

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.15301 OF 2007

ORDER:

The petitioners, who are 226 in number, filed this writ petition to issue a Writ of Mandamus declaring the inaction of the respondents in referring the cases of the petitioners to the competent Civil Court under Section 18 of the Land Acquisition Act (for short 'the Act') for determination of the correct market value of the lands of the petitioners acquired for foreshore submergence of Somasila Project.

2. Petitioners are agriculturists owning small extents of lands and their agricultural lands situated in Boddicherla Village, Gopavaram Mandal, Kadapa District, were acquired for Somasila Irrigation Project for submergence in the backwaters. Most of the petitioners are illiterate persons and were eking out their livelihood with the proceeds they received by personally cultivating the lands owned by them. They became displaced on account of acquisition of their lands for the purpose of foreshore submergence of Somasila Project. No notices under Section 12 (2) of the Act were served on the petitioners and they have no knowledge of passing of the awards by the Land Acquisition Officer on 22.02.1999. The petitioners were made to run pillar to post for payment of compensation to their lands, though they were dispossessed in the year 1999 itself. At the intervention of the peoples' representatives, a word was orally sent to the petitioners to receive the cheques on 26.03.2004. After coming to know about the issuance of cheques, the petitioners approached the office of the Land Acquisition Officer, the Special Deputy Collector, Somasila

Project, Atmakur, and received the compensation by way of cheques under protest on 26.03.2004 and they endorsed their protest in 'C' form. Petitioners further state that they submitted applications dated 03.05.2004 under Section 18 of the Act to the Land Acquisition Officer seeking reference to the Court for enhancement of the compensation. The applications were submitted reach-wise through their advocate. Alleging inaction, the present writ petition is filed.

3. The third respondent filed a counter affidavit stating that the second respondent issued six notifications under Section 4 (1) of the Act, published on 01.02.1996 proposing to acquire the landed properties of the petitioners situated in Reach Nos.3 to 6, 8 and 9 of Boddicherla Village, Gopavaram Mandal, Kadapa District, along with other lands for the purpose of foreshore submergence of Somasila Project. Enquiry under Section 5A of the Act was dispensed with and declarations under Section 6 were published. The Special Deputy Collector, Somasila Project, Atmakur, Nellore District, was the Land Acquisition Officer. He passed Award Nos.1 to 6/1998-1999 dated 22.02.1999 and compensation was also paid to the awardees on 29.03.2004. Thereafter, the jurisdiction of Boddecherla Village and some other villages was transferred from Special Deputy Collector, Atmakur, to the Special Deputy Collector, TGP-II, Kadapa. The Special Deputy Collector, Atmakur, in Ref.No.251/2005 dated 24.05.2005 has transferred all the records of these villages. On 16.10.2006, the Advocate Thippa Reddy, addressed a letter to the Special Deputy Collector, TGP-II, Kadapa, requesting to refer the applications, under Section 18 of the Act, relating to Boddecherla Village. In reply thereto, the

Special Deputy Collector, in Ref.D/15/2005 dated 16.12.2006, stated that the files relating to the applications u/s.18 of the Act of Boddecherla Village were not received and the Advocate was requested to contact the Special Deputy Collector, Atmakur, Nellore District. The Special Deputy Collector, TGP-II, in Ref.11/2007 dated 31.01.2007 addressed a letter to the Special Deputy Collector, Atmakur, requesting to send the attested copy of 28-A register for compliance of the Orders in W.P.Nos.27219 and 27220 of 2006 on the file of this Court. The Special Deputy Collector, Atmakur, in Ref.No.e/31/2007 dated 24.07.2007 sent a reply stating that '28A applications were separately kept from the connected files of the Rekalakunta & Boddecherla Villages so at the time of sending records and files, they were not noticed. Now I am sending the 28-A applications and Section 18 of LA Act References and Xerox copy of Register of 28-A as detailed in the Annexure'. The Special Deputy Collector, TGP-II, Kadapa, has received the files accordingly. Thereby, the Special Deputy Collector, TGP-II, Kadapa, received 43 applications pertaining to Reach No.3, 24 applications of Reach No.4, 48 applications of Reach No.5, 27 applications of Reach No.6, 53 applications of Reach No.8 and 31 applications pertaining to Reach No.9. Thereafter, the Special Deputy Collector, Kadapa, vide letter dated 04.02.2009 sought the Special Deputy Collector, Atmakur, to confirm the genuineness of the applications. Pursuant thereto, the Special Deputy Collector, Atmakur, enquired into the matter and sent his report. Thereafter, Special Deputy Collector, Kadapa, took up enquiry, issued notice to the Advocate Thippareddy requesting him to produce the applicants for enquiry on 09.11.2009. On

10.11.2009, the Advocate endorsed on the notice that since the matter is pending before this Court, the enquiry may be conducted after disposal of the case by this Court. The same was informed to the petitioners by the Tahasildar by way of tom tom in the village on 09.12.2009. Thereafter, the Special Deputy Collector, TGP-II, visited Boddecherla Village, conducted enquiry, which revealed that the applications under Section 18 pertaining to Bodecherla (V) were barred by limitation. It is specifically pleaded in the counter that though the petitioners stated in the writ affidavit that the authorities have received the above applications on 03.05.2004 and 14.10.2004, but in fact the authorities have received the applications only on 22.05.2004. As such, the applications of the petitioners were rejected vide proceedings dated 22.03.2010 and the same was communicated to their advocate through registered post.

4. Heard both sides and perused the material on record.

5. Sri P.Sridhar Reddy, learned counsel appearing for the petitioners would contend that neither the notices under Section 12 (2) of the Act were issued nor served on the petitioners. The petitioners have no knowledge of passing of the awards. Petitioners received the compensation by way of cheques under protest on 26.03.2004 and they endorsed their protest in 'C' form. They submitted applications dated 03.05.2004, through Advocate, under Section 18 of the Act seeking reference to the Civil Court for enhancement of the compensation. Petitioners' Advocate addressed reminder letters to the second respondent on 04.10.2004 and 16.10.2005 seeking reference to the Civil Court.

Even the third respondent in his counter admitted that applications under Section 18 of the Act were received on 22.05.2004. As such, the contention of the respondents that the applications are barred by limitation is untenable. He further submits that from a conjoint reading of Sections 31 (2) and 18 of the Act, it is clear that an application seeking reference under Section 18 of the Act for determination of amount of compensation can be made by any person interested, who has not accepted the award and who has not received the amount otherwise than under protest. The cause of action to seek reference under Section 18 of the Act would commence only on receipt of compensation that too under protest. As such, the petitioners' applications are well within time and the respondents are under obligation to refer the petitioners' applications under Section 18 of the Act to the Civil Court. In support of his contentions, he placed reliance on the decision of this Court in **Golla Sunkulamma v. Revenue Divisional Officer, Kurnool and another¹** and **Singareni Collieries Company Limited rep. by its General Manager vs. C.Raghavender Rao and another²** wherein this Court held that the cause of action to seek reference under Section 18 of the Act would arise, only on receipt of compensation, that too under protest. The period of two months for seeking reference under Section 18 of the Act must be calculated from the date on which the amount of compensation was received, under protest. The counsel further contended that the petitioners' right to seek reference under Section 18 of the Act could not be denied on trivial grounds of delay.

¹ 2008 (2) ALT 532

² 2008 (1) ALT 256

6. Per contra, the learned Assistant Government Pleader, while reiterating the stand of the 3rd respondent taken in the counter, would contend that the petitioners' landed properties were acquired in the year 1996 and award was passed on 22.02.1999. They were dispossessed in the year 1999. The petitioners' applications filed under Section 18 of the Act said to be submitted on 03.05.2004 and received on 22.05.2004, even after receipt of compensation by the petitioner on 26.03.2004 by cheques, under protest, are barred by limitation.

7. In reply thereto, the counsel for the petitioners submits that the said contention is untenable in view of the ratio laid down by this Court in **Golla Sunkulamma** and **Singareni Collieries Company Limited (referred supra)**. On the other hand, the learned AGP made feeble submissions that the said decisions have no application to the facts of the present case.

8. On careful consideration of the facts in issue, this Court found that though the Land Acquisition Officer had passed the awards on 22.02.1999, no notices under Section 12 (2) of the Act were served on the petitioners. The petitioners have no knowledge of passing of the awards. However, the petitioners received compensation by way of cheques under protest on 26.03.2004. It appears that the petitioners have sent their applications through their Advocate by registered post on 03.05.2004 to the Special Deputy Collector, Atmakur, the then Land Acquisition Officer, seeking reference under Section 18 of the Act to the Civil Court for enhancement of compensation.

9. In this context, it would be necessary to extract the following portion of the counter of the 3rd respondent:

“ 5. The Special Deputy Collector, TGP-II, Kadapa, has received the files Accordingly. The applications U/s18 relating to reach Nos.3 to 6, 8 & 9 of Boddecherla Village were available along with the covering letters by Advocate Thippareddy, through the following Registered Post:

Regd. Post No. & Date	Reach No.	Number of Applications	Sent by	Sent to
1) EPP No.109073, dt.22-05-2004	3	43	Sri R.Thippa Reddy	The SDC (LA), S.S.P., Atmakur,
2) EPP No.109077 dt.22-05-2004	4	24	- do -	- do -
3) EPP No.109075 dt.22-05-2004	5	48	- do -	- do -
4) EPP No.109076 dt.22-05-2004	6	27	- do -	- do -
5) EPP No.109078 dt.22-05-2004	8	53	- do -	- do -
6) EPP No.109074 dt.22-05-2004	9	31	- do -	- do -

10. Further, the enquiry got conducted by the third respondent through the Special Deputy Collector, Atmakur, about the genuineness and confirmation of the petitioners' applications filed u/s.18 of the Act has no legal sanctity and only on mere surmises and conjectures the Special Deputy Collector, Atmakur, doubted the genuineness of the applications submitted by the petitioners. It has no legal binding on the petitioners and no effect on the petitioners' applications filed under Section 18 of the Act. The further finding of the Special Deputy Collector, Atmakur, that the applications are barred by limitation under Section 18 of the Act is unsustainable in view of the ratio laid down by this Court in **Golla Sunkulamma** and **Singareni Collieries Company Limited** (*referred supra*). The petitioners' applications filed under

Section 18 of the Act, sent through Advocate, on 03.05.2005 by Registered Post, were received on 22.05.2004 in the office of the Special Deputy Collector, Atmakur, the then Land Acquisition Officer, after receipt of the compensation by the petitioners on 26.03.2004 through cheques as per the award dated 22.02.1999. As no notices under Section 12 (2) of the Act were served on the petitioners, the petitioners have no knowledge of the award. Hence, it could easily be construed that the petitioners' applications filed under Section 18 of the Act are well within two months' time from the date of receipt of compensation, under protest, through cheques on 26.03.2004, as per Section 18 read with Section 31 (2) of the Act as held by this Court in the decisions referred supra. Therefore, the Writ Petition is liable to be allowed.

11. Accordingly, the Writ Petition is allowed directing the third respondent to refer the petitioners' applications, under Section 18 of the Land Acquisition Act, for re-determination of compensation to competent Civil Court, within a period of two months, from the date of receipt of a copy of this order,

12. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

8th March, 2018
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