

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.2491 of 2007

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking verbatim the following relief/s:

‘..to issue a Writ or direction particularly a Writ in the nature of Mandamus declaring the action of the respondents for not following the mandatory provisions under Section 11-A and 12(2) of the Land Acquisition Act as illegal, arbitrary and discrimination and consequently direct the 3rd respondent to consider the representations pending before him dated 7-1-2005 and 9-3-2005 submitted by me for reference under section 18 of the Land Acquisition Act and to pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.’

2. I have heard the submissions of Sri G. Simhadri, learned counsel appearing for the petitioner, and of the learned Government Pleader for Land Acquisition appearing for the respondents. I have perused the material record.

3. At the hearing, the following facts are admitted and not disputed: Pursuant to the proposal of the 1st respondent to form Growth Centre near Jadcherla, a draft notification under Section 4(1) of the Land Acquisition Act, 1894 [Central Act 1 of 1894] [hereinafter referred to as ‘the Act’, for short] was issued *vide* proceedings No.G1/64/2003 for acquisition of land of an extent of 439.09 guntas in Sy.No.408 and other numbers situated at Polepally village of Jadcherla Mandal; and, thereafter, a draft notification under Section 6 of the said Act was submitted to the District Collector, Mahaboobnagar, along with office

letter, dated 08.01.2003, for approval. On respective approvals of the same, on 17.01.2003 and 20.01.2003, the urgency clause under Section 17(4) of the Act was invoked and the enquiry under Section 5-A of the Act was dispensed with and necessary publications were made. Eventually, the required extent of land including the land of the petitioner of an extent of 18.35 guntas in Sy.No.444 in Polepally village with structures, trees and bore-wells with pump sets thereon was acquired for the desired purpose. An Award *vide* Award No.F/1965/2001 was passed, on 03.02.2005, by the Land Acquisition Officer and Revenue Divisional Officer, Mahabubnagar mentioning therein that the true area of the acquired land is Ac.362.20 guntas and also the other details of the land. After passing of the Award, the petitioner received compensation for his land, on 23.02.2005, by way of a Demand Draft, dated 19.02.2005, for a sum of Rs.20,81,860/-.

4. In this backdrop of admitted and undisputed facts, the case of the writ petitioner is this:

After publication of Section 4(1) notification and during the course of enquiry, the petitioner submitted a representation, dated 07.01.2005, stating that he is the owner of Ac.18.35 guntas in Sy.no.444 of Polepally village of Jadcherla Mandal and requesting the Joint Collector to examine his case in the light of the contents of the said representation and further stating *inter alia* that he is willing to forego his land at the appropriate compensation that may be fixed after taking into consideration all merits and market rate of orchards/garden lands which

are worth Rs.3 lakhs to Rs.3.5 lakhs per acre. The petitioner also made another representation, dated 19.01.2005, for fixing of compensation for trees separately. The petitioner thus sought compensation for the land, the trees and the fruit bearing trees on the land which he developed by establishing bore-well with S.M. Pump set and pipeline by constructing a pump room. He raised several trees in his land like 445 Mango trees, 54 Guava trees, 58 Aonla trees, 6 Fig trees, 10 Custard Apple trees, 1 Pomogranate tree, 2 Jamun trees, 102 Vepa trees, 1 Nemali tree, 2 Regu trees and 1 Kanuga tree and fenced the orchard with barbed wire fencing. The petitioner further used to take up wet agriculture by raising paddy in an extent of about 5 acres in 3 bits towards Eastern and Western ends of the property. The 3rd respondent gave a direction to the Horticulture department to cause an inspection and fix the valuation of the trees/fruit bearing trees. Based on the report of the said department, a compensation of Rs.5,76,170/- was fixed for fruit bearing trees. Without considering the representation, dated 07.01.2005, which was kept pending, the Award was passed under Section 12(2) of the Act and compensation was fixed @ Rs.80,000/- per acre. When the petitioner visited the office of the 3rd respondent he was informed about the compensation amount which was kept ready for payment. He received the same under protest that the amount fixed is not the correct quantum of compensation. The Land Acquisition Officer promised to make a reference of the case of the petitioner to a civil Court under Section 18 of the Act, after considering the representation, dated 07.01.2005, and also to send copy of the Award shortly to the petitioner

and stated that on receipt of the copy of the Award only, the petitioner would be entitled to submit an application for a reference under Section 18 of the Act for enhancement of compensation. Even after lapse of six months thereafter, the petitioner neither received a copy of the Award nor a notice from the civil Court pursuant to a reference, if any, under Section 18 of the Act. Therefore, the petitioner submitted a representation, dated 09.03.2005, to the 3rd respondent to refer the case of the petitioner to civil Court for enhancement of the compensation. The land is not taken possession till the date of the filing of the writ petition. The land was acquired by fixing low amount of compensation. The basis for fixation of the compensation is not known. The Award was passed under Section 12(2) of the Act in violation of mandatory provisions under Sections 11-A and 12(2) of the Act. While fixing compensation, the case of the petitioner was discriminated from that of the neighbours whose lands were also acquired under the same notification. For the lands of some of the neighbours, compensation was fixed at a higher rate of Rs.1,80,000/- per acre whereas compensation for the land of the petitioner was determined @ Rs.80,000/- per acre. Because of dispensing with the enquiry under Section 5-A of the Act, the petitioner could not put-forth his contentions. Hence, the writ petition is filed.

5. The case of the respondents as stated in the counter affidavit of the 3rd respondent, in brief, is this: - 'The land was acquired after duly following the procedure established by law. The possession of the land acquired was taken by the MRO, Jadcherla, on 23.07.2004, and was

handed over to APIIC. The petitioner has given consent for acquisition and received the compensation; yet he filed the writ petition for a direction for referring the case to civil Court under Section 18 of the Act. In view of the consent given and the consent Award passed under Section 11(2) of the Act, the petitioner is not entitled to seek such relief. The petitioner is the owner of the land of an extent of Ac.18.35 guntas is true. In view of the urgency involved in the matter, the enquiry under Section 5-A of the Act was dispensed with by invoking the provision of Section 17(4) of the Act and the Award was passed under Section 11(2) of the Act, on 03.02.2005; and, compensation of Rs.20,81,860/- was paid, on 23.02.2005, by way of a Demand Draft, dated 19.02.2005. Compensation was paid for the land, structures and trees after obtaining the necessary information from the departments concerned. After assessment of market value, a meeting with the pattedars was convened and all the details were explained to them. All of them are apprised of the benefit of receiving compensation under a consent Award. They were informed about the terms of G.O.Ms.No.1050 Revenue (LA) Department, dated 17.10.1992, and their eligibility to the compensation. They were convinced. 97 out of 103 pattedars had given consent and accepted for receiving compensation. The petitioner also gave his consent. Therefore, reference to a civil Court as desired by the petitioner does not arise. All the contrary allegations are false.'

6. The further case of the petitioner as stated in the reply affidavit, in brief, is as follows: 'No personal notices under Sections 9(1), 10 and 9(3) of the Act were served upon the petitioner. The urgency provisions

were invoked is not correct. The signatures of the petitioner were obtained on blank papers stating that they are required for obtaining market value of the property. It appears that thereafter the staff of the 3rd respondent prepared the affidavit of the petitioner on the said blank papers and that later the Award was passed stating that the petitioner gave consent for passing Award. No consultations and negotiations were held as required under the A.P. Land Acquisition (Negotiations Committee) Rules, 1992, [hereinafter 'the Rules' for short] wherein the procedure was prescribed. The procedure prescribed under the Rules was not at all followed. No record is produced to show that the procedure was followed and that consent is given and the Award was passed on such valid consent. The petitioner made a representation, dated 09.03.2005, to refer his case to a civil Court under Section 18 of the Act. He could not endorse his protest while receiving the compensation as he was informed that the compensation would not be paid if he intends to write anything about his protest. Therefore, he raised an oral protest. He did not give consent for passing the Award. The petitioner is entitled to receive the compensation under protest and make a request for a reference to the civil Court as per law. No record is produced to show that the Award is one passed on consent given as per Rules and procedure. The land acquired was sold to several companies, which are having influence with the Government; and, the lands were thus sold for higher rates, that is, for rates more than 100 times the compensation that was paid to the pattedars. A copy of the consent affidavit which was produced with the counter affidavit is not genuine.

A perusal of it shows that it was not engrossed on a non judicial stamp paper of the value of Rs.5/- as required under the Rules. No agreement as contemplated under the Rules was entered into and no consent is given. Any consent allegedly taken is not valid in the eye of law.'

7. At the hearing, learned counsel for the petitioner and learned Government Pleader advanced arguments in line with the cases of the parties, which are stated supra, in detail.

8. Learned counsel for the petitioner further contended as follows: -
'Taking advantage of the illiteracy and lack of knowledge of the legal procedures of the petitioner, the Government are falsely contending that the petitioner has consented for payment of a particular sum of compensation. In-fact the petitioner did not consent. None of the steps contemplated under the Rules are followed. The copy of the affidavit, which was produced and placed on record also does not reflect that the requirements of the provisions of the Rules are duly followed and complied with. Therefore, the petitioner cannot be denied his legitimate right of making a request to refer his case to civil Court for determination of just and fair compensation.'

9. On the other hand, learned Government Pleader contended that the Award was passed based on consent after acceding to the request of the petitioner and other pattedars and, therefore, the question of making a reference under Section 18 of the Act does not arise. He further stated that the petitioner did not produce any acknowledgments in proof of submission of his representations, dated 07.01.2005 and 09.03.2005,

and that the compensation that was paid was received without any protest much less a written protest and that one of the important conditions for seeking reference under Section 18(1) of the Act is raising a protest while receiving the compensation and that since the petitioner failed to establish that he did not consent for the Award being passed or that he received compensation under protest, he is not entitled to seek reference of his case to a civil Court under Section 18(1) of the Act.

9.1 He further submitted that the requirements of the Rules are duly complied with and that the Rules are followed while passing the consent award and further placed reliance upon the decision in **Ranveer Singh v. State of U.P¹**.

10. I have given earnest consideration to the facts and submissions. The provisions of the Act provide for the procedure to be followed in the matters of acquisition of lands and payment of compensation for the acquired lands. Section 18 of the Act, which provides for a reference to be made to the civil Court for determination of compensation by the civil Court, reads as under:

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 the measurement of the land, the amount of the compensation, the person 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;

¹ AIR 2016 SC 3753

(b) in other cases, within six weeks 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.

10.1 Though the petitioner stated in the writ petition that he filed two representations and also filed copies of the same along with the writ petition, the petitioner did not produce acknowledgements or endorsements showing the receipt of the said representations by any of the respondents. However, the receipt of the said representations is not specifically denied in the counter affidavit. Further, the fact that an inspection was made for fixation of the value of the trees by the officers of the Horticulture department makes it manifest that the petitioner is making requests for fixation of adequate compensation for land as well as trees according to the facts and circumstances and on the basis of values of orchards worth Rs.3 lakhs to Rs.3.5 lakhs. The provisions of the Act do not contemplate the raising of a written protest while receiving compensation under protest. Since the law does not prescribe any particular mode of protest, even an oral protest is valid under law. The fact that the petitioner sufficiently established that he gave a representation immediately after receiving the compensation amount would manifest his intention that he accepted the compensation under protest. When once it is found that the representation is made/application is filed within the time stipulated raising a protest, the Land Acquisition Officer is under an obligation to refer the matter to a civil Court. Be that as it may.

11. The only request before this Court is to direct the respondents to make a reference of the case of the petitioner to the civil Court as

desired by him and as per Section 18 of the Act for determination of compensation by the Court. It is pertinent to note that Section 11(2) of the Act which starts with a non-abstante clause envisages that when a Collector is satisfied that all persons interested in the land who appeared before him have agreed in writing on the matters to be included in the Award of the Collector in the form prescribed in the Rules, he may, without making further enquiry make an Award to the terms of such agreement. Rule 16 of the Rules says that after negotiated settlement a consent Award shall be passed under Section 11(2) read with second proviso under Section 31(2) of the Act and further prohibits reference under Section 18 of the Act once an Award is passed through a negotiated settlement. Thus, after negotiated settlement, when once consent Award is passed under Section 11(2) of the Act, the question of reference to a civil Court does not arise. Further, as held in the decision in Ranvir Singh (supra), when once it is established that an Award passed is a consent Award and that the land owner accepted the compensation as reflected in the consent Award, no plea based on equity for a claim for higher compensation is tenable under law. Thus, it is beyond doubt that when once an Award is passed on consent after negotiated settlement, the party, on whose consent such an Award is passed, stands deprived of his right, under Section 18 of the Act, to seek reference to the civil Court. Therefore, the question now is as to whether the Award is one passed on consent and in pursuance of a written agreement after a negotiated settlement and is a consent Award in the eye of law. For determining the said aspect, it is necessary to refer to the Rules and

examine the questions - Whether the petitioners gave their consent? Whether the requirements of the Rules are duly complied with? And, if so, whether such consent is valid? And, whether the Award in question is a consent Award passed after negotiated settlement?

12. Under the Rules, action for negotiation shall commence only after enquiry and Award by the Collector and approval of preliminary value under Section 11 of the Act is completed. The specific case of the respondents is that the lands of the petitioner and others were acquired by following the procedure stipulated under the Rules contained in G.O.Ms.No.1050, dated 17.10.1992, which were framed in exercise of powers under Section 55 of the Act. The Rules were amended *vide* G.O.Ms.1286 Revenue (LA) Department, dated 16.02.1993 and G.O.Ms.No.594, Revenue (LA) Department, dated 10.08.1998. Under Rule 3 of the Rules, negotiations in the matter of fixation of compensation shall commence only after the Land Acquisition Officer conducts enquiry, passes Award and submits it to the District Collector for approval of the preliminary value under Section 11 of the Act. Rule 4 prescribes the composition of Negotiations Committee. After the amendment of the Rules, the requirement of the Judge being a member of the Committee was done away with. *Vide* G.O.Ms.No.594, dated 10.08.1998, clause 7 was added to Rule 4 for inclusion of one retired District Judge to be nominated by the Government as a Member of the Committee. Rule 5 ordains that the convenor of the committee shall cause a notice to be displayed in Form No.I in the respective villages, inviting applications from interested persons and to appear before the

committee. Rule 6 provides for submission of claims by interested persons. The Committee is required to negotiate settlement only when all the interested persons are before it. Under Rule 8, the Collector is required to serve a notice on the requisitioning department to submit a claim under Form No.II. Rule 10 prescribes detailed procedure as regards conduct of the business by the committee. The said procedure contemplates receiving of statements from the interested persons, service of notices of hearing, oral representations and further statements in writing and a series of meetings culminating in a final meeting to be presided over by the Chairman. According to the Rules, there shall be an agreement in form No.III between the owner/interested party on one hand and the LAO (on behalf of the Government) on the other and the said agreement shall be attested by the members of the Negotiation Committee at the final meeting. After form-III is attested, the LAO is required to take affidavits from the persons concerned in form no.IV, that is, on non judicial stamp paper of the value of Rs.5/- and the same shall be attested by the LAO. As per settled legal position, the consent Award which is a result of a negotiated settlement has the affect of depriving the land owner of his right to seek reference under Section 18 of the Act. Therefore, every requirement envisaged under the Rules shall be duly complied with in strict accordance with the provisions of the Rules. If the Award in question is examined in the light of the rule position adverted to supra, it is manifest that none of the requirements of the Rules are followed.

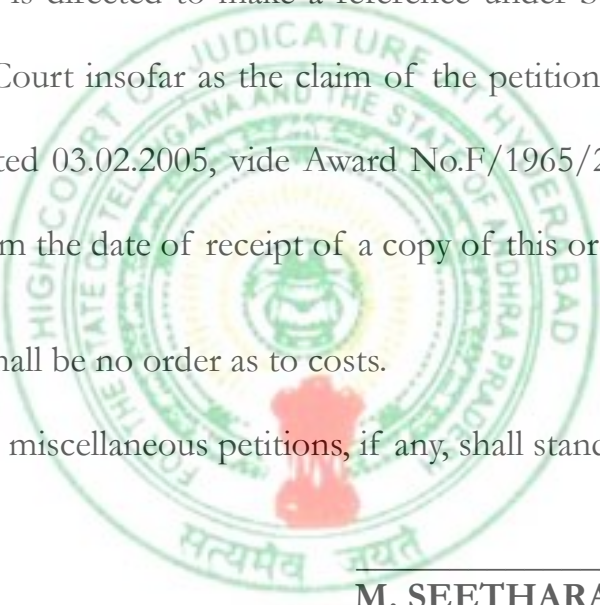
13. In the counter affidavit, there was no specific advertence to compliance of the requirements mandated under the Rules. No copy of the agreement under form no.III, if any, entered into as per Rules and no affidavit obtained from the petitioner on a non judicial stamp paper of the value of Rs.5/-as required under form No.IV are produced along with the counter affidavit. Therefore, it follows that there was no settlement as provided under the Rules. The copy of the affidavit produced shows that it is not engrossed on a stamp paper of the required value. The petitioner disputes the genuineness of his signature on the paper on which the original affidavit is said to have been drafted. Section 11(3) of the Act envisages that the Collector must be satisfied that all the persons interested in the land who appear before him have agreed in writing on the matter to be included in the Award of the Collector in the form prescribed in the Rules. But, even as per the case of the Government, only 97 out of 103 pattedars have given consent. Be that as it may. Neither the Award nor the counter affidavit discloses the due compliance of the procedure or the requirements provided under the Rules. The counter is also bereft of details as to who are the members of the committee that was constituted as per Rules, service of notices and the dates of the various meetings that were held from time to time etcetera. On a careful scrutiny, this Court is of the view that the respondents failed to place before this Court any material to show that consent was obtained and negotiated settlement was arrived at and that an agreement was entered into in form no.III and an affidavit was given or obtained under form no.IV as prescribed under the Rules. Therefore,

there is nothing on record to accept the contention of the respondents that the Award is a consent Award in the eye of law. Since the Award is not a consent Award in the eye of law, this Court finds that there is no justification on the part of the respondents in denying the right of the petitioner to seek reference under Section 18 of the Act. On the above analysis, this Court holds that the petitioner is entitled to make a request for reference of his case to a civil Court under Section 18 of the Act.

14. For the afore-stated reasons, the Writ Petition is allowed and the 3rd respondent is directed to make a reference under Section 18 of the Act to a civil Court insofar as the claim of the petitioner arising out of the Award, dated 03.02.2005, vide Award No.F/1965/2001, within two (2) months from the date of receipt of a copy of this order.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.



M. SEETHARAMA MURTI, J

08.06.2018

Note: Issue CC by 28.06.2018

[B/o]

Vjl