

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.28422 of 2009

ORDER

Heard Mr.M.Rama Rao holding for Mr.A.Radha Krishna for petitioner, learned Government Pleader for Land Acquisition and Mr.S.S.Varma for 2nd respondent.

Sri Annapurna Sahita Kasi Visweswara Baktha is the petitioner. The petitioner challenges Notification No.843, dated 26.05.2009 as illegal, arbitrary and unconstitutional.

On 29.12.2009, this Court granted stay of operation of impugned notification.

On 19.03.2018, learned counsel were heard for considerable length of time on an ancillary issue namely 1st respondent passed Award No.7 of 2012, dated 31.08.2012 notwithstanding the stay of operation of impugned notification. A convenient plea taken by 1st respondent is that the copy of the order of this Court dated 29.12.2009 was not received by the office of 1st respondent.

Learned counsel for petitioner relies on a few documents to evidence that the interim order was brought to the notice of 1st respondent and alternatively that the 1st respondent is aware of the stay granted by this Court, for the writ petition was heard in the presence of law officers representing the 1st respondent. Therefore, Award No.7 of 2012 cannot be put against petitioner.

The record has been summoned to verify whether award could be passed in so far as the claim of petitioner is concerned, when the interim stay granted by this Court is in operation. Before proceeding further, yet another development in the matter is adverted to. The petitioner on 17.10.2017 represented to respondents 1 and 2 for consideration of payment of compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (for short 'Act 30 of 2013') and in such an event, the petitioner is prepared to give up other objections against alignment etc., raised in this writ petition.

The passing of the award is not disputed by 1st respondent, but the reason for passing the award is that the 1st respondent has not received the copy of the order, dated 29.12.2009. The file is perused. From the record, the 1st respondent could not discharge the onus fastened on 1st respondent to show that the award has been passed in *bona fide* belief viz., no proceeding is pending in this Court challenging acquisition of land of petitioner.

Without getting into further debate on this aspect of the matter, learned Government Pleader submits that since the project of road widening has made substantial progress, Award No.7 of 2012 dated 31.08.2012 in so far as the petitioner alone may be set aside and remit the matter to 1st respondent for consideration and disposal of representation, dated 17.10.2017.

The statement is placed on record and accepted.

The writ petition is ordered as follows :-

(a) Award No.7 of 2012, dated 31.08.2012 is set aside in so far as the petitioner is concerned.

(b) The petitioner is given liberty to represent to 1st respondent for granting compensation under the Act 30 of 2013 by enclosing a copy of this order, within four weeks from the date of receipt of a copy of this order.

(c) The 1st respondent considers the request and passes award determining the compensation payable to petitioner for land and structures affected with the acquisition of land belonging to petitioner within six weeks from the date of receipt of representation, serves copy of the award by registered post with acknowledgment due to petitioner, pays compensation and thereafter takes possession of the property of petitioner.

Learned counsel appearing for respondents submit that Section 105 read with IV Schedule mandates payment of compensation under the Act 30 of 2013 with effect from 01.01.2014. The payment of compensation under the new Act or under the old Act is dependant on whether the Award dated 31.08.2012 is legal, valid and enforceable.

This Court ought to have considered taking up *suo motu* action against respondents, for passing the award in spite of stay

being granted by this Court, but, after perusing the record and by recording the statement of learned Government Pleader, the writ petition is disposed of by setting aside the award, the other aspects, hence, are not considered.

The writ petition is ordered accordingly. No order as to costs.

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

S. V. BHATT, J

Dt: 27-03-2018
Prv



