

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 1314 of 2017

ORDER :

Petitioner claims to be a society registered under the Societies Registration Act and is looking after the waqf in the name and style of *Masjid-e-Bilal and Eidgah*, beside Eidgah, Bandar Road, Ganguru, Penamaluru Mandal, Krishna District. It is stated that the land in an extent of 136.67 square yards situated at Survey No. 240/2, Ganguru Village, where the said Masjid was established, was gifted by way of a registered deed *vide* Doc. No. 2590 of 1999, dated 21.08.1999. While so, the 6th respondent National Highway Authorities of India, without issuing any notice of their intention and without following the due process of law, marked the Masjid for extension of National Highway from Vijayawada to Machilipatnam. On 27.12.2016, at 05.00 p.m., the officials of Respondents 2 to 6 came to the premises and directed the petitioner to hand over the possession of the subject property by vacating the Masjid in one week. The petitioner, therefore, submitted a representation to the 2nd respondent District Collector on 30.12.2016, not to demolish the Masjid and requested to change the alignment of the road. Despite the same, on 02.01.2017, the officials of Respondents 2 to 6 came to the subject premises and removed the shops attached thereto. The main case of the petitioner is that the Masjid comes under the purview of waqf properties, which cannot be acquired for any public purpose, as contemplated under Section 51(1A)(a) of the Waqf Act, 1995.

A counter-affidavit has been filed by the Project Director, National High Way Authority of India denying the averments of the petitioner. It is stated that the Ministry of Road Transport &

Highway, New Delhi, in exercise of the powers conferred under sub-section (1) of Section 3A of the National Highways Act, 1956 (for short, 'the Act'), issued Gazette Notification dated 24.09.2009, declaring its intention to acquire the lands in Ganguru Village, Penamaluru Mandal, for widening of NH-9 from km.0/000 to km.20/650 in V-M Section. It is further stated that the said notification was published in two daily news papers and the Competent Authority Land Acquisition (CALA) & Revenue Divisional Officer, Vijayawada received 25 objections under Section 3C(1) of the Act and disposed of the same. It is specifically stated that the declaration under Section 3D (1) was published in Gazette of India Notification dated 22.09.2010, on which, the lands vests absolutely in the Central Government free from all encumbrances. It has been categorically submitted that the CALA & Revenue Divisional Officer, Vijayawada passed the Award dated 17.09.2012 for an extent of 43947.80 sq. meters which includes the petitioner's land in R.S. No. 240/2A, total award amount of Rs.14,99,30,077/- was deposited in CALA/RDO, Vijayawada Account on 03.11.2012 itself and the possession of the land was also handed over on 16.12.2013.

The above averments have not been refuted by the petitioner by filing any reply-affidavit.

Heard learned counsel for the petitioner as well as learned Government Pleader for Revenue (Andhra Pradesh).

In the light of the averments made in the counter-affidavit to the effect that the acquisition proceedings had already been taken up and Award pursuant thereto had been passed and compensation was also paid, the limited grievance of the petitioner that the 6th respondent authorities had not followed the procedure

established under law for acquisition of the property, can be said to be redressed.

Insofar as the contention of the petitioner that waqf properties cannot be acquired for any public purpose, as contemplated under Section 51(1A)(a) of the Waqf Act is concerned, it is apt to extract the said provision:

“ **51(1A)(a):** Any sale, gift, exchange, mortgage or transfer of waqf property shall be *void ab initio*:

Provided that

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that—

(a) the acquisition shall not be in contravention of the Places of Worship (Special Provisions) Act, 1941 (42 of 1991).”

A fair reading of the above provision leaves no manner of doubt that it has no application to the acquisition to be made invoking the provisions of the National Highways Act, 1956. Even as a general proposition, it may be noted that there is no prohibition in any law much less in the Waqf Act preventing acquisition of the land by the State for public purpose.

In those circumstances, there is no merit in the Writ Petition and is accordingly, dismissed. However, the petitioner shall be entitled to claim compensation for the acquired land, in accordance with law. No costs.

Consequently, the miscellaneous Applications, if any shall also stand dismissed.

CHALLA KODANDA RAM, J

03rd January 2018

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