

HON'BLE SRI JUSTICE M.GANGA RAO

W.P.No.17529 OF 2007

ORDER

This writ petition is filed for the following relief:

“...to issue writ order or direction more particularly one in the nature of Writ of Mandamus declaring the proceedings RC.No.63/07 R.I.II dated 16.06.2007 by the 1st respondent and not including the land admeasuring an extent of Ac.1.68 cents in S.No.110/2 of Paravada Village and Mandal, Visakhapatnam as illegal, arbitrary, violative of Article 300-A of the Constitution of India and principles of natural justice and consequently direct the 1st respondent to issue notice U/s.5-A of the Land Acquisition Act including the land admeasuring an extent of Ac.1.68 cents in S.No.110/2 of Paravada Village and Mandal, Visakhapatnam to the petitioner and such other order or orders which are deemed fit and proper in the circumstances of the case.”

The deceased 1st petitioner is the absolute owner and possessor of the said land by virtue of registered sale deed dated 6.4.1993 from one Varri Venkayamma. He had been in possession and enjoyment of the same by paying necessary taxes to the revenue authorities, and pattadar pass book was also issued in his name in respect of the said land. While so, the 1st respondent issued a notice dated 16.06.2007 calling upon the deceased 1st petitioner to file objections within 15 days from the date of publication of the notification, and to attend enquiry under Section 5-A of the Act on 25.07.2007 at 11.00 A.M. But the deceased 1st petitioner received the said notice on 25.07.2007 at 5.30 p.m, hence he could not file objections and could not participate in the said enquiry. The notice issued by the 1st respondent reveals that the land in an extent of Ac.1.68 cents in S.No.110/2 of Paravada Village

is not included in the acquisition proceedings. But he was informed by the respondent officials that the said land is classified as poramboke. But the grievance of the petitioner is that he is in possession and enjoyment of the same since 1993 and doing hollow brick unit business in the said land with huge expenditure of Rs.15,00,000/-. The State Government used to pay compensation to even unauthorized occupiers of Government land whether their names are included or not in revenue records like pahanies of the respective years. As such, the respondents ought not to have declined the rights of the petitioner's over the property in question. Hence, the present writ petition is filed declaring the action of the respondents in issuing notice as arbitrary and illegal.

Counter-affidavit has been filed on behalf of the respondents stating that the Executive Director (Estates), APIIC Limited, Hyderabad has submitted a requisition for acquisition of lands to an extent of Ac.128.59 cents in Sy.Nos.12 to 16 and 18,20 to 23, 26 to 29, 31,32, 94, 103/P2, 105, 107 to 109 and 110/P2 and 113 situated at Paravada Village and Mandal for establishment of Pharmacity vide letter dated 5.1.2007. The notification under Section 4 (1) of the Land Acquisition Act, 1894 (for short 'the Act') was published on 3.3.2007. The enquiry under Section 5-A of the Act was served on Rongali Apparao, who is the relative of the petitioner herein on 2.7.2007, calling for the objections. The notice in Form-3 informing the date fixed for enquiry under Section 5-A on 25.07.2007 was also published in all the public places calling for

objections, if any, i.e., Office of the Special Deputy Collector, APIIC, SEZ Unit.1, Visakhapatnam. But the petitioner having received the notice under Section 5-A of the Act, failed to submit his explanation. The petitioner has not approached the Land Acquisition Officer in response to the notice as there is no bar for filing the objections. The declaration under Section 6 of the Act was also published on 12.09.2007. The petitioner has approached this Court for inclusion of the land admeasuring an extent of Ac.1.68 cents in Sy.No.110/2 of Paravada Village, which is classified as Assessed Waste Dry i.e., Government land. The petitioner cannot claim any right over land classified as Assessed waste dry i.e., Government land. As such, the petitioner is not entitled for inclusion of the said land, which is Government land.

As can be seen from the record, the land in an extent of Ac.1.68 cents in Sy.No.110/2 of Paravada Village, was classified as Assessed Waste Dry i.e., Government land and the same cannot be acquired under the provisions of the Land Acquisition Act. As the petitioner is an encroacher of the said land, he is not entitled to compensation. Further, it is pertinent to note that any registered sale deed and any sale transaction in respect of the Government land will not accrue any right or title to the petitioner. At this length of time, the respondents are not liable to pay the compensation to the encroached land.

Hence, the writ petition is dismissed leaving it open to the petitioner to submit a representation to the respondents claiming compensation in accordance with law.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE M.GANGA RAO

21st February, 2018
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