

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.2791 of 2015

ORDER:

In the present writ petition, challenge is to the action of the Respondents in taking over possession of the petitioners' land admeasuring Ac.0-20 cents situated in Sy.No.961/B2 of Rajampet mandal, YSR Kadapa district.

2. Petitioners 3 and 5 are the sons of 1st petitioner and petitioners 2 and 4 are the sons of late D.V.Chalapathi and the said D.V.Chalapathi and the 1st petitioner herein are the brothers and sons of Sri D.Subbaramaiah.

3. The case of the petitioners herein is that late D.Subbaramaiah S/o late D.Venkatapathy purchased an extent of Ac.2-15 cents of land in Sy.No.961/B2 of Rajampet village under registered sale deed bearing Doc.No.3132/1932 registered on the file of Sub-Registrar, Pullampet from one Sri Aritakula Venkata Shetty S/o Sri Changaiah Shetty. It is further stated in the writ affidavit that after the death of Sri D.Subbaramaiah, 1st petitioner and his brother D.V.Chalapathy started enjoying the said property and Sri D.V.Chalapathy and 1st petitioner herein sold some extents out of the said property to third parties who constructed houses thereon and enjoying the same; that in the remaining extent, 1st petitioner constructed a shopping complex and also leased out portions of the same for saw mills and bunks; that Sri D.V.Chalapathy also did the same. It is further averred that in the year 1967, 1st petitioner herein and Sri D.V.Chalapathy divided the joint family properties including the available extent in Sy.No.961/B2 under a registered partition deed and they started enjoying their shares exclusively. It is further stated that Sri D.V.Chalapathy, father of petitioners 2 and 4

passed away and after his death, petitioners 2 and 4 are enjoying their father's share; that the revenue authorities have issued pattadar passbook and title deed in the name of 1st petitioner and as per the entries in the revenue records, the said property is a patta land possessed by the 1st petitioner and his brother Sri D.V.Chalapathy. In the year 1994, the Government proposed to lay a by-pass road to Rajampet Town and a draft notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 8.6.1994, proposing to acquire an extent of Ac.0-05 cents in Sy.No.961/B2, treating the subject land as pool poramboke. The petitioners herein filed W.P.No.12145 of 1991, assailing the action of the Respondents in interfering with the possession and enjoyment of the petitioners in respect of Ac.2-15 cents in Sy.No.961/B2 of Rajampeta village. This Court, by way of order dated 13.9.2000 disposed of the said writ petition with a direction to the Respondents therein not to interfere with the possession and enjoyment of the land in question except in accordance with law with a further direction to the 4th respondent Gram Panchayat to consider the request of the petitioners for grant of permission.

4. Thereafter, the Tahsildar initiated proceedings under the Land Encroachment Act, by issuing notice dated 26.9.2000 under Section 7 of the Act in respect of land to an extent of Ac.2-15 cents, which was challenged by way of W.P.No.18772 of 2000. This Court on 8.11.2011 disposed of the said writ petition, quashing the notice issued under Section 7 of the Land Encroachment Act, while keeping it open to the petitioners to approach Civil Court. Thereafter, the 1st petitioner herein instituted O.S.No.33 of 2000 on the file of the Court of Senior Civil Judge, Rajampeta for declaration of title and for consequential relief of permanent injunction against the respondent authorities. The learned Senior Civil Judge, Rajampeta by way of judgment

dated 3.9.2005 decreed the suit in favour of 1st petitioner herein and against the defendants and the operative portion of the said judgment reads as under:

“In the result, suit is decreed in favour of plaintiff and against the defendants declaring his title and possession over the suit schedule property to an extent of Ac.0.04 cents comprising in S.No.961/B2 of Rajampet town and mandal without prejudice and subject to final adjudication by the Hon'ble High Court of Andhra Pradesh in writ petitions under Ex.A3 and B7 respectively or any other proceedings, if pending on the file of Hon'ble High Court of Andhra Pradesh with regard to suit subject matter. In case the defendants have already taken possession of the suit schedule property in pursuance of the orders passed in I.A.No.258 of 2000 in O.S.No.33 of 2000 dated 28.9.2000 on the basis of memo filed by 2nd defendant vide S.R.No.3755 dated 27.9.2000, they are directed to comply the undertaking given by 2nd defendant under the above referred memo as per law and rules and procedure for the time being in force. Further, the plaintiff is at liberty to proceed against the defendants for his redressal in case already suit schedule property has been taken possession by the defendants, except through process of law. But in the circumstances, there is no order as to costs”.

5. Thereafter, the Deputy Executive Engineer (R&B) Sub-Division, Rajampeta-6th respondent herein, on the representation of the 1st petitioner, addressed a letter bearing No.Survey/works/(R&B),RJPT/2014-15 dated 28.7.2014 to the Tahsildar, Rajampeta mandal, requesting to furnish the information regarding the petitioners land by deputing surveyor at an early date for taking further necessary action, while referring to the request of the petitioners for compensation for an extent of Ac.0-22 cents in Sy.No.961/B2. Subsequently, the Tahsildar, Rajampeta vide letter Ref.No.C/2/4/2014 dated 21.8.2014 requested the Deputy Executive Engineer, R&B Department, Rajampet to send requisition for the above survey number at an early date for taking necessary action in the matter, while referring to the letter of the

Sub-Collector, Rajampet wherein proposals for draft notification and draft declaration were called for, for acquisition of land in Sy.No.961/B2 admeasuring Ac.0-05 cents and 0-17 cents.

6. Later, vide letter dated 23.8.2014, the Deputy Executive Engineer (R&B) Sub-Division, Rajampeta sought opinion from the Assistant Government Pleader, Rajampeta. In response to the same, the learned Government Pleader addressed letter dated 3.9.2014 to the Deputy Executive Engineer, stating that the Government is bound to honour the judgment and decree of the trial Court and pay compensation to the individual and further opined that the Government can invoke provisions of Land Acquisition Act for localising the acquisition already made by taking possession by issuing draft notification and declaration. The learned Government Pleader also suggested for negotiations. Vide letter dated 9.9.2014, the Deputy Executive Engineer made a request to the Revenue Divisional Officer, Rajampeta to issue necessary instructions to the concerned officers to fix up the compensation amount for the subject land and communicate the same for taking further necessary action. Subsequently, 1st petitioner herein submitted representation to the Revenue Divisional Officer, Rajampet on 11.9.2014 for fixing market value of the property. Later, the Revenue Divisional Officer, by way of letter dated 6.12.2014 addressed to the Tahsildar, Rajampet with a request to inspect the land in question and to submit draft notification and draft declaration proposals for the land in Sy.No.961/B2 admeasuring Ac.0.05 cents.

7. In the above background, the present writ petition came to be filed in the month of February, 2015, questioning the action on the part of

Respondent authorities in taking over petitioners land admeasuring Ac.0.22 cents without paying any compensation.

8. A counter affidavit deposed by the Revenue Divisional Officer, Rajampet, YSR Kadapa district is filed, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

9. Heard Sri Srinivas Polavarapu, learned counsel for the petitioner and the learned Government Pleaders appearing for the Departments of Land Acquisition and R & B.

10. It is contended by the learned counsel for the petitioner that in view of the decree passed by the Civil Court in O.S.No.33 of 2000, declaring the title of the petitioners herein in respect of the property covered by 1932 document, there is absolutely no justification on the part of the respondent authorities in neither initiating any proceedings nor paying any compensation. It is further submitted that the entire earlier correspondence that took place between R & B Department and the Revenue Department clearly discloses that the authorities took possession of the land admeasuring Ac.0.22 cents for the purpose of laying the road, as such, the action of the Respondent authorities in not paying compensation is arbitrary, illegal, unreasonable and violative of Articles 14, 21 and 300-A of the Constitution of India, besides being opposed to the very spirit and object of the provisions of the Land Acquisition Act. It is further submitted by the learned counsel for the petitioner that though this Court vide order dated 8.11.2011 in W.P.No.18772 of 2000 kept it open to the Government to approach Civil Court, the authorities did not approach Civil Court, as such, in the teeth of the judgment rendered by the Civil Court in O.S.No.33 of 2000, the respondent authorities

cannot deny title of the petitioners herein. It is further submitted that the findings of the Civil Court in O.S.No.33 of 2000 are binding on the respondents. It is further submitted that the subject land is situated in the midst of Rajampet town and it is full of constructions now and there is no pool poramboke land as stated by the respondents in their counter. It is further stated that in the year 2000, some extent of the subject land was taken over by the respondents herein for extension and laid road also.

11. On the contrary, it is mainly contended by the learned Government Pleaders that the 1st petitioner herein approached Civil Court and filed O.S.No.33 of 2000, seeking declaration of title only in respect of Ac.0.4 cents and as such, the petitioners herein are not entitled for any compensation for the rest of the extent.

12. In the above background, now the issue that emerges before this Court is whether the petitioners herein are entitled for payment of compensation under Land Acquisition Act for the entire extent of Ac.0.22 cents in Sy.No.961/B2?

13. There is absolutely no controversy on the reality that in the year 2000, 1st petitioner herein instituted O.S.No.33 of 2000 against the respondents herein for declaration of title and for permanent injunction. There is also no dispute with regard to the fact that the said suit was decreed by the Civil Court, holding title and possession in favour of plaintiff. A copy of the said judgment is placed on record along with the writ petition as material paper. To substantiate their case, plaintiff in the said suit who is 1st petitioner herein filed registered sale deed dated 19.12.1932 executed by the vendor in favour of Sri D.Subbaramaiah, father of 1st petitioner herein for an extent of Ac.2.15 cents in the said survey number.

14. In this context, it may be appropriate to refer to certain findings recorded by the learned Senior Civil Judge in the said judgment. The learned Senior Civil Judge at paragraph 9 of the judgment categorically found the title in favour of the plaintiff therein and their possession over the suit schedule property for more than 30 years. The Civil Court also categorically recorded finding about adverse possession in favour of the plaintiff and against the case of the defendants therein over the subject property. The Civil Court also observed about the issuance of pattadar passbooks and title deeds in favour of plaintiffs for the extent covered by the suit schedule survey number. The Civil Court also further found that the plaintiff and his predecessors have established possession over the suits schedule property for more than 30 years. The Court held that they have perfected their title by adverse possession for more than 30 years against the defendants also. While recording the above said findings, the Civil Court also found that the issuance of Exs.A1 and A2 notices under Sections 6 and 7 of the Land Encroachment Act as unsustainable. It is submitted by the learned counsel for the petitioner that the findings of the learned Senior Civil Judge would clearly disclose that the title of the plaintiff was recognised as against the entire extent of subject survey number. This Court finds sufficient force in the said submission of the learned counsel having regard to the findings of the learned Senior Civil Judge in the said suit.

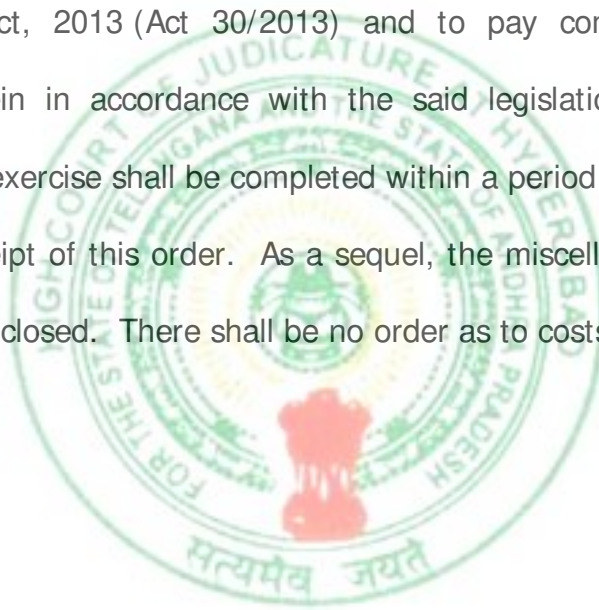
15. It is significant to note that the correspondence that took place between R & B and the Revenue authorities, as mentioned above would also strengthen the case of the petitioners herein. It is also not in dispute that pursuant to the orders of this Court in W.P.No.18772 of 2000 dated 8.11.2011, the respondent authorities did not approach the Civil Court. There is also no dispute with regard to the reality that the decree granted by

the Civil Court in O.S.No.33 of 2000 attained finality. Therefore, this Court does not find any justification on the part of the respondent authorities in not initiating any proceedings under the Land Acquisition Act for the purpose of payment of compensation to the petitioners herein. In the considered opinion of this Court, the impugned action is highly illegal, arbitrary and violative of Articles 14, 21 and 300-A of the Constitution of India.

16. For the aforesaid reasons, the writ petition is allowed, directing the Respondents herein to initiate proceedings under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30/2013) and to pay compensation to the petitioners herein in accordance with the said legislation for the subject property. This exercise shall be completed within a period of six months from the date of receipt of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 22.3.2018
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A.V.SESHA SAI, J





THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.2791 of 2015

22.3.2018

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