

THE HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.25088 of 2004

ORDER:

Heard Ms.S.Pranathi, holding for Mr.K.V.Chowdary, counsel for petitioner and learned Assistant Government Pleader for Land Acquisition.

The petitioner prays for mandamus declaring the action of respondents in not initiating acquisition proceedings afresh for an extent of 0.90 cents in Tadepalli Village of Guntur District as illegal, arbitrary and violative of Article 300-A of the Constitution of India.

The petitioner prays for a consequential direction to respondents to initiate the acquisition proceedings in respect of Ac.0-90 cents in Tadepalli Village of Guntur District (for short 'petition land').

The petitioner was the owner and possessor of petition land. On 08.09.1984, the 1st respondent herein issued notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act'). It is the case of the petitioner that on 20.12.1984 advance possession of petition land was taken and on 18.09.1986, house site pattas were issued to the beneficiaries.. The Award under Section 11 of the Act was made on 29.09.1986. The petitioner admits to have

received compensation, but receipt of compensation is under protest. Thereafter, the petitioner filed O.S.No.63 of 1987 on the file of Principal Senior Civil Judge, Guntur, for the relief of declaration that the Award dated 18.09.1986 of Land Acquisition Officer (Revenue Divisional Officer) is invalid and void. The petitioner prayed for consequential relief for possession of petition land free from all encumbrances.

The 1st and 4th respondents herein have been arrayed as defendants in the suit. The defendants filed written statement and contested the prayer. The trial Court framed the following issues for trial.

1. Whether the plaintiff is entitled to the declaration that the Award dated 18.09.1986 is invalid and void?
2. Whether the plaintiff is entitled for possession of suit schedule lands?
3. To what relief?

The learned trial Judge, on issue No.1, held that the Award dated 18.09.1986 is invalid and void.

On issue No.2, it is held that the question of recovery of possession does not arise, even as consequential relief, in this case, for the beneficiaries are in possession of petition land.

Consequently, the suit was decreed in part and the operative portion of judgment reads thus:

“In the result, the suit is decreed in part. The plaintiff shall have declaration that the Award dated 18.09.1986 is invalid and void. The suit with regard to the relief of recovery of possession in respect of suit schedule land is dismissed. The parties shall bear their own costs of the suit”

In this background, the case of the petitioner is that the petitioner has been making representations for initiation of land acquisition proceedings for acquiring petition land. In the event of fresh land acquisition proceedings being initiated, the amount already received by petitioner, as compensation, can and could also be taken note and compensation determined accordingly and paid in accordance with law. At last, the petitioner refers to reply dated 31.10.1995, wherein the Revenue department informed the petitioner that it is for the Social Welfare Department to take up and answer the grievance of petitioner vis-a vis acquisition. To complete the narration, it is necessary to refer to filing of I.A.No.184 of 1997 in O.S.No.63 of 1987 by the petitioner for amendment of decree under Sections 151 and 152 of Code of Civil

Procedure. The prayer for amendment to the decree reads as follows:

“A fresh notification under Section 4(1) of the Act can be issued and the acquisition proceedings can be started afresh in respect of land to an extent of Ac.0-90 cents belonging to the petitioner/plaintiff. On 10.09.1998, the request for amendment to decree was rejected.”

On 10.09.1998, I.A.No.184 of 1997 was dismissed. The judgment and decree in O.S.No.63 of 1987 and the order in I.A.No.184 of 1997 have become final. The petitioner seeks enforcement of his right on the premise that Award is declared as invalid and void and therefore fresh land acquisition proceedings are initiated. Therefore, a direction for initiating acquisition proceedings is maintainable and accordingly prays in the instant writ petition.

M/s.S.Pranathi, for petitioner, has substantially reiterated the above circumstances and contended that the divesting of proprietary rights of petitioner, in view of subsequent declaration of Award as void and not in accordance with law, violates Article 300-A of Constitution of India. She prays for a direction though not on the lines

prayed in the writ petition, by moulding the relief, the respondents may be directed to pass fresh Award.

The 4th respondent filed counter affidavit and most of the dates and events referred in the writ affidavit are not in dispute. The defence now taken by 4th respondent is that the respondents by issuing 4(1) notification have set in motion the procedure prescribed by law for acquiring the property of citizen, the acquisition of land resulted in Award dated 18.09.1986. The petitioner herein received compensation on 29.09.1986, albeit under protest. Once the compensation is received under protest, the petitioner has to follow the procedure under Section 18 of the Act, but not file a suit for declaration that Award is void and illegal. Once the period prescribed under Section 18 for reference is over, the petitioner could not have asked for enhanced compensation. The 4th respondent contends that the petitioner has received compensation together with all benefits. Therefore, the direction to initiate land acquisition proceedings or pass fresh Award will be contrary to law and unavailable under Article 226 of Constitution of India.

The Assistant Government Pleader incidentally contends that decree and judgment in O.S.No.63 of 1987 is

a simple decree for declaration. The attempt of petitioner, for amendment to decree, failed with the dismissal of I.A.No.184 of 1997. The writ prayer, if considered by this Court, virtually amounts to executing a simple declaratory decree, which is impermissible in law. He prays for dismissing the writ petition.

I have heard the counsel and perused the record.

The circumstances referred to above are not in dispute. From the undisputed circumstances, the point arises for consideration of this Court is whether the petitioner is entitled for a writ of mandamus for initiating land acquisition proceedings afresh or not.

Let me first consider the chronology of events which are in quick succession. On 18.09.1986, the Land Acquisition Officer (LAO) passed the Award. The compensation together with copy of Award was tendered on 24.09.1986 to petitioner. On 24.09.1986, the petitioner received compensation under protest. Under Section 18 of the Act, the petitioner has two (02) months time for seeking reference under Section 18 of the Act. In the case on hand, admittedly, steps for reference have not been taken. Thereafter, the suit, as already stated, was filed for declaring the Award as void. The petitioner prayed for

declaring the Award as void and also for recovery of possession. The prayer for recovery of possession was rejected. The petitioner, if at all was aggrieved by the dismissal of suit in part, the petitioner ought to have canvassed the matter further by filing appeal or atleast the suit already filed by him, he ought to have obtained comprehensive reliefs from the Civil Court or Appellate Court. The petitioner realizing the difficulty in execution of mere declaratory decree filed an application to amend the decree. It is axiomatic that a simple declaratory decree cannot be executed.

Now, the petitioner prays for a writ of mandamus for initiating land acquisition proceedings. The objection taken by the respondents herein is that the petitioner already received compensation and now there cannot be further acquisition proceedings. The petitioner, if has grievance against compensation determined through Award No.6/86/87 dated 18.09.1986, the remedies are against Award. Now, there cannot be a mandamus to respondents for initiating land acquisition proceedings, more particularly, when the petitioner has already received compensation and not worked out remedies under Section 18 of the Act.

Keeping in view the above circumstances, this Court is not persuaded to issue writ of mandamus, which for all purposes, would amount to executing declaration in O.S.No.63 of 1987 and reviving a prayer rejected in I.A.No.184 of 1997. Further, the petitioner failed to work out remedies available under Section 18 of the Act. The petitioner received compensation, therefore, it is not a case of complete denial of recourse to law or non-payment of compensation by respondents while acquiring the property of petitioner. As already noted, land acquisition proceedings were initiated, compensation determined and paid but thereafter, the petitioner did not work out the remedy under Section 18 of the Act. Lastly, I.A.No.184 of 1997 was dismissed on 10.09.1998, the writ petition is filed in 2004. The invocation of writ prayer suffers from laches as well.

For the above reasons, this Court is not persuaded to direct the respondents by way of writ of mandamus to initiate either land acquisition proceedings or pass fresh Award. In the case on hand, learned counsel for petition made an attempt to bring the case under Section 24 of the Act No.30 of 2013. For the facts established and circumstances stated above, the proviso under Section 24

of the Act, are not attracted and no relief can be moulded even under Section 24 of the Act.

The writ petition fails and is accordingly dismissed.
No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

S. V. BHATT, J

Dt: 22.02.2018
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