

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.25912 OF 2007

ORDER:

This writ petition is filed to issue a Writ of Mandamus directing the first respondent to refer the matter to the competent Tribunal under Section 30 of the Land Acquisition Act, 1894 (for short 'the Act') for the determination of rights of all the legal heirs in the compensation amount.

2. The case of the petitioner is that his grandfather Morle Bapu Mera was the owner and possessor of the land to an extent of Ac.20.35 cents in Survey No.27 of Potepally Village of Bheemini Mandal, Adilabad District. The said Morle Bapu Mera left four sons to inherit the properties equally. It was a joint Hindu family. The patta of all the lands including land in Survey No.27 of Potepally Village was mutated in the name of Chandrumera being the eldest son, but all the heirs were enjoying the lands equally and no partition was effected.

The Government has constructed the Kamalapur Tank. The land to an extent of Ac.9.43 cents out of Ac.20.35 cents in Survey No.27 of Potepally Village of Bheemini Mandal has come under submersion. The case of the petitioner is that himself and other legal heirs are having a specific share in the compensation awarded for the land. The second respondent – Morle Dhondumera, by suppressing all the real facts, tried to give the entire compensation amount to the other legal heirs

though they are not entitled for the entire compensation awarded by the Land Acquisition Officer. The petitioner and other legal heirs have submitted applications to the first respondent/Land Acquisition Officer to conduct enquiry and pass award of compensation in favour of all the legal heirs on 28.04.2006 and a legal notice was also sent on 11.05.2006. But the first respondent till date had not conducted any enquiry and not passed the award of compensation in favour of all the legal heirs. Questioning the arbitrary action of the respondents 1 and 2, the petitioner filed the present Writ Petition.

3. The first respondent/Land Acquisition Officer filed counter stating that he issued notification under Section 4(1) of the Act, which was published on 10.10.2005, proposing to acquire the land to an extent of Ac.9.17 gts. out of Ac.20.14 gts. situated in Survey No.27 of Pothapalli Village of Bheemini Mandal for formation of new tank across Yerravagu. The Sub-division record was prepared and the possession of the land was also taken on 24.01.2004. The name of the petitioner was not recorded either as pattadar or cultivator in respect of the land to an extent of Ac.9.17 gts. The Land Acquisition Officer passed award under Section 11(2) of the Act on 02.04.2007 and compensation was paid to Sri Morla Dondumera and his sons on 13.04.2007. Since Morla Dondumera and his sons are the pattadars and enjoyers of the land, they are entitled to pay compensation. As the

petitioner could not appear before the Land Acquisition Officer during the award enquiry and not raised any dispute, the petitioner failed to submit any documentary evidence in support of his claim. In those circumstances, the dispute could not be referred to the Civil Court under Section 30 of the Act.

4. In the facts of the case and in the considered view of this Court, it is found that the land to an extent of Ac.9.17 gts. in Survey No.27 of Potepally Village of Bheemini Mandal, Adilabad District, was acquired for formation of new tank across Yerravagu under the provisions of the Act by issuing notification under Section 4(1) of the Act, which was published on 10.10.2005. Thereafter, the award was passed on 02.04.2017 under Section 11(2) of the Act and the compensation was paid to the second respondent and his sons on 13.04.2007, as they are the pattadars and enjoyers of the land. The petitioner had not participated in the award enquiry. If the petitioner has got any title over the land, he should have raised objection before the authorities regarding title of the land, but he did not do so. The petitioner had not even produced any *prima facie* evidence in support of his claim before the Land Acquisition Officer to refer the matter under Section 30 of the Act. As the Collector has vested with discretionary power, in view of the award and payment of compensation to the pattadars on 13.04.2007, the dispute

has not been referred to the Civil Court under Section 30 of the Act.

5. Accordingly, the Writ Petition is dismissed. However, the petitioner can approach the competent Civil Court, if so advised, for recovery of his share from the second respondent and his sons, who had admittedly received the compensation. No costs.

6. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

23rd February, 2018
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