

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.9193 of 2015

ORDER:

One Mohd. Hyder Ali Khan, S/o. Razak Ali Khan was the owner of property bearing Door No.8-3-389/2/A admeasuring 390 sq yds in T.S.No.3/5, Ward No.6, Block No.L of Yellareddyguda village, Khairatabad Mandal, Hyderabad District.

2. The said property was allegedly orally gifted by Mohd. Hyder Ali Khan to Sardar Chandra Singh, S/o. Sardar Ram Singh on 05-01-1977 and possession of the property was also delivered to the donee. Subsequently, Mohd. Hyder Ali Khan executed a registered gift deed in favour of Sardar Chandra Singh on 05-01-1982 vide registered gift deed No.1144/1982 dt.05-01-1982.

3. Sardar Chandra Singh sold the said property under registered sale deed being doc. No.1182/1982 dt.18-02-1982 to K.Srinivasa Rao (5th respondent).

4. In 2008, 5th respondent entered into a registered Development Agreement-cum-GPA bearing doc. No.3403/2008 dt.01-09-2008 in favour of M/s.Sai Praveen Constructions of which the petitioner Tudi Praveen is the proprietor.

5. Petitioner contends that as per the terms of the said Development Agreement, petitioner has to develop the property by constructing a commercial complex in the land of 390 sq yds and in consideration of the development of the property, petitioner would be

entitled to 50% share in the land and building. According to the petitioner, he constructed cellar + ground + 3 upper floors as per the Development Agreement terms and gave 50% share to the 5th respondent and retained 50% share to himself. He contends that he is running a hotel by name “Sri Suprja Inn” in the premises.

6. Out of this area, an extent of 232.33 sq yds was acquired for the purpose of Metro Rail Project under a notification issued under Section 4 (1) of the Land Acquisition Act, 1894 (for short ‘the 1894 Act’) which was approved by the District Collector, Hyderabad on 21-10-2013 and was published in the District Gazette on 21-10-2013 and in local newspapers.

7. Subsequently, draft declaration under Section 6 of the Land Acquisition Act, 1894 was approved by the District Collector on 24-03-2014 and was published in the Hyderabad District Gazette on 29-04-2014 and in the newspapers.

8. Thereafter, public notice in Form VI as required under Sections 9 (1) and 10 of the 1894 Act was issued on 03-05-2014 and later individual notices under Sections 9 (3) & 10 were issued on 03-05-2014 fixing a date on 19-05-2015 for conduct of award enquiry.

9. Thereafter, an award bearing No.C3/922/2013 dt.20-09-2014 was passed by the Special Grade Deputy Collector and Land Acquisition Officer, Metro Rail Project, GHMC, Hyderabad.

10. This was questioned by petitioner in W.P.No.30238 of 2014. The said Writ Petition is still pending on the file of this Court.

THE W.P.No.29913 of 2014 AND THE ORDER Dt.02-12-2014 THEREIN

11. One Hansraj N Patel assailed the award bearing No.C3/922/2013 dt.20-09-2014 was passed by the Special Grade Deputy Collector and Land Acquisition Officer, Metro Rail Project, GHMC, Hyderabad in W.P.No.29913 of 2014 which was heard with another batch of cases and a common order was passed on 02-12-2014.

12. This Court held that under Section 24 (1) (a) of the Right to Fair Compensation, Resettlement and Rehabilitation Act, 2013 (Act 30 of 2013), where land acquisition proceedings were initiated under the 1894 Act, but award was not passed before 01-01-2014, they can be continued and award can be passed but provisions of Act 30 of 2013 should be applied for determination of compensation. It held that the impugned award passed on 20-09-2014, having been rendered by applying all the provisions of the 1894 Act, instead of Act 30 of 2013, was liable to be set aside. Therefore, after setting aside the said award, it remitted the matter back to the Land Acquisition Officer for determination of compensation payable to the subject property in accordance with Act 30 of 2013.

13. On the basis of this order, 3rd respondent issued notice to the petitioner in the Writ Petition on 30-12-2014 asking him to file a claim statement.

14. Petitioner filed claim statement along with documents claiming 50% share in the compensation in respect of the premises bearing Door No.8-3-389/2/1/A.

15. Respondent Nos.5 to 7, 9 and Ahmed Hyder Khan also filed claim petitions seeking the compensation amount.

16. The 3rd respondent then passed the impugned award in proceedings No.C3/922/2013 dt.23-01-2015 determining the compensation as Rs.3,95,93,016/-. In the said award, he observed:

“As there are claims and counter claims received, it is difficult to award compensation to the rightful owner and as such it is ordered to refer the matter to the Civil Court under Section 76 of Act 30 of 2013 for adjudication of title and payment of compensation to the rightful owner”

He directed deposit of the same in the Civil Court under Section 76 of Act 30 of 2013.

17. However, respondent Nos.6 to 12 did not question the award No.C3/922/2013 dt.23-01-2015 at all and have thus acquiesced in the same.

THE PRESENT WRIT PETITION

18. Thereafter, the present Writ Petition was filed on 01-04-2015 by the petitioner contending that the said award dt.23-01-2015 in relation to the subject property is illegal, null and void and contrary to Article 300-A of the Constitution of India and for consequential direction to the respondents to pass award afresh awarding 50% of the compensation to him.

19. On 02-04-2015, while ordering notice before admission, this Court directed the respondents to maintain *status quo* as on date as regards the consideration of issue under Section 76 of Act 30 of 2013 for a period of four weeks. The said order was subsequently extended from time to time.

20. Learned Government Pleader for Revenue took notice for respondent Nos.1 to 3, Sri K.Vivek Reddy, learned counsel, took notice for 4th respondent, Sri K.K. Waghray, learned counsel, took notice for respondent Nos.6 and 11, Sri Ali Farooque, learned counsel, took notice for 10th respondent and Sri G.Hanumantha Rao, learned counsel, took notice for 12th respondent. Respondent Nos.5, 8 and 9 were served but there is no counter affidavit on their behalf. Smt. Nazneen Begum, learned counsel, appeared for 7th respondent, but did not file any counter.

21. Counter affidavits have been filed by respondent Nos.6 and 11 and also by 10th respondent.

22. The matter was heard in part on 17-07-2018, 01-08-2018, 14-09-2018, 01-10-2018 and was reserved for orders on 04-10-2018.

CONTENTIONS OF COUNSEL FOR PETITIONER

23. It is the contention of the learned counsel for the petitioner that the 3rd respondent, could not have referred the matter to the Civil Court under Section 76 of Act 30 of 2013 stating that it is difficult to award compensation to the rightful owner.

24. He contended that respondent Nos.6 to 12 have no right in the subject property and had never claimed any rights therein from 1977 i.e. for the last 38 years and have never challenged any of the title documents executed since 1982 in respect of the subject property. He contended that 3rd respondent ought to have held that there is no title dispute in respect of the subject property and could not have made the reference to the Civil Court.

He contended that the claim of the 6th respondent and others ought to have been rejected, that there is total non-application of mind and abdication of statutory functions by 3rd respondent and consequently the impugned award is liable to be set aside.

25. Learned counsel for the petitioner relied upon the decisions in **Dr. G.H.Grant Vs. The State of Bihar¹** and **Govindu Venkata Reddy Vs. K.Krishna Rao and another²**.

THE STAND OF RESPONDENT Nos. 6 AND 11

26. Respondent Nos.6 and 11 filed counter affidavit disputing the contentions of the petitioner.

27. They contended that petitioner is a *lis pendens* purchaser as the property bearing No.8-3-389/2/A, admeasuring 390 sq yds which is forming part of Sy. No.10 and 11 of the larger extent of the total area of Ac.4.20 gts which covers various Municipal numbers from 8-3-323 and sub numbers etc. are all the subject matter of partition suit in O.S.No.81/1981 (which is renumbered as O.S.No.328 of 1983 and presently pending on the file of IX Additional Chief Judge, City Civil Court, Hyderabad). In the said partition suit O.S.No.328 of 1983, the vendor's vendor viz., late Mohd. Hyder Ali Khan, s/o. late Mohd. Razak Ali Khan was party defendant No.18. There is another suit O.S.No.318 of 1991 which was subsequently renumbered as O.S.No.9 of 1994 which is also pending on the file of IX Additional Chief Judge, City Civil Court, Hyderabad, and the suit is also for partition by

¹ AIR 1966 S.C. 237

² AIR 1982 A.P. 86

another co-sharer. The vendor's vendor late Mohd. Hyder Ali Khan was also party defendant No.26 in the suit.

28. During the pendency of the partition suit, they allege that late Mohd. Hyder Ali Khan executed the alleged registered gift deed in favour of Sardar Chandra Singh and through him the petitioner and his vendor K.Srinivasa Rao are claiming the title. Thus, the whole transaction in respect of the property bearing D.No.8-3-389/2/A admeasuring 390 sq yds is affected by doctrine of *lis pendens*, as such, the petitioner is not entitled to claim any relief in the compensation amount till the rights of the vendor's vendor late Mohd. Hyder Ali Khan is decided by the trial Court in the partition suit. The respondents contended that late Mohd. Hyder Ali Khan has set up plea of oral gift in respect of the portion of the premises forming apart of larger extent and his plea of oral gift is denied by the other co-shares. Therefore, according to them, the petitioner is not entitled to claim absolute rights in the property to claim compensation amount.

29. They further contend that the so called development or construction taken up by the petitioner were also admittedly during the pendency of the partition suit and therefore, neither the petitioner nor K.Srinivasa Rao have any better rights or title than the title or share of the Mohd. Hyder Ali Khan.

30. They further contended that in fact, the original owner Smt. Aktarunnisa Begum died leaving behind two daughters viz., Ahmadunnisa Begum and Ameerrunnisa Begum (the status of Ameerunnisa Begum as daughter is disputed in the trial court), apart from grand children of her four

sons. Mohd. Hyder Ali Khan is one of the grand sons of Aktarunnisa Begum. Therefore, if at all Mohd. Hyder Ali Khan got any share, the share will be negligible.

31. They further contended that respondent No.6, while submitting claim petition before 3rd respondent, has also filed a Memorandum of Understanding dt.25-08-2008 and in pursuance of the same, all the co-owners of the property have arrived at a settlement insofar as their shares in the property are concerned and according to it, the sharing ratio among the owners is also fixed at 40:60% in the property.

32. They further contend that the contentions of petitioner that the 3rd respondent cannot refer the matter to Civil Court or that there is no civil dispute pending between the parties are untenable; and that 3rd respondent has referred the matter in Civil Court in view of the serious dispute with regard to title.

33. Similar stand is taken by respondent No.10.

THE CONSIDERATION BY THE COURT

34. From the above facts and contentions, it is clear that an extent of 232 sq yds in premises bearing No. Door No.8-3-389/2/A admeasuring 390 sq yds in T.S.No.3/5, Ward No.6, Block No.L of Yellareddyguda village, Khairatabad Mandal, Hyderabad District, Hyderabad was acquired for the purpose of Hyderabad Metro Rail.

35. Though initially an award dt.20-09-2014 was passed under the Land Acquisition Act, 1894, the said award was set aside by this Court on

02-12-2014 in W.P.No.29925 of 2014 filed by land owner of another property which is subject matter of the same award, and the matter was remanded back to 3rd respondent to pass an award under Act 30 of 2013. Thereafter, the 3rd respondent passed an award C3/922/2013 dt.23-01-2015.

36. As regards the subject property, according to the award, respondent Nos.6 to 11 filed claims along with the petitioner.

37. In the award, 3rd respondent extracted the contentions of the petitioner and respondent nos.5 to 7 as stated by them in the affidavit filed in support of the Writ Petition and in the counter-affidavits.

38. Thereafter, he recorded that the respondent nos.5 and 7 stated that compensation amount be distributed among the legal heirs of the four sons of Aktharunnisa Begum as per the partition suits.

39. He then held that it is difficult to award compensation to the rightful owner and so it is ordered to refer the matter to the Civil Court under Section 76 of Act 30 of 2013 for adjudication of title and payment of compensation to the rightful owner. He directed that the compensation amount of Rs.3,95,93,016/- be deposited in the Civil Court under Section 76 for adjudication of title and payment of compensation to the rightful owner.

40. It is not in dispute that though there is a direction in the award dt.23-01-2015 passed by 3rd respondent to refer the matter to the Civil Court under Section 76 of the Act 30 of 2013, in view of the *status quo* order passed by this Court on 02-04-2015, no reference under Section 76 has yet been made.

41. Section 76 of the Act 30 of 2013 states:

“Section 76. Dispute as to apportionment:-

When the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority.”

42. Therefore, Section 76 enables the Collector to refer disputes arising as to apportionment of compensation settled in an award or for any part thereof or as to persons to whom the same any part thereof payable to the Land Acquisition, Rehabilitation and Resettlement Authority constituted under Section 51 of the Act 30 of 2013.

43. The question arises *“whether it is mandatory to make a reference under Sec.76 of the Act 30 of 2013 to the said authority merely because there is a dispute raised or whether the Land Acquisition officer has discretion whether or not to make such reference?”*

44. Sec.76 of Act 30 of 2013 is identical to Section 30 of the 1894 Act.

45. Interpreting Section 30 of the 1894 Act, in **Dr. G.H.Grant** (1 supra), the Supreme Court held that the Collector under Section 30 is *not enjoined* to make a reference and he *may relegate* any person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award. It held that the power under Section 30 to refer the dispute relating to apportionment or as to the persons to whom it is payable is, discretionary and *the Collector may, but is not bound to exercise*

that power. It observed that the Collector is not authorized to decide finally the conflicting rights of the persons interested in the amount of compensation and he is primarily concerned with the acquisition of the land. It held that the scheme of apportionment by the Collector does not finally determine the rights of persons interested in the amount of compensation and the award is only conclusive between the Collector and the persons interested and not among the persons interested. It held that the Collector has no power to *finally* adjudicate upon the title to compensation and the dispute has to be decided either under Section 18 or under Section 30 or in a separate suit.

46. A Division Bench of this Court in **Govindu Venkata Reddy** (2 supra) held that while exercising power under Section 30 of the 1894 Act, *the Collector can decline to make reference even where complicated questions were involved.* It held that the Collector/Land Acquisition Officer has to enquire into respective interests of the persons claiming the compensation and *he has the power to enquire into and determine the disputed claims and disputed questions of title* as well. It held that it cannot be said that the Land Acquisition Officer has no jurisdiction to go into the disputed claims or disputed questions of title or that, and that as soon as such a dispute arises, he is under obligation to make a reference to the Civil Court. It however cautioned that *he is also under no obligation to decide or determine such disputed questions;* and that if the dispute as to title arising before him involves *complicated questions of fact and/or law* and that, it is desirable that those questions should be enquired into by Civil Court and in such circumstances, he can refuse to decide that question and refer the same

for decision to Civil Court. It reiterated that the *Land Acquisition Officer* was not bound to make a reference to Civil Court under Section 30 of the Act merely because the petitioner asked for it since he has to go into the disputed questions of title. It held that if the Collector chose to go into and decide the conflicting claims to land or compensation, the only remedy of the person aggrieved was to ask for a reference under Section 19; and he cannot, after award is made, ask for a reference under Section 30, if he was present and represented before the Collector during the award proceedings.

47. The learned counsel for the respondent Nos.6 and 11 relied on the judgment in **Arulmighu Lakshminarasimhaswamy Temple, Singirigudi Vs. Union of India and others**³, which held that when there is a dispute about title, the Land Acquisition Officer *has to* make a reference to decide *inter se* title. The said decision took a diametrical opposite view to the Three Judge Bench judgment of the Supreme Court in **Dr. G.H.Grant** (1 supra) which had held that power under Section 30 to refer the dispute as to the persons to whom compensation is payable is discretionary and that the Collector was not bound to exercise that power. It did not even refer to the decision in **Dr. G.H.Grant** (1 supra).

48. Therefore, I am inclined to follow the decision in **Dr. G.H.Grant** (1 supra) and not the decision in **Arulmighu Lakshminarasimhaswamy Temple, Singirigudi** (4 supra) and hold that the Collector under Section 30 of the 1894 Act (and also under Sec.76 of the 2013 Act) is *not enjoined* to make a reference and he *may relegate* any person raising a dispute as to apportionment, or as to the person to whom

³ 1996 (7) Supreme 638

compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award; that power under Section 30 to refer the dispute relating to apportionment or as to the persons to whom it is payable is, *discretionary* and *the Collector may, but is not bound* to exercise that power. The Collector/Land Acquisition Officer has to enquire into respective interests of the persons claiming the compensation and *he has the power to enquire into and determine the disputed claims and disputed questions of title* as well.

49. In my considered opinion, the 3rd respondent obviously felt that complicated questions of law and fact require to be adjudicated and it is better that the Civil Court decides them, and that was why he referred the matter to the Civil Court under Section 76 of Act 30 of 2013 and also directed deposit of the compensation amount in the Civil Court.

50. Since the 3rd respondent had the *discretion* to refer the matter to the Civil Court and was *not obligated* to decide the dispute between the parties as held in **G.H. Grant (1 supra)** and **Govindu Venkata Reddy (2 supra)**, no exception can be taken to the said decision of the 3rd respondent.

51. In relation to other property bearing No.8-3-322 which is subject matter of W.P.No.1969 of 2015, a different view had been taken by this Court because the 3rd respondent therein had accepted the claim of petitioner therein (unlike in relation to the subject property herein) and that was why this Court held that there was no necessity for a reference under Section 76 of the Act 30 of 2013

52. Therefore, the interim order granted on 02.04.2015 is vacated; the Writ Petition is disposed of upholding the decision of the 3rd respondent in the Award No.C3/922/2013 dt.23.01.2015 directing that the dispute of title between the petitioner and the respondent nos.5 to 12 be referred to Civil Court under Sec.76 of Act 30 of 2013 for adjudication as regards property bearing Municipal No.8-3-389/2/A/1, Yellareddyguda, Khairatabad Mandal, Hyderabad; and the compensation is directed to be disbursed as per the decision of the reference court. No costs.

53. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

Date: 31-10-2018
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JUSTICE M.S.RAMACHANDRA RAO

