Jeelugumilli Mandal of West Godavari District. Dealing first with the extents in Survey nos.44/ 2 and 113/ 4, the unofficial respondents, particularly, respondents 5, 8 & 9 are not making any claim in respect of the said lands in the said two survey numbers. The respondents 5, 8 & 9 are making a claim in respect of Ac.8.45 cents in Sy.no.100/ 1 only. In this writ petition, the writ petitioners did not implead the parties, who were said to be interested in the lands in Sy. Nos.44/ 2 & 113/ 4 and whose names were said to have been mentioned in the Notification in respect of the above said lands. According to the counter of the 3<sup>rd</sup> respondent, Nallapu Nageswara Rao and Uppala Pavan Kumar are shown as persons interested in the land in an extent of Ac.2.96 cents in Sy.no.44/ 2, Ac.2.53 cents in Sy.no.113/ 4 respectively and compensation in respect of the said extents of land was already paid to the said persons during the month of February 2007. Be that as it may.

12. Dealing now with the land of an extent of Ac.8.45 cents in Sy.no.100/ 1 in respect of which the petitioners on one hand and the respondents 5, 8 & 9, on the other are making claims, it is to be noted that the writ petitioners did not file any documents except the copies of the notification and registered Will deed, dated 18.02.1927, said to have been executed by Pallapu Venkaiah, who is said to be their ancestor. Though it is stated that the petitioners filed objections before the 3<sup>rd</sup> respondent with regard to payment of compensation in respect of the above said lands and that the same was refused to be received by the 3<sup>rd</sup> respondent, a copy of such written objections, if any, is not filed along with the material papers. Though it is being claimed that after the demise of the testator, Pallapu Venkaiah, Gopina Gangamma got a half share in the properties of the testator as per the bequest under the Will and that she enjoyed the property during her life time and that after her death, her sons, Gopina Pedda Venkanna and Gopina Chinna Venkanna took possession of the properties and enjoyed the properties and that eventually, the entire property

devolved upon Gopina Pullaiah and his three sons, namely, Gopina Ramu, Gopina Korraju and Gopina Venkateswara Rao, petitioners 1, 3 & 4, no records like Pattadar pass books & title deed books or copies of pahanies are filed by the writ petitioners.

13. Be that as it may. The respondents 5, 8 & 9 filed copy of the order in O.S.No.1/16/F2 on the file of the Court of Agent to the Government-cum-District Collector, West Godavari, at Eluru. It reflects that the said suit was filed by Gopina Pullaiah (died) and other writ petitioners herein against Jayavarapu Nageswararao and others including respondents 5, 8 & 9 in this writ petition. The said suit was dismissed, by an order dated 26.03.2016, holding that the disputed land is registered in the name of the defendants therein and that they submitted online adangal copies and 1B copies also. The subject matter of the said suit is admittedly Ac.8.45 cents in R.S.No.100/1, Ac.13.94 cents in R.S.no.44/2 situated at Rowthugudem village, Jeelugumilli Mandal. When it is contended before this Court that the said order of the Agent to the Government & District Collector, West Godavari, passed in O.S.1/2016/F2 has become final, the said submission is not disputed by the writ petitioners. Moreover, the said order in the said suit, on a plain perusal, shows that Gopina Pullaiah, the 2<sup>nd</sup> petitioner herein, died even by the date of the said order. The said order also shows that the respondents 6 & 7, Jayavarapu Pullaiah & Jayavarapu Veerabhadra Rao, defendants 2 & 3 in the suit, also died even by the date of passing of the above said orders in the said suit. Thus, it is clear that the 2<sup>nd</sup> writ petitioner and respondents 6 & 7 in the writ petition died long before the institution of this writ petition. Hence, the 2<sup>nd</sup> writ petitioner is a dead person and that the respondents 6 & 7 also died even by March, 2016, that is, long before the institution of the writ petition and yet, the writ petition is filed by showing one dead person as the 2<sup>nd</sup> petitioner and two other dead persons as respondents 6 & 7. In spite of respondents 5, 8 & 9 pointing out the said defects, no steps are taken by the writ petitioners 1, 3 & 4 to make

amends. Be that as it may. It is a matter of record that one Nallapu Krishna also filed W.P.no.3829 of 2017 in respect of the very same land of Ac.8.45 cents in Sy.no.100/ 1 of Bowthugudem village *inter alia* seeking a declaration that the action of the respondents in not considering the objections raised by him, on 31.08.2016 and 28.11.2016, in the matter of acquisition of an extent of Ac.8.45 cents in R.S.no.100/ 1, as arbitrary, illegal and unconstitutional and that the 3<sup>rd</sup> respondent therein filed a report, dated 01.09.2017, through the Assistant Government Pleader (Social Welfare) and that on that the learned counsel for the writ petitioner therein sought liberty to workout all issues available for seeking compensation before the competent authority and that recording the said submissions, the interim order granted in the said writ petition was vacated observing as follows: 'The steps, if any, taken in this behalf in payment of compensation by the respondents, it is needless to observe that the same is subject to the final adjudication in this behalf in the case instituted by petitioner.' A copy of the said order, dated 04.09.2017, in the above said W.P.no.3829 of 2017, is placed on record. Thus, there is one more rival claimant for payment of compensation in respect of Ac.8.45 cents in Sy.no.100/ 1. It is not brought to the notice of the Court as to whether he had subsequently initiated any proceedings following the above said orders and whether any order was granted to him in those appropriate proceedings, if any, initiated.

14. Section 15(2) of Act 30 of 2013, which deals with hearing of objections, states that any person interested in any land, which has been notified under sub-section (1) of Section 11, as being required or likely to be required for a public purpose, may within sixty days from the date of the publication of the preliminary notification, raise objections in writing and the Collector shall after giving an opportunity of being heard in person or by any person authorised by him in this behalf or by an Advocate, and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary,

either make a report in respect of the land which has been notified under sub-section (1) of Section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government. As per law, the decision of the appropriate Government on the objections made under sub-section (2) shall be final.

15. Since a reference was also made to the Andhra Pradesh Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014, which deals with disposal of objections, it is necessary to refer to the said Rule, which reads as under:

“21. Disposal of objections: (1) The Collector shall issue a notice in Form-VI(B) and after hearing all objections and making enquiry as provided under Section 15(2) shall submit a report along with his recommendations on the objections to the District Collector for decision.

(2) The decision of the District Collector shall be final.”

16. In the instant case, as per the submissions of the learned Government Pleader, an award 2/ 2016-17, dated 25.02.2017, has already been passed and that in the event any of the writ petitioners are not willing to accept the award, they ought to have made a request to the Collector to refer the matter for determination of their objections and that the petitioners failed to do so and that even now, the petitioners may do so, if they so desire and if they are so advised.

17. It is submitted that in case of rehabilitation and resettlement awards, Section 37 deals with the finality of the Awards of the Collector and that under Section 51, the rehabilitation and resettlement authority is empowered to

resolve the disputes related to land acquisition and compensation etcetera and that under Section 64, any person who has not accepted the award, may require the matter to be referred by the Collector for determination of his objections by the authority and that if the Collector fails to make a reference within 30 days of receipt of the application to make a reference to the appropriate authority, the applicant may apply to the authority by stating the grounds on which the objections to the award are taken and that it is for the authority to determine the claim/objections. Already, this Court reserved liberty to the petitioner in W.P.No.3829 of 2017 to approach the competent authority. Since the writ petitioners approach in filing this writ petition by impleading a dead person as second petitioner and two more dead persons as respondents 6 & 7 lacks diligence and as they could not file any documents in support of their claim, and as this Court already gave suitable directions to one claimant in W.P.no.3829 of 2017 and in view of the orders of the Agent to the Government & District Collector, West Godavari, in O.S.no.1/2016/F2, dated 26.03.2016, this Court finds that the interim order can be vacated reserving liberty to the petitioners 1, 3 & 4 to work out their rights and seek remedies, which the law permits, insofar as their claims in respect of the subject lands before the appropriate competent authority by initiating necessary proceedings, which the law permits.

18. On the above analysis and in the result, the interim order, dated 14.07.2017, is vacated and the Writ Petition and the interlocutory applications, viz., W.V.M.P.Nos.3315 of 2017 and 5 of 2018 are disposed of accordingly reserving liberty to the petitioners 1, 3 & 4 to work out their rights and seek remedies, which the law permits, insofar as their claims in respect of the subject lands before the appropriate competent authority by initiating necessary proceedings within one month from the date of this order. However, to enable the petitioners 1, 3 & 4 to take appropriate steps, the official respondents and the Bank shall not take any further steps with regard to

payment of compensation for a period of one month from today. It is needless to state that the steps, if any, taken subsequently by the official respondents with regard to payment of compensation shall be subject to the final adjudication of the case that may be instituted by the petitioners 1, 3 & 4 before appropriate competent authority.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

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M. SEETHARAMA MURTI, J

16.07.2018

Note:- Issue CC by 01.08.2018  
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