

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

WRIT PETITION No.24960 of 2017

O R D E R:

Heard counsel for petitioner and the Government
Pleader for Land Acquisition appearing for respondents.

2. Petitioner owned Acs.6.69 cents of land in survey No.63/1B2 along with Acs.6.04 cents in survey No.66/1 of Madhurapudi Village, Korukonda Mandal, East Godavari District. These two extents of land along with other extents of others were acquired for expansion of Rajahmundry Airport under Act 30 of 2013 through a preliminary Notification under Section 11(1) of the Act 30 of 2013 dt.24.06.2015 and Draft Declaration under Section 19(1) of the Act 30 of 2013, which was published on 03.10.2015.

3. Thereafter, an Award has been passed vide proceedings Ref.(A)No.2631/2015 dt.14.11.2015 by the 3rd respondent determining the compensation for both extents of the petitioner, which were acquired. It is stated therein as under:

“

Sl. No.	Sy.No.	Extent in Ac.Cts
33	63/1B2	6.69
	66/1	6.04
	Total	12.73

The above land was declared in the name of Sri Thirumalanadhuni Surya Nagabhushanam S/o Venkata Rao. Neither the notified owner nor any other person interested produced any valid documentary evidence to establish their title over the land under acquisition. Further the land in Sy.No.66/1mis covered under LCC case No.1832/Rjy/75 which is pending finalization. Hence the compensation due

on the above land is ordered to be deposited in the Authority u/s.77(2) of Act 30/2013 as detailed below:-

01	Land Value for Ac.12.73 cts @ Rs.33,00,000/- pa	:	42009000
02	Tree Value Horticulture including 100% solatium	:	3261277
03	Tree Value Forest including 100% solatium	:	275362
04	Structures(RWS) including 100% solatium	:	426000
05	Structures(R&B) including 100% solatium	:	17628
06	Grand Total	:	45989267

”

4. According to the petitioner, though it is stated in the Award that for the land of Acs.6-04 cents in survey N.66/A there is alleged to be a LCC case No.1832/Rjy/75 under Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 pending, petitioner had been paid on 12.11.2015 the compensation therefor by way of a bank transfer to the petitioner's account, but petitioner contends that as regards Ac.6.69 cents in survey No.63/1B2, in respect of which it is not even the case of the respondents that any such case is pending, the compensation determined under the award has not been paid.

5. Petitioner therefore contends that the action of the respondents in withholding the amount of compensation payable to the petitioner for the said extent of Acs.6.69 cents in survey No.63/1B2 of Madhurapudi Village amounting to Rs.2,25,20,628-00 is illegal, arbitrary, violative of Articles 14 & 300A of Constitution of India and the provisions of Act 30 of 2013, and seeks a direction to the respondents to release the amounts to the petitioner.

6. Counter affidavit and additional counter affidavit have been filed by 3rd respondent in which reliance is placed on proceedings in LCC case No.1832/Rjy/75 dt.21.09.2016 of the 3rd respondent.

7. The said proceeding is an order passed under Section 10(3) of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and it records that on 08.01.2016 it was determined that petitioner is holding lands in excess of the ceiling area equivalent to 0.6207 S.H., that some of the lands proposed to be surrendered by the petitioner do not meet the actual extent required to be surrendered, that there is a dearth of 0.2398 SH and the petitioner was directed to surrender certain lands admeasuring Ac.10.35 cents in survey Nos.61/1, 61/2A, 63/1A1 and 63/1B1.

8. The Government Pleader for Land Acquisition appearing for respondents states that since the petitioner did not comply with the said directive, the respondents are entitled in law to with-hold the compensation payable to the petitioner pursuant to the Award dt.14.11.2015.

9. I am unable to agree with the said contention in view of Section 10 of Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973. The said Section states as under:

“Sec.10 - Surrender of land in certain cases:

- (1) If the extent of the holding of a person is in excess of the ceiling area, the person shall be liable to surrender the land held in excess.
- (2) Tribunal shall serve on every person, who is liable to surrender the land held in excess of the ceiling area under sub-section (1), a notice specifying therein the extent of land which such person has to surrender and requiring him to file a statement within such period not being less than fifteen days, as it may fix, indicating therein, full particulars of the land which such person proposes to surrender.
- (3) If the person on whom a notice is serviced under sub-section (2), files the statement referred to in that sub-section within the period fixed therefore and the Tribunal is satisfied, after making such inquiry as it deems fit that the proposed surrender of the land is in accordance with the provisions of this Act, it shall pass an order approving the surrender and the said land shall thereupon be deemed to have been surrendered by such person.
- (4) If the person on whom a notice is served under sub-section (2) does not file the statement referred to in that sub-section within the period fixed therefore or files such statement within the period fixed but does not specify therein the entire extent of land which such person has to surrender, the Tribunal may, after giving an opportunity to the person concerned of being heard, itself select, in the former case the entire extent, and in the latter case, the balance of the extent which such person has to surrender, and pass an order to that effect, and thereupon the said land or balance of land, as the case may be, deemed to have been surrendered by such person.
- (5) (a) Notwithstanding anything in the Section, it shall be open to the Tribunal to refuse or to accept the surrender of any land—
 - (i) which has been converted into non-agricultural and has been rendered incapable of being used for purposes of agriculture.
 - (ii) the surrender of which is not acceptable on account of a dispute as to the title to the land or an encumbrance on the land or on account of the land being in the possession of any person mentioned in ¹[* * *] item (v) of clause(i) of Section 3 or on account of the land proposed to be surrendered becoming inaccessible by reason of its severance from the remaining part of the holding: and

the Tribunal shall, in every such case, serve a notice on the person concerned requiring him to surrender any other lands in lieu thereof; and thereupon the provisions of sub-section (3) and (4) shall mutatis mutandis apply to such surrender.

Provided that where land proposed to be surrendered under this Section is burdened with a mortgage, the Tribunal may, on an application made by the mortgagor with the consent of the mortgagee, by order, transfer such mortgage from the land so proposed to be surrendered to the residuary holding of the mortgagor or to any part thereof.

- (b) Where the land so surrendered under Clause(a) is also not acceptable to the Tribunal, the Tribunal shall, after giving an opportunity to the person concerned of being heard, select any other land in lieu thereof, and thereupon, the said land shall be deemed to have been surrendered by such person.

.....”

10. From the above, it is clear that if the Land Reforms Tribunal refuses to accept the surrender of any land proposed by a declarant, it is entitled to give a notice to the declarant asking him to surrender any other land in lieu thereof and if the declarant does not comply with it within a specified period, select the land which it seeks to take possession by passing an order after giving opportunity to the declarant.

11. It is beyond the comprehension of the Court as to why the 3rd respondent has not chosen to exercise this power conferred on him under Section 10(4) read with Section 10(5) of the Act. Without exercising such power in respect of the lands mentioned in the proceedings dt.21.09.2016 it is not open to the respondents to with-hold the compensation payable to the petitioner in respect of the land admeasuring Acs.6.69 cents in survey No.63/1B2 of Madhurapudi Village.

12. In fact the stand taken by the Government Pleader does not appear to be correct since the land mentioned in the proceedings dt.21.09.2016 of the 3rd respondent are taken possession on 22.09.2016 and Form-10 was issued by the Revenue Inspector of Korukonda that these lands have been taken possession.

13. Absolutely, there is no reason in law as to why petitioner should be denied compensation for the land of Acs.6.69 cents in survey No.63/1B2 of Madhurapudi Village,

which had been taken by the respondents for expansion of Rajahmundry Airport.

14. Therefore, the Writ Petition is allowed and the respondents are directed to forthwith pay the petitioner the amount of compensation determined in the Award dt.14.11.2015 passed by the 3rd respondent in respect of the said land of Acs.6.69 cents in survey No.63/1B2 of Madhurapudi Village, Korukonda Mandal, East Godavari District. 1st respondent shall also pay costs of Rs.5,000/- to the petitioner.

15. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

07th August, 2018.

gra

M.S.RAMACHANDRA RAO, J

