

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.18710 of 2012

ORDER:

In this writ petition seeking a writ of Certiorari, the petitioners seek to set aside the Award in Award proceedings No.B/2483/09, dated 28.12.2011, after calling for and examining the records related to the said Award.

2. I have heard the submissions of Sri A. Anandachary, learned counsel appearing for the petitioners, and of the learned Government Pleader for Land Acquisition appearing for the respondents. I have perused the material record.

3. The case of the petitioners and the submissions made on their behalf, in brief, are as follows: - "The petitioners are brothers. They are the absolute owners and possessors of land admeasuring Ac.2.07 guntas in Sy.No.75 in Chinnakalavala village, Sulthanabad Mandal of Karimnagar District. The said lands were sought to be acquired for providing house sites under Indiramma Programme Phase-II to persons of weaker sections. A draft notification was issued, on 03.10.2009, under Section 4(1) of the Land Acquisition Act, 1894 [Central Act 1 of 1894] [hereinafter referred to as 'the Act', for short]. A draft declaration was published, on 05.01.2010, under Section 6 of the Act. The 1st respondent-Land Acquisition Officer fixed the rate @ Rs.2,50,000/- per acre. In the impugned Award, it was stated that during the Award enquiry, all the interested persons expressed willingness for settlement of compensation under package deal rate through negotiations; that the negotiations meeting of the District Level Negotiations Committee with the land losers, was held under the chairmanship of the District Collector, on 19.03.2010; and, that the compensation for payment was finalised subject to the condition that the land

losers shall not agitate for enhanced compensation in any Court of law by having recourse to Section 18 of the Act. However, the petitioners have not taken the compensation amount. They did not participate in the District Level Negotiations Committee meeting, which was held on 19.03.2010. The impugned Award was passed in utter disregard of the mandatory provisions of the Act. The crucial date for assessing the market value of the land is the date of publication of notification under Section 4(1) of the Act. The said requirement was ignored. The views of the petitioners were not taken into account. The petitioners are not well versed with the procedures and the forms. Their signatures were obtained on form nos.III & IV by the respondents without informing the contents thereof. The respondents have not taken the views of the petitioners with regard to compensation amount. The Award was passed in gross violation of the Rules under A.P. Land Acquisition (Negotiations Committee) Rules, 1992 [‘the Rules’, for short]. By virtue of the Award, the petitioners were denied a valuable right of seeking reference under Section 18 of the Act. The Award is totally unilateral, arbitrary, illegal and is liable to be set aside.’

4. The case of the respondents as stated in the counter affidavit filed by the 1st respondent, RDO, in brief is this:

One G. Srihari Rao was the pattedar of an extent of Ac.2.07 guntas of land in Sy.No.75/c in Chinnakalavala village. The petitioners are his legal heirs. They have given consent to part with the said land for the purpose of acquisition for providing house sites under Indiramma Programme to persons of weaker sections. Based on their consent, the land acquisition proceedings were initiated. After publication of draft notification & draft declaration

respectively under Sections 4(1) & 6 of the Act, negotiations were held with the petitioners, as per the Rules. The petitioners filed their affidavits for passing the Award by fixing the compensation @ Rs.2,50,000/- per acre. Award was accordingly passed by the LAO. Notices under Section 12(2) of the Act were issued and served on the petitioners. The petitioners failed to appear to receive the compensation. Thereafter, *vide* reference No.B/2483/2009, dated 30.01.2012, notices in form-10 were issued by the 1st respondent; and, the said notices were duly served on the petitioners. Thereafter, possession of the land was taken by the Government, on 13.02.2012, under the cover of a panchanama. The land is now in the possession of the Government and a lay out has been prepared and patta certificates have already been distributed, on 01.06.2012, to the identified 55 beneficiaries by the Tahasildar, Sulthanabad. Since the land acquisition proceedings were initiated basing on the consent and as the petitioners have given consent for passing the award, the Award was passed under Section 11(2) of the Act; and, the possession of the land was taken over by the Government. The Tahasildar distributed the house site patta certificates to the beneficiaries. The petitioners have not intentionally received the compensation even after service of notices under Section 12(2) of the Act. And, after the possession of the land was taken by the Government, they have filed the present writ petition with a *mala fide* intention to create litigations and complications. The land acquisition proceedings were initiated and finalised as per the provisions of the Act. *Vide* proceedings, dated 29.10.2009, in reference No.B/2356/2008, the 1st respondent has issued notice in form no.III as required under Section 5-A of the Act; but, no claims or objections were received from either the petitioners or any other persons in response to draft notification and notice issued under Section 5-A of the Act. A draft

declaration *vide* proceedings, dated 24.12.2009, in G3/5998/2009, was submitted to the 2nd respondent-District Collector, and it was published in Karimnagar District Gazette No.65, dated 29.12.2009. The substance of the draft declaration was also published in Telugu newspapers having circulation in the locality. Notices for Award enquiry were issued, on 22.01.2010, requiring the petitioners to attend for Award enquiry. A meeting as per Rules was held, on 19.03.2010, under the chairmanship of the District Collector. In the said meeting, the petitioners have consented and expressed willingness for payment of compensation @ Rs.2,50,000/- including all benefits. Accordingly, on 19.03.2010, they filed an affidavit in form no.IV and signed the annexure-III before the LAO. They declared that they will not make a claim for higher compensation in any Court of law or in any other forum and that they will abide by the consent Award that may be made under Section 11(2) of the Act. Basing on the willingness and the forms signed, the Award was passed and subsequently notices as required under Section 12(2) of the Act were issued and notices were served on the petitioners. However, the petitioners have not turned up to receive the compensation. Hence, the amount was kept in revenue deposit. The draft notification is dated 30.10.2009; and, as laid down under law, the particulars of sale statistics recorded in the village/locality during the preceding three years period from the date of draft notification were taken as base for assessing and fixation of the market value of the land acquired and the land value was fixed @ Rs.1,62,000/- which was approved by the Joint Collector. The same was explained to the petitioners by the 1st respondent, who is the LAO, at the time of conducting preliminary negotiations and also in the meeting held for negotiations, on 19.03.2010. Therefore, the contentions of the petitioners contrary to the said submissions are all false. The petitioners

participated in the negotiations; and, as per their willingness only the value of the land was fixed @ Rs.2,50,000/- per acre. Further, after having discussions in the meetings and after explaining all the facts only, the petitioners, who are satisfied with the facts and the rate, have signed form nos.III & IV as per the requirements of law. The signatures in the forms were obtained after explaining the contents of the same. The contrary allegations made by the petitioners in the writ affidavit are false. The land was taken possession by the Government under the cover of a panchanama duly serving the notice under form no.10. And, the Tahasildar distributed patta certificates to the beneficiaries. Hence, the writ petition may be dismissed.

5. From the above pleadings, it is discernable that the following facts are admitted and not disputed: - "The petitioners are the owners of Ac.2.07 guntas of land at Chinnakalavala village. The Government proposed to acquire the said land of the petitioners for providing house sites under the Indiramma Programme Phase-II to the persons of weaker sections. On a requisition, dated 24.09.2009, land acquisition proceedings were initiated and a draft notification under Section 4(1) of the Act has been submitted to the Collector, Karimnagar, *vide* office letter, dated 03.10.2009. *Vide* proceedings, dated 22.10.2009, the Collector approved the draft notification. After completion of 5-A enquiry, the draft declaration under Section 6 of the Act was submitted *vide* letter, dated 19.12.2009. The same was approved by the Collector *vide* proceedings, dated 24.12.2009. The substance of the draft notification and draft declaration were published in Telugu and English daily newspapers on various dates viz., 26.10.2009, 02.01.2010, 25.10.2009 and 02.01.2010. The draft notification and draft declaration were published in the respective District Gazette no.59 & 65, dated 22.10.2009 and 29.12.2009. The possession of the land under acquisition

was not taken over by the Government till the date of passing of the Award. The petitioners have not received the compensation.'

6. In this backdrop of admitted and undisputed facts, the case of the writ petitioners is that the Award was passed in utter violation of the provisions of the Act and the Rules though it is being claimed that it is a consent Award and that the petitioners never gave their consent for a consent Award and never participated in the District Level Negotiations Committee meeting at any time and that by virtue of the Award, the petitioners were denied a valuable right to seek a reference under Section 18 of the Act to the civil Court for fixation of just and fair compensation for their acquired land and that the Award was passed arbitrarily & illegally and in a unilateral manner in gross violation of the provisions of the enactment and the Rules and that they are not aware of the procedures and that their signatures were obtained on form nos.III & IV without informing the contents thereof and that they did not receive the compensation amount.

7. Learned Government Pleader reiterated the pleaded case of the respondents, which is stated supra, in detail.

8. Be it noted that the petitioners are not seeking a specific direction to the respondents to refer the case under Section 18 of the Act to civil Court for determining quantum of compensation as per law. In-fact, the petitioners did not receive the compensation. They are requesting the Award to be set aside as it is one passed arbitrarily, illegally and in gross violation of the mandatory provisions of the enactment and the Rules. Per contra, the respondents are contending that after obtaining consent of the petitioners, the land acquisition proceedings were initiated and that thereafter the publications of draft

notification and draft declaration were made and that the petitioners gave consent for acquisition of their lands by fixing compensation @ Rs.2,50,000/- per acre and passing an Award and that, therefore, based on the consent, the Award was passed under Section 11(2) of the Act and that before passing the Award, notices were issued for Award enquiry and that a meeting of the Negotiations Committee under the chairmanship of the District Collector was held, on 19.03.2010, and that in the said meeting also the petitioners consented and expressed willingness for payment of compensation @ Rs.2,50,000/- per acre including all benefits and that accordingly they filed an affidavit in form no.IV and signed annexure-III form, on 19.03.2010, foregoing their right to claim higher compensation and agreeing to abide by the consent Award that may be made under Section 11(2) of the Act and that in the negotiations meeting the petitioners were explained all the facts and that they were satisfied with the rate and signed form nos.III & IV and that since the Award is a consent Award, the question of seeking reference under Section 18 of the Act or setting aside the Award does not arise and that after the possession of the land was taken under a panchanama, on 13.02.2012, a lay out was prepared and patta certificates were distributed to the beneficiaries by the Tahasildar and that at that juncture the petitioners approached this Court with *mala fide* intentions.

9. I have given earnest consideration to the facts and submissions. The Act provides for the procedure to be followed in the matters of acquisition of lands and payment of compensation for the acquired lands. Section 18 of the Act, which provides for a reference to be made to the civil Court for determination of compensation by the civil Court, reads as under:

18. Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the

measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

It is pertinent to note that Section 11(2) of the Act which starts with a non-obstante clause envisages that when a Collector is satisfied that all persons interested in the land who appeared before him have agreed in writing on the matters to be included in the Award of the Collector in the form prescribed in the Rules, he may, without making further enquiry make an Award to the terms of such agreement. Rule 16 of the Rules says that after negotiated settlement a consent Award shall be passed under Section 11(2) read with second proviso under Section 31(2) of the Act and further prohibits reference under Section 18 of the Act once an Award is passed through a negotiated settlement. Thus, after negotiated settlement, when once consent Award is passed under Section 11(2) of the Act, the question of reference to a civil Court does not arise. Further, as held in the decision in **Ranveer Singh v. State of U.P.**¹, when once it is established that an Award passed is a consent Award and that the land owner accepted the compensation as reflected in the consent Award, no plea based on equity for a claim for higher compensation is tenable under law. Thus, it is beyond doubt that when once an Award is passed on consent after negotiated settlement, the party, on whose consent such an Award is passed, stands deprived of his right, under Section 18 of the Act, to seek reference to the civil Court. Therefore, the question now is as to whether the Award is one passed on consent and in pursuance of a written agreement after a negotiated

¹ AIR 2016 SC 3753

settlement and is a consent Award in the eye of law. For determining the said aspect, it is necessary to refer to the Rules and examine the questions - Whether the petitioners gave their consent? Whether the requirements of the Rules are duly complied with? And, if so, whether such consent is valid? And, whether the Award in question is a consent Award passed after negotiated settlement?

10. I have carefully gone through the record produced by the learned Government Pleader.

11. Under the Rules, action for negotiation shall commence only after enquiry and Award by the Collector and approval of preliminary value under Section 11 of the Act is completed. The specific case of the respondents is that the lands of the petitioners and others were acquired by following the procedure stipulated under the Rules contained in G.O.Ms.No.1050, dated 17.10.1992, which were framed in exercise of powers under Section 55 of the Act. The Rules were amended *vide* G.O.Ms.1286 Revenue (LA) Department, dated 16.02.1993, and G.O.Ms.No.594, Revenue (LA) Department, dated 10.08.1998. Under Rule 3 of the Rules, negotiations in the matter of fixation of compensation shall commence only after the Land Acquisition Officer conducts enquiry, passes an Award and submits it to the District Collector for approval of the preliminary value under Section 11 of the Act. Rule 4 prescribes the composition of Negotiations Committee. After the amendment of the Rules, the requirement of the Judge being a member of the Committee was done away with. *Vide* G.O.Ms.No.594, dated 10.08.1998, clause 7 was added to Rule 4 for inclusion of one retired District Judge to be nominated by the Government as a Member of the Committee. Rule 5 ordains that the convenor of the committee shall cause a notice to be displayed in Form No.I in

the respective villages, inviting applications from interested persons and to appear before the committee. Rule 6 provides for submission of claims by interested persons. The Committee is required to negotiate settlement only when all the interested persons are before it. Under Rule 8, the Collector is required to serve a notice on the requisitioning department to submit a claim under Form No.II. Rule 10 prescribes detailed procedure as regards conduct of the business by the committee. The said procedure contemplates receiving of statements from the interested persons, service of notices of hearing, oral representations and further statements in writing and a series of meetings culminating in a final meeting to be presided over by the Chairman. According to the Rules, there shall be an agreement in Form-III, which shall be entered into shall be signed by the land owners/interested parties and the LAO on behalf of the Government and shall be attested by the members of the negotiation committee in the final meeting. After form III is attested, the LAO is required to take affidavits from the persons concerned on the same day in form no.IV, that is, on non judicial stamp paper of the value of Rs.5/- and the same shall be attested by the LAO. As per settled legal position, the consent Award which is a result of a negotiated settlement has the affect of depriving the land owner of his right to seek reference under Section 18 of the Act. Therefore, every requirement envisaged under the Rules shall be duly complied with in strict accordance with the provisions of the Rules. In matters of this nature, when the law ordains and a statute prescribes a particular act to be done in a particular manner provided under the statute, such act shall be performed in the same manner as prescribed and in no other manner.

12. Firstly, it is to be noticed that Section 5-A enquiry was not dispensed with. Enquiry under Section 5-A of the Act was held.

13. The record produced discloses that the petitioners together executed an agreement, dated 17.12.2007, on a stamp paper of the value of Rs.10/- agreeing for acquisition of their land for the rate fixed by the Government. However, there are corrections by over writing of the date mentioned at the top and in the body of the said document. In this case, the land acquisition proceedings were initiated under a requisition, dated 24.09.2009; and, a Gazette notification, dated 29.12.2009, was later issued; whereas the agreement referred to supra was said to have been executed, on 17.12.2007, that is, much prior to the initiation of the acquisition proceedings. Admittedly, the said agreement being prior to the issuance of Section 4(1) notification is not in accordance with the scheme of the Act and the Rules as the agreement under the scheme of the Act has to be entered into under Section 11(2) of the Act only on issuance of notification but not anterior to the same. Even under Rule 3 action for negotiation shall commence only after enquiry and award by the Collector and approval of preliminary value under Section 11 of the Act is completed. Therefore, the agreement produced with the record is of no avail to the respondents. This view of this Court also finds support from the decision of a Division Bench of this Court in **Guddi Malkapur Co-op.Housing Society rep., by its Secretary v. L.A.O, HUDA, Hyderabad**². Further, according to the Rules, there shall be an agreement in form No.III between the owners on one hand and the LAO on the other and the said agreement shall be attested by the members of the Negotiation Committee at the final meeting. The record produced by the Government does not contain any such agreement entered into between the petitioners/land owners on one hand and the LAO on the other and attested by the members of the Negotiation Committee at the final

² 2007(1) ALT 547 (DB)

meeting. Learned Government Pleader also could not point out from the record produced any such agreement. The Rules provide that negotiations shall be oral and no proceedings or deliberations of the Committee pertaining to the compensation claimed, offered etcetera shall be recorded. The record produced contains forms no.IV in three sheets respectively signed by the three petitioners and attested by the LAO. The same do not bear the date on which the affidavits were signed and attested. Except the above said forms, as already noted no agreement which is required to be entered into as per Rules has been filed or produced with the record. Even the said forms no.IV signed by the petitioners are not engrossed on non judicial stamp papers of the value of Rs.5/- each as provided under the Rules. It is not even the case of the respondents that an agreement in form No.III signed by the interested persons and the LAO and attested by the members in the final meeting was entered into and that on the same day affidavits in form No.IV were obtained from the petitioners on stamp papers of the value of Rs.5/- each. No explanation is forthcoming for not obtaining the affidavits on the stamp papers of the required value. Neither the record produced nor the counter affidavit discloses the due compliance of the procedure and fulfilment of the requirements under the Rules. Thus, on a careful analysis of the facts pleaded and submissions made and on a careful scrutiny of the record produced, this Court is of the view that the respondents failed to place before this Court any material to show that consent was obtained and that negotiated settlement was arrived at and that an agreement was entered into in form no.III and affidavits of the petitioners were obtained in form no.IV as prescribed under the Rules. Therefore, there is nothing on record to accept the contention of the respondents that the Award is a consent Award in the eye of law.

14. On the above analysis, this Court is *prima facie* satisfied that the Award in question not being a consent Award passed after negotiated settlement as ordained under the provisions of the Act and the Rules is liable to be set aside. However, before parting with the case, it is necessary to examine as to whether the Award shall be set aside as a sequel to the said finding or whether a direction can be given to the LAO to make a reference of the case of the petitioners under Section 18 of the Act to a civil Court. While considering this aspect, it is to be reiterated that the petitioners are not seeking a reference under Section 18 of the Act and in-fact, they are seeking to set aside the Award having not received the compensation. Be it also noted that the Award was passed on 28.12.2011 and that the petitioners approached this Court on 22.6.2012. According to the averments in the counter affidavit of the RDO, possession of the land was taken, on 13.02.2012, by the Government under a Panchanama and the land was laid out into plots. However, no lay out showing that the land was laid out into plots was produced along with the record produced. It is not specifically averred in the counter affidavit that the possessions of the plots were handed over to respective beneficiaries. It is only averred that house site patta certificates were distributed to the beneficiaries by the Tahasildar. Therefore, from the pleadings of the Government, it appears that the beneficiaries were not handed over possession of the plots, if any, laid out. The specific case of the petitioners during the course of hearing is that the land is left unoccupied and is covered with wild growth and is not handed over to any beneficiaries. In-fact, photographs showing the said condition of the land and also copy of 1(B) register (ROR) issued on 29.11.2016, copy of adangal/pahani for fasali 1426 and a copy of adangal/pahani for fasali 1424 are also produced for perusal of the Court and are placed on record at the time of

hearing. The said documents reflect that the property is still standing in the name of the petitioners in the revenue records and is not mutated in the names of the pattedars/beneficiaries. Nevertheless, the record produced by the Government contains a bunch of copies of pattas, all dated 01.06.2012, signed by the Tahasildar, Sulthanabad. None of the beneficiaries came forward before this Court stating that they are already in possession of the plots forming part of the acquired land. It is necessary to reiterate that in the counter affidavit of the RDO it is not specifically stated that possessions of the respective plots were handed over to the beneficiaries and it is only stated that pattas are distributed to the beneficiaries. Be that as it may. Right to property is a constitutional right. It is now being considered as a human right. As per Article 300-A of the Constitution of India, no person shall be deprived of his property save by authority of law. Therefore, the Government are required to follow the mandate of law while depriving a person of his property since no person shall be deprived of property save by authority of law. As this Court has already recorded a finding that consent of the petitioners was not obtained and that their consent, if any, is not obtained in accordance with the procedure established by law and that the Award is not one passed on consent after negotiated settlement, this Court has no hesitation to further hold that the Award is liable to be set aside.

15. On the above analysis, this Court finds that the writ petition deserves to be allowed.

16. In the result, the Writ Petition is allowed as prayed for. The respondents are directed to redeliver possession of the subject land to the petitioners within two (2) months from the date of receipt of a copy of this order. As a sequel to

these orders, liberty is reserved to both parties to pursue further remedies which the law permits if so advised and so desired.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

14.06.2018

Note: Issue CC by 28.06.2018.

[B/o]

Vjl

