

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.2699 of 2015

ORDER:

Petitioners are residents of Bandarupalli and their structures/building/sheds were submerged in Somasila project constructed by respondents.

2. On 07-11-2007, the Special Deputy Collector (LA), G.N.S.S., Unit-II, Kadapa and the Executive Engineer, S.S.P.Division-I, Somasila, Nellore District inspected and prepared an inspection notes detailing the type of structures present in the lands of the petitioners survey number-wise and this was forwarded by the Executive Engineer, SSP Division-I, Somasila to the Special Deputy Collector (LA) along with plinth area of the structures.

3. Petitioners' case is that though an extent of Ac.32.56 cents with structures thereon was notified under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") on 01-11-2007, only Ac.30.92 cents was declared under Section 6 of the declaration dt.14-12-2007 and structures owned by petitioners in an extent of 1½ acres were excluded from acquisition.

4. They therefore filed W.P.No.20433 of 2008 seeking payment of compensation for their lands and structures and sought a direction to respondents to pay compensation.

5. The said Writ Petition was allowed on 09-03-2012 rejecting the contention of respondents therein that Ac.1.44 cents together with structures was excluded from notification for acquisition on the ground that they were brought into existence in the submerged lands. This Court held that the reason for exclusion of the said land with structures cannot be accepted since only after thorough verification and enquiry, they found that balance of the lands in the village need to be acquired due to backwaters and once a notification under Section 4(1) of the Act was issued after such thorough verification, it was not at all open for the Land Acquisition Officer to point out anything about the structures and over-rule the findings recorded by the Special Deputy Collector as regards the existence of structures. It therefore held that the action of respondents in excluding the properties of the petitioners from acquisition cannot be countenanced. But instead of directing publication of declaration under Section 6 of the Act at that point of time, it directed the respondents to pay compensation for petitioners' properties also at the same rate that was mentioned in the consent award in relation to the notification dt.01-1-2017 within two months.

6. Alleging that nothing was done thereafter, the present Writ Petition is filed.

7. In the counter-affidavit filed by respondents, the respondents have stated that after order dt.09-03-2012 was passed in

W.P.No.20433 of 2008, notice had been issued to the petitioners on 03-11-2012, that petitioners attended and stated before the Land Acquisition Officer that they have to be paid compensation to the structures noted in the joint inspection letter dt.07-11-2007 and to pass a regular award for the structures, but no consent award was passed as petitioners did not give consent.

8. This stand of the respondents is untenable, because if the petitioners did not consent to pass a consent award, nothing prevented the respondents from passing a regular award under Section 11 of the Act in relation to structures on the basis of what is laid down in the above order passed by this Court.

9. Accordingly, the Writ Petition is allowed and 3rd respondent is directed to take into account the Joint Inspector Report dt.07-11-2007 and the proceedings dt.22-12-2007 of the 4th respondent in relation to the structures of the petitioners and determine compensation payable to the petitioners as was done in the case of other consent awards passed pursuant to Section 4(1) of the Act notification dt.01-11-2007 within four (04) weeks from the date of receipt of a copy of the order, after giving notice to the petitioners. No costs.

10. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 23-08-2018
Vsv