THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.24094 of 2007

ORDER:

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

> **'... to issue a Writ, Order or direction especially one in the nature of Writ of Mandamus declaring that:**
>
> **i) Notification, dated 12.6.1998 issued under Section 4(1) of the Land Acquisition Act and all other consequential proceedings are void;**
>
> **j) Further declare that the respondents are liable to pay the compensation/market value as fixed by the Committee referred to in para no.6 forthwith without any further delay;**
>
> **k) That the inordinate delay caused in making payment of compensation is illegal, arbitrary and the Respondents are liable to pay interest thereon**
>
> **l) Declare that the temple is entitled for compensation at the present market value'**

2. I have heard the submissions of Sri M. Surender Rao, 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:

The petitioner is the Chairman of the Trust Board of Sri Bhimeshwara Swamy Temple, Bhimavaram. The temple owned Ac.7.00 cents of land in

Sy.no.583/B2 in Bhimavaram. By a notification under Section 4(1) of the Land Acquisition Act, 1894, ['the Act', for short] the said land was notified for acquisition for providing house sites to persons of weaker sections. As the property is that of the temple, which is a religious institution, under the control of endowments department, in view of the provisions of Sections 80 & 81 of A.P. Charitable Hindu Religious Institutions and Endowments Act, 1987 [Act 30 of 1987], the Collector, West Godavari District, that is, the 1st respondent addressed a letter, dated 16.06.1998, to the Commissioner of Endowments seeking consent in the above regard. The 1st respondent also addressed a letter, dated 16.08.1998, to the Revenue Divisional Officer, Narsapuram – 2nd respondent to recommend the proposed market value for the acquired extent of land. Even before the replies were received to the said letters, the declaration under Section 6 of the Act was published, on 23.06.1998. Therefore, the opinion of the standing counsel was sought. It was opined that the District Collectors are empowered to acquire the endowed properties. The Executive Officer of the subject temple sought instructions from the Assistant Commissioner of Endowments *vide* his letter, dated 01.07.1998. The Assistant Commissioner of Endowments, by a letter, dated 01.07.1998, requested the 1st respondent to take consent of the Commissioner before taking possession of the subject land. In the meantime, the Trust Board passed a resolution as regards the value for which the land can be parted with in favour of the Government. The Assistant Commissioner, Endowments, by letter, dated 10.08.1998, directed the Executive Officer of the subject temple to send proposals for obtaining consent of the Commissioner. On 27.08.1998, the Execute Officer was asked to attend to the award enquiry. The Temple filed its objections, on 07.09.1998. The Commissioner of Endowments, by letter, dated 09.10.1998, requested the 1st respondent to make a deposit of 80% of the amount of compensation before taking advance possession of the land. Neither the deposit was made nor was a reply issued to the said letter. The Commissioner proposed to give his consent for acquisition of the land and issued a notification, dated 11.03.1999. Objections were called for from interested persons for the proposed consent of the Commissioner for acquisition of the land. The Government issued G.O.Ms.No.25, dated 28.03.2000, stating that compensation amount will be paid to the Temple in four installments or within a period of three years. Even those directions in the said G.O were not complied with and no compensation was paid so far to the Temple. The Executive Officer addressed a letter, dated 04.02.2005, to the 1st respondent requesting for payment of compensation. The Assistant Commissioner, Endowments, addressed a letter, dated 07.03.2005, to the 2nd respondent requesting to pay the money. The Regional Joint Commissioner, Endowments, addressed a letter, dated 20.01.2007, to the 2nd respondent seeking payment of compensation money. Neither the compensation in full nor 80% of the compensation amount was paid. For fixing market value of the land, the matter was referred to a committee comprising of Commissioner, Endowments, CCLA, Commissioner, Social Welfare and Secretary, CCLA. The Committee fixed market value @ Rs.2,80,000/- per acre. The compensation for the acquired land works out to Rs.19,60,000/-. The Executive Officer of the temple addressed a letter, dated 06.08.2007, for payment of the said amount of compensation. While acquiring the land way back in June, 1998, the urgency clause under Section 17 of the Act was invoked. Even 80% of the compensation was not paid as per the provisions under the Act. The respondents having taken possession of the land of the Temple about a decade prior to 2007 are not justified in keeping silent in the matter of payment of compensation to the Temple. The respondents stated that the Award was passed either before 11.06.2000 or 22.06.2000. Since the respondents and concerned authorities are not taking any action in the matter, the petitioner is constrained to file this writ petition.

4. The case of the respondents as stated in the counter of the RDO-Land Acquisition Officer, which is relevant, in brief, is this:

The land in R.S.No.583/B measuring Ac.12.43 cents of Bhimavaram stands classified in the accounts of the Government as 'Government wet' and it belongs to Sri Bhimeswara Swamy vari Temple of Bhimavaram and is under the control of Endowments Department. Out of the above said land, Ac.7.00 cents, which was sub divided as R.S.No.583/B2, has been notified for acquisition for the purpose of providing house sites. Draft notification under Section 4(1) and draft declaration under Section 6 of the Act were published on 12.06.1996 and 22.06.1998 respectively. The publications were also made in daily newspapers and District Gazette. Urgency clause was invoked under Section 17(4) of the Act. Notices under Section 9(1), 10, 9(3) and 10 of the Act were issued on 24.06.1998. Notice was also issued to the Executive Officer of the Temple directing him to deliver possession of land notified for acquisition before the evening of 27.06.1998 to the MRO. Accordingly, land was taken possession, on 29.06.1998, and house site pattas were granted to the eligible beneficiaries. Since the land is under the control of the Endowment

Department, the Collector addressed a letter, dated 16.06.1998, to the Commissioner of Endowments to give consent to part with the land and for giving advance possession. Government also issued instructions in G.O.Ms.no.444, Revenue (Endowments-II) Department, dated 19.09.1995, and G.O.Ms.No.456, dated 29.09.1995, to Collectors to acquire the endowment property for providing house sites to persons of weaker sections in the event no alternative Government lands are available for the said purpose. Therefore, when it is absolutely necessary, endowments land can be acquired and possession can be taken irrespective of whether or not the trustee or trust board of the institution gives consent or not. By the afore-said Government Order, a State Level Committee with Commissioner of Land Revenue, Commissioner of Endowments and Commissioner of Social Welfare as members was constituted to finalize the market value of the endowment lands notified for acquisition. The Commissioner of Endowments, by letter, dated 31.12.1998, informed the 1st respondent that the department has taken a decision to handover notified property subject to payment of costs indicated and also subject to final fixation of the rate by the Committee set up by the Government vide GOMs.No.444, dated 19.09.1995. The Executive Officer attended the award enquiry on 07.09.1998 and submitted a statement that there are two tenants. Valuation proposals were submitted to the State Level Committee. Since the market value has not been finalized by the State Level Committee upto 14.03.2007, 80% of the compensation money could not be paid or deposited. The State Level Committee, on 14.03.2007, fixed the compensation payable to the land notified for acquisition @ Rs.2,80,000/- per acre and directed the 1st respondent to take further necessary action for passing award, after the interim orders passed by this Court in WP.No.11812 of 2005 and W.P.No.10547 of 2006 are vacated. The interim orders granted by this Court in the said writ petitions are in force. Hence, the Award could not be passed. All the legal requirements are fulfilled in this case. The beneficiaries of the acquired land constructed dwelling houses as per the pattas allotted to them and are living therein. Immediately after the interim orders in the afore-said writ petitions are vacated, the respondents will take necessary action for obtaining the necessary funds for passing the Award and disburse the compensation to the Temple.

5. From the narration of the pleadings & submissions made in line with the pleadings, it is noticeable that the subject land of the subject temple, which is an endowed property, was acquired by the Government and a draft notification under Section 4(1) of the Act was published, on 12.06.1998, and that by dispensing with the enquiry envisaged under Section 5-A of the Act, a declaration was published under Section 6 of the Act, on 22.06.1998, and without waiting for necessary consent from the competent authority of the Endowment Department and without making payment of 80% of the compensation amount, advance possession of the subject land was taken, on 29.06.1998. Since the said date, the compensation was not paid to the temple. Admittedly, the market value was determined at Rs.2,80,000/- per acre by the State Level Committee constituted for fixing the market value. The total value of the acquired land thus worked out to Rs.19,60,000/-. Besides the market value, the temple is entitled to payment of solatium, additional market value, interest, and other benefits, as per the provisions of the Act. Award was not passed till date as per the submissions made before this Court. The reason

assigned is that the stay orders granted by this Court in WPNos.11812 of 2005 and W.P.no.10547 of 2006 are in force and that further necessary action for passing award would be taken after the interim orders in the afore-said cases are vacated. Thus, it is not the case of the respondents that there are any interim orders passed by any Court preventing them from making the payments due to the temple as per law in respect of the subject land. Neither the existence of any such interim orders is brought to the notice of this Court nor are copies of such orders, if any, produced before this Court. Despite several letters & correspondence, the compensation amount was not paid to the temple. As on the date of the institution of the writ petition and even thereafter, the compensation amount with other benefits is not paid. However, in the counter, it is stated that the acquired land was distributed to the beneficiaries as house sites and that the beneficiaries are living in the properties allotted to them by constructing houses. Learned Government Pleaders submitted that in view of the said fact, it is not possible to restore the land to the petitioner temple.

6. In this backdrop of factual matrix it is advantageous to refer to the decision of the Supreme Court in **Tukaram Kana Joshi and Ors. thr. Power of Attorney Holder vs. M.I.D.C. and Ors.**[1] In this decision, the facts and ratio are as follows:

> The Appellants were deprived of their immovable property in 1964, when Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the Right to Property seized to be a Fundamental Right, taking possession of or

[1] (2013) 1 SCC 253

acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In Jilubhai Nanbhai Khachar, etc. etc. v. State of Gujarat and Anr. [AIR 1995 SC 142], it has been held as follows: - 'In other words, Article 300-A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without due sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation.'

The right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment etc. Now however, human rights are gaining an even greater multi faceted dimension. The right to property is considered, very much to be a part of such new dimension. (Vide: Lachhman Dass v. Jagat Ram and Ors.: (2007) 10 SCC 448; Amarjit Singh and Ors. v. State of Punjab and Ors.: (2010) 10 SCC 43; Narmada Bachao Andolan v. State of Madhya Pradesh and Anr.: AIR 2011 SC 1989; State of Haryana v. Mukesh Kumar and Ors.: AIR 2012 SC 559 and Delhi Airtech Services Pvt. Ltd. v. State of U.P. and Anr.: AIR 2012 SC 573).

In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the Rule of Law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the Appellants

> over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.
>
> Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. Functionaries of the State took over possession of the land belonging to the Appellants without any sanction of law. The Appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the authorities have treated the land owner as a 'subject' of medieval India, but not as a 'citizen' under our constitution.
>
> The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one.

Suffice if it is stated that the facts and ratio in the above decision appositely sum up the nature of action that was resorted to by the State in the case at hand.

7. Finally, learned counsel for the petitioner submitted that in the facts & circumstances of the case, the only request which the petitioner now makes before this Court is to direct the respondents to pay the compensation as fixed @ Rs.2,80,000/- per acre along with solatium, additional market value & interests etcetera and extend the necessary lawful benefits as envisaged under law to the petitioner temple forthwith. Learned counsel for the petitioner emphasized that the temple would be entitled to interest on all the amounts due in respect of the subject land from 29.06.1998, the date on which possession of the subject land of the temple was taken and further submitted that liberty may be reserved to the Government to take appropriate departmental and other necessary actions against the officers of the Government and Endowment Department for their arbitrary, illegal and high-handed actions in the matter and for depriving the temple of its valuable property as well as its enjoyment unlawfully, illegally and contrary to the procedure established by law.

8. In the result, the Writ Petition is allowed in part with costs directing the respondents to pay to the petitioner temple forthwith, and in any event within four weeks from the date of receipt of a copy of this order, the entire compensation amount of Rs.19,60,000/- (Rupees nineteen lakhs sixty thousand only) (fixed @ Rs.2,80,000/- per acre) along with solatium, additional market value & interests etcetera and extend the necessary benefits as envisaged under law to the petitioner temple in respect of the subject land. It is needless to state that all amounts due as per law shall be paid with interest from 29.06.1998, the date on which possession of the subject land of the temple was taken. It is also made clear that liberty is reserved to the Government to take forthwith

necessary actions both departmental and/or otherwise against the officers of the Government and endowment department, who are responsible for the present situation.

The costs are quantified at Rs.10,000/- payable by the respondents to the petitioner.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

04.10.2018
Vjl