

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.5752 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a writ of Mandamus declaring the action of the respondents in issuing a Notification under Section 4(1) of the Land Acquisition Act, 1894, *vide* Rc.no.3417/ 06/ G2, dated 30.09.2006, and the consequential action in issuing proceedings in Rc.no.3417/ 06/ G2, dated 17.02.2017, under Section 5-A of the said Act and the further action in passing of Award no.3 of 2008, dated 11.01.2008, by the 2nd respondent in respect of the petitioner's land of an extent of Ac.1.08 cents in Sy.no.102/3 and Ac.0.92 cents in Sy.no.102/ 2 [total admeasuring Ac.2.00 cents of wet land] in Amrataluru village & Mandal of Guntur District, as illegal, arbitrary & unconstitutional and opposed to principles of natural justice and quash the acquisition proceedings and set aside the Award no.3 of 2008, dated 11.01.2008, made by the 2nd respondent.

2. I have heard the submissions of *Sri N.Sri Ram Murthy*, learned counsel appearing for the petitioner; and of the learned Government Pleader for Land Acquisition (AP), appearing for the respondents. I have perused the material record.

3. The case of the petitioner is this: 'She is the absolute owner and possessor of the above said two acres of land in Amrataluru village of Guntur District. She purchased the said land under a registered sale deed, dated 27.04.1985, from one Vemulapalli Sobharani of Hyderabad. Since the date of purchase, she is in lawful possession and enjoyment of

the same and is paying land revenue to the Government. She does not possess any other land except the above said land. She is an agriculturist. Therefore, her land cannot be acquired by the Government. However, under the Notification, dated 30.09.2006, issued under Section 4(1) of the Land Acquisition Act, 1894, ('the Act', for brevity), which is impugned, the Government initiated the acquisition proceedings allegedly for providing house sites to the persons of weaker sections of the society. A paper publication was made in 'Andhrabhumi' Telugu daily, on 11.10.2006, in respect of the lands belonging Kothapalli Sasirababu and others. The total land proposed to be acquired under the aforesaid Notification is Ac.7.09 cents which belonged to the said Kothapalli Sasirababu, Kothapalli Saratchandrababu, Devabhaktuni Swaruparani, Kothapalli Sasirababu, Kothapalli Ratnajyoti, Yalavarthi Koteswara rao, Govada Radhakrishnamurthy. However, the name of the petitioner does not find a place in the said Notification. The official respondents did not issue any notice to the petitioner proposing to acquire her lands. Subsequently, proceedings, dated 17.02.2007, were issued under Section 5-A of the Act, where under, an extent of Ac.4.49 cents in all belonging to i) Govada Radhakrishnamurthy (Ac.1.35 cents); ii) K.Sreenivasababu (Ac.0.60 cents); (iii) Devabakthuni Swaruparani (Ac.0.30 cents); iv) K.Sasirababu (Ac.1.00 cents); and v) Kothapalli Ratnajyoti (Ac.1.24 cents) in Sy.nos.102-2B and 3A of Amrathaluru village of Amrathaluru Mandal, Guntur District, were sought to be acquired for the alleged public purpose. The writ petitioner raised paddy crop in her land of Ac.2.00 cents in Sy.no.102/ 2 and 102/ 3 of Amrathaluru village & Mandal. The crop was harvested on 20.11.2007 and was heaped in the lands. She raised black gram crop as second crop and is in possession and enjoyment of the said land.

3.1 While so, in the first week of December, 2007, the staff of the 3rd respondent-Tahasildar proclaimed in the vicinity that her land is also acquired under the aforesaid Notification and that they will take possession of the said land within few days. When the petitioner stated to them that in the Notifications, her name and her lands do not find a place and that the respondents have no right to enter into her lands or take possession of the lands, they stated that the petitioner can make a representation to the respondents 1 & 2, namely, the District Collector and the Revenue Divisional Officer-cum-Land Acquisition Officer. The provisions of the Act mandate issuance of notice to the persons affected by the proposed acquisition. Further, conduct of an enquiry under Section 5-A of the Act is mandatory before the land of any person is acquired and the land acquisition proceedings are finalized. In the circumstances, the proposed action of the respondents in either issuing the Notification without mentioning the name & the land of the petitioner and in attempting to take possession of her land is illegal, arbitrary, unconstitutional, opposed to principles of natural justice and Articles of the Indian Constitution. The petitioner filed W.P.no.28067 of 2007 and W.P.M.P.no.36694 of 2007 seeking interim stay of all further proceedings. In Section 4(1) Notification and Section 5-A notice, the name of the husband of the petitioner was mentioned in respect of the land of Ac.1.35 cents in Sy.no.102/ B, which is proposed to be acquired. In the said writ proceedings, she did not state that Govada Radhakrishna Murthy is her husband and that his name finds a place in the Notification. For that reason, this Court is not satisfied, despite the learned counsel bringing to the notice of the Court that the proceedings do not pertain to the land of the petitioner and that her husband owned and possessed an extent of Ac.2.00 cents of wet land in S.nos.102/ 2 and

102/ 3 of Amrathaluru village and that the petitioner's village is different from the village where the land of her husband is situate and that her husband converted his land into fish tanks and that her husband is having title deed in respect of his lands. However, since this Court was not satisfied with the said submission, the counsel for the petitioner sought permission to withdraw the above writ petition with liberty to file a fresh writ petition. The said request was accepted; and, accordingly, W.P.no.28067 of 2007 was dismissed. A copy of the order in the said writ petition is filed along with the present writ petition. Her husband informed her that he attended for award enquiry and stated that his land is a tank and is not feasible for house sites. The 2nd respondent did not consider the said objection. After the dismissal of the above said writ petition filed by the petitioner, Award no.3 of 2008 was passed by the 2nd respondent in respect of Ac.4.49 cents of land of the above said persons. In that award also, the name of the petitioner does not find a place; and, in fact, neither the Notification nor the Award pertain to the land of the writ petitioner. However, under the guise of the Award no.3 of 2008, dated 11.01.2008, the respondents are making attempts to dispossess the petitioner from her lands. The revenue officials came to her land, on 05.03.2008, and informed her that even though the aforesaid Award does not pertain to her land, her land also would be taken possession within ten days as per the directions of the respondents 2 & 3, that is, after the harvesting of the black gram crop. If the petitioner is dispossessed from her land, she would suffer irreparable loss and hardship. Hence, the present writ petition is filed.

4. On 18.03.2008, this Court ordered notice before admission and passed the following interim order:

‘If the petitioner is not already dispossessed, she shall not be dispossessed for a period of three weeks.’

Later, the said order was extended on 25.03.2008, till 31.03.2008.

There is no further extension of the said order. On 05.03.2009, the writ petition is admitted. No counter is filed by the respondents.

5. Learned counsel for the petitioner made submissions in line with the pleadings of the petitioner, which are stated supra, in detail.

6. Learned Government Pleader for Land Acquisition stated that the Award has already been passed in respect of the land that is acquired and supported the case of the respondents, which culminated in the Award.

7. Admittedly, the petitioner purchased the subject land of Ac.2.00 cents [Ac.1.08 cents in Sy.no.102/ 3 and Ac.0.92 cents in Sy.no.102/ 2] of Amrathaluru village under a registered sale deed, dated 27.04.1985, from one Vemulapalli Sobharani of Hyderabad. A copy of the said sale deed is filed along with the material papers. It is also her case that her property is different and distinct from the property of her husband and that her husband is the owner of another extent of Ac.2.00 cents of wet land in Sy.no.102/ 2 and 102/ 3 of Amrathaluru village, having purchased the same from Vemulapalli Sobharani under a registered sale deed, dated 15.06.1982, who is also her vendor and that her husband converted his land into a fish tank and that his name only appeared in the notification and in the Award; and yet, the respondents are trying to take possession of her land though she was not issued any notice and she was not given an opportunity to participate in the enquiry under Section 5-A of the Act and though her name and the details of her land admittedly do not find place in the Notifications as well as in the Award.

Her husband participated in the enquiry and stated that his land is a tank is not in dispute. The lands acquired under the Award are admittedly the following lands of the following persons: 'Land in an extent of Ac.3.58 cents in Sy.no.102-2B of K.Srinivasa Rao & four others; and, land in an extent of Ac.0.91 cents in Sy.no.102-3A of G.Radha Krishna Murthy, who is admittedly, the husband of the petitioner.' The compensation amount under the said award is due and payable to Govada Radha Krishna Murthy, Kothapalli Srinivasa Babu, Devabhakthuni Swarupa Pani, Kothapalli Sasira Babu and Kothapalli Ratna Jyothi. Thus, even as per the award, the land of the petitioner is not acquired and therefore, she is not entitled to any compensation. In that view of the matter, from the facts, which are not contradicted and which are admitted, the respondents cannot interfere with the possession and enjoyment of the aforesaid land of the petitioner, which is admittedly not the subject matter of the land acquisition proceedings including the notification & the award and which is not admittedly acquired. Unless the subject land of the petitioner is acquired by following the procedure established by law, her possession and enjoyment over her land cannot be disturbed or interfered with by the official respondents and their staff/ subordinates.

8. Since the Land Acquisition Act, 1894, is repealed, in the event, the Government is desirous of acquiring the land or any part of the land of the petitioner, the Government are required to follow the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Unless the name and details of the land of the persons effected by the acquisition are mentioned in the Notification under Section 4(1) and such person is given an opportunity to file objections and participate in the enquiry under

Section 5-A of the Act, the Government are not entitled to dispossess such person from the possession and enjoyment of such person's land. In the absence of name of the landowner and her land in the Section 4(1) Notification and in the subsequent proceedings coupled with absence of the name of the landowner and her land details in the award, no acquisition of land of such person is permissible as such person in such circumstances stands deprived of an opportunity of stating objections and avail the opportunity of hearing in the acquisition proceedings. A Notification under Section 4(1) of the Act is a summary Notification to make it known to the land owners the intention of the Government to acquire the land notified therein. On such Notification, the land owners whose names & lands are mentioned in the Notification can file objections under Section 5-A of the Act (unless dispensed with by Notification under the provisions of Section 17 of the Act). The land owners are required to be given a personal hearing of the matter stating the requirements and formalities to be complied with. If the said requirements are not complied with, the acquisition proceedings in respect of the lands of such persons stand denuded of the statutory sanction.

9. On the above analysis, and for the reasons stated above, this Court is of the considered view that this writ petition can be disposed of with appropriate directions protecting the interests of the writ petitioner.

10. Accordingly, the Writ Petition is disposed of directing the respondents not to interfere with the possession and enjoyment of the subject land of the petitioner, pursuant to the Award no.3 of 2008, dated 11.01.2008, as the said Award has come to be passed without

notice and without an opportunity of hearing to the petitioner at any stage and as the said Award admittedly does not refer to the name & land of the petitioner. It is needless to state that this order shall not preclude the official respondents from implementing the aforesaid Award if it is not assailed in any other proceeding and is otherwise implementable. It is made clear that this order shall not preclude the Government to proceed with the acquisition proceedings in accordance with Act 30 of 2013 if the Government are desirous of acquiring the subject land or any part of the land of the petitioner for the desired purpose or any other purpose, in future.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

14th September 2018
RAR

M. SEETHARAMA MURTI, J

