

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.8490 OF 2007

ORDER:

This writ petition is filed to issue a Writ of Mandamus declaring the action of the respondents in fixing the compensation amount unilaterally without taking into consideration the statement submitted by the third respondent on 30.08.2006 and G.O.Ms.No.357 dated 22.03.2006 in relation to the orchards/trees under the guise of consent award, as illegal and to further direct the respondents to pass the award by following the same.

2. The case of the petitioners is that the first petitioner is the owner and possessor of land to an extent of Ac.3.78 cents in Survey No.983/2 and Ac.2.40 cents in Survey No.984/2 – total aggregating to Ac.6.44 cents, situated at Kakarla Village, Ardhaveedu Mandal, Prakasam District. The second petitioner is the owner and possessor of the land to an extent of Ac.1.44 cents in Survey No.989/2, situated at Kakarla Village, Ardhaveedu Mandal, Prakasam District.

The respondent No.2 had issued notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') on 24.09.2005, proposing to acquire the lands of the petitioners for the purpose of constructing Poola Subbaiah Veligonda Project. The enquiry under Section 5-A of the Act was dispensed with invoking urgency clause under Section

17(4) of the Act. Even before the issuance of notification, the lands were inspected by the respondents and the particulars of variety of the fruit-bearing trees and their numbers were also mentioned in the said notification. The petitioners, while seeking compensation, decided to fight for compensation for the value of the land and also for value of the trees vis-à-vis loss of income they sustained because of the acquisition. The respondent No.2 informed to the petitioners that the value of the land and trees would be made in accordance with the guidelines for valuation of the orchards issued in G.O.Ms.No.357, dated 22.03.2006. The Assistant Director of Horticulture, Prakasam District would prepare a statement determining the total amount of compensation payable in respect of the petitioners' orchards, the number of plants existing in each acre and categorization of orchards in the light of G.O.Ms.No.357, dated 22.03.2006. Believing the respondents, the petitioners agreed for the consent award for the valuation of the land. When the respondent had proposed for consent award, it was informed to the petitioners that the Department of Horticulture would furnish a statement with regard to the valuation of orchards basing on which the award would be passed.

In respect of the value of the land, the petitioners had agreed for fixation of value of dry land at Rs.90,000/- per acre and value of the irrigated dry land at Rs.1,10,000/- per acre. The petitioners' lands are irrigated dry lands and they agreed

to give consent for fixation of the value at Rs.1,10,000/- per acre. Accordingly, the petitioners had executed the required agreement to the extent of the value of their respective lands. In respect of the valuation of the trees, the petitioners were made to believe that the respondent is determining the amount of compensation basing on the statement to be prepared by the Department of Horticulture duly reflecting the category. The Department of Horticulture has prepared a statement dated 30.08.2006, which was shown to the petitioners and the respondent told that the award would be passed basing on the same. Surprisingly, the respondent has passed the impugned award titling as 'consent award' vide Award No.2/2006, dated 24.03.2007, under Section 11(2) of the Act. A perusal of the impugned award shows that the valuation of the land has been fixed by taking into consideration of three years period prior to the publication of draft notification. The negotiation committee was convened and the valuation of the dry lands and irrigated dry lands were fixed at Rs.90,000/- and Rs.1,10,000/- per acre respectively. But the award does not disclose as to how the respondent had determined of the value of the plants in the light of Section 23 of the Act. The respondent had arbitrarily determined the value of the plants without taking into consideration the statement of the Assistant Director of Horticulture, dated 30.08.2006. Though the Assistant Director of Horticulture categorized the petitioners' orchards

under Category 'A', but it appears that the award is passed basing on the subsequent statement of the Horticulture Officer, categorizing under Category 'B' without any notice to the petitioners. Being aggrieved by the same, this writ petition is filed.

3. The second respondent filed counter stating that on requisition of the Executive Engineer, Irrigation Division, Cumbum, Prakasam District, the lands to an extent of Ac.266.94 cents in Survey No.983 including the petitioners' lands in an extent of Ac.7.88 cents in Survey No.983/2, situated at Kakarla Village, Ardhaveedu Mandal, Prakasam District, were proposed to acquire for the purpose of Poola Subbaiah Veligonda Project. The authorities issued notification under Section 4(1) and declaration under Section 6 of the Act and published on 16.09.2005 and 23.09.2005 respectively. The enquiry under Section 5-A of the Act was dispensed with invoking urgency clause under Section 17(4) of the Act.

The Special Deputy Collector has proposed to conduct the District Level Negotiations Committee (DLNC) meeting on 05.01.2006 for fixation of the land value. The market value of the land was finalized in the DLNC at Rs.1,10,000/- per acre for irrigated dry lands and at Rs.90,000/- per acre for dry lands. The land owners agreed for the same. Thereafter, the Assistant Director of Horticulture Department has inspected

the horticulture trees i.e., sweet orange, amla, mango and coconut trees existing in the lands proposed for acquisition and made categorization according to the age of plants and package of practices being adopted by the farmers and fixed the value of the trees. The Land Acquisition Officer passed the Award No.2 of 2006 on 24.03.2007 under Section 11(2) of the Act. The valuation of the horticulture trees submitted by the Assistant Director of Horticulture was approved by the District Level Committee meeting and the compensation was disbursed to the petitioners with their consent. The Assistant Director of Horticulture was estimated the value of the horticulture trees as per G.O.Ms.No.357, dated 22.03.2006. The petitioners were also executed an affidavit in Form 4 before the Land Acquisition Officer on Rs.10/- non-judicial stamp paper agreeable to receive compensation of Rs.1,10,000/- per acre offered by the Negotiation Committee and agreed to receive the compensation for the trees in the land acquired, which was approved by the District Level Committee in consultation with the technical officer. Further, they were agreed that they would not claim for any payment of higher compensation in court of law or in any other forum and they shall abide by the consent award passed under Section 11(2) read with Section 31(2) of the Act.

The Negotiation Meeting was held on 05.01.2006 and after discussions, the land value was fixed at Rs.1,10,000/- per acre for irrigated dry land and the petitioners also

accepted for the compensation payable for horticultural spices including land value as per G.O.Ms.No.1050 Revenue L.A., dated 17.10.1992. The award and the notices under Section 12(2) of the Act were served on the petitioners. The value of the horticultural spices was finalized on 23.03.2007 by the District Level Committee. Hence, the question of not taking into consideration of statement prepared on 30.08.2006 by the Assistant Director of Horticulture does not arise. The value of each category of plants was mentioned in Annexure II of consent award. In respect of teak trees of the petitioners, supplementary award was passed on 12.11.2007 and the petitioners were also received compensation for teak trees. Hence, the writ petition is not maintainable against the consent award passed under Section 11(2) of the Act and consequently no relief could be granted.

4. Sri Ganta Rama Rao, learned senior counsel appearing for Sri Mohd. Islamuddin Ansari, the learned counsel for the petitioners, would contend that the respondents acquired the petitioners' land for construction of Poola Subbaiah Veligonda Project. The enquiry under Section 5-A of the Act was dispensed with, invoking urgency clause under Section 17(4) of the Act and even before issuance of the notification, the lands were inspected by the respondents and the particulars of variety of fruit-bearing trees and their numbers were also mentioned in the said notification. The petitioners had agreed for fixation of value of dry land at Rs.90,000/- per acre

and value of the irrigated dry land at Rs.1,10,000/- per acre. The Department of Horticulture has prepared a statement dated 30.08.2006, which was shown to the petitioners and the respondent told that the award would be passed basing on the same. Surprisingly, the respondent has passed the impugned award titling as 'consent award' vide Award No.2/2006, dated 24.03.2007, under Section 11(2) of the Act. He further argued that a perusal of the impugned award shows that the valuation of the land has been fixed by taking into consideration of three years period prior to the publication of draft notification. The respondent had arbitrarily determined the value of the plants without taking into consideration the statement of the Assistant Director of Horticulture, dated 30.08.2006. Though the Assistant Director of Horticulture categorized the petitioners' orchards under Category 'A', the award appears to be passed basing on the subsequent statement of the Horticulture Officer, categorizing under Category 'B' without any notice to the petitioners. Therefore, it cannot be treated as consent obtained as per the Rules and it cannot bind the petitioners. Hence, it could easily be concluded that the petitioners were deprived of their compensation for the value of the trees assessed by the Assistant Director of Horticulture on 30.08.2006 as per G.O.Ms.No.357, dated 22.03.2006 and the same is not included in the consent award dated 24.03.2007.

5. Learned Assistant Government Pleader would contend that the market value of the land was finalized in the DLNC at Rs.1,10,000/- per acre for irrigated dry lands and at Rs.90,000/- per acre for dry lands and the land owners agreed for the same. The Assistant Director of Horticulture Department has inspected the horticulture trees i.e., sweet orange, amla, mango and coconut trees existing in the lands proposed for acquisition and made categorization according to the age of plants and package of practices being adopted by the farmers and fixed the value of the trees. The Land Acquisition Officer passed the Award No.2 of 2006 on 24.03.2007 under Section 11(2) of the Act. The valuation of the horticulture trees submitted by the Assistant Director of Horticulture was approved by the District Level Committee meeting and the compensation was disbursed to the petitioners with their consent. The Assistant Director of Horticulture was estimated the value of the horticulture trees as per G.O.Ms.No.357, dated 22.03.2006. The petitioners were also executed an affidavit in Form 4 before the Land Acquisition Officer on Rs.10/- non-judicial stamp paper agreeable to receive compensation of Rs.1,10,000/- per acre offered by the Negotiation Committee and agreed to receive the compensation for the trees in the land acquired, which was approved by the District Level Committee in consultation with the Technical Officer and they were agreed that they would not claim for any payment of higher compensation in

court of law or in any other forum. The value of the horticultural species was finalized on 23.03.2007 by the District Level Committee. Hence, the question of not taking into consideration of statement prepared on 30.08.2006 by the Assistant Director of Horticulture does not arise. The value of each category of plants was mentioned in Annexure II of consent award. In respect of teak trees of the petitioners, supplementary award was passed on 12.11.2007 and the petitioners were also received compensation for teak trees. Hence, the writ petition is not maintainable against the consent award passed under Section 11(2) of the Act and consequently no relief could be granted.

6. In the facts and circumstances of the case and in considered view of this Court, it is found that the petitioners were given consent before the DLNC meeting on 05.01.2006 for the value of the land at Rs.1,10,000/- per acre for dry land. But the petitioners were given an impression that the compensation could be paid for the Horticulture plants as per the report of the Assistant Director of Horticulture submitted after inspection. The compensation for the horticultural species could be awarded as per the report dated 30.08.2006 of the Assistant Director of Horticulture, for which the District Level Committee has agreed. The Assistant Director of Horticulture had estimated the value of the horticultural trees as per G.O.Ms.No.357, dated 22.03.2006. But the consent award was passed valuing the horticultural trees under

category 'B', based on the subsequent report dated 12.02.2007 submitted by the Assistant Director of Horticulture based on the inspection conducted on 04.10.2006, instead of the report dated 30.08.2006 submitted by the Assistant Director of Horticulture. The Horticulture Officer, Giddalur had again conducted the joint inspection along with R.I., Surveyor and farmers in the month of February, 2007 and observed that the gardens are left without proper irrigation, fertilizers, plant protection and other cultivation operations and as the gardens are left without proper management in peak season, resulting the plants are dried up and not looked healthy, and as a result the gardens were categorized 'B' grade in the second inspection report dated 12.02.2007. The petitioners stated that awarding compensation for horticultural species under category 'B' based on the subsequent inspection report dated 12.02.2007, is illegal.

7. A perusal of the record shows that the consent of the petitioners said to have been obtained in Form 3 and Form 4 on the stamp paper dated 29.03.2007 and signed on 23.06.2007 as required under sub-rule (9) of Rule 10 of the Andhra Pradesh Land Acquisition (Negotiation Committee) Rules, 1992 and Form 6 obtained after passing of the award on 24.03.2007. Hence, the genuineness of the said affidavits in Form 3 and Form 4 are doubted. Therefore, it cannot be treated as consent obtained as per the Rules and it cannot

bind the petitioners. Hence, it could easily be concluded that the petitioners were deprived of their compensation for the value of the trees assessed by the Assistant Director of Horticulture on 30.08.2006 as per G.O.Ms.No.357, dated 22.03.2006 and the same is not included in the consent award dated 24.03.2007. Hence, the petitioners are entitled for compensation for the orchards as per the valuation fixed by the Assistant Director of Horticulture on 30.08.2006, as per G.O.Ms.No.357, dated 22.03.2006.

8. Accordingly, the writ petition is allowed, directing the respondents to consider the payment of compensation for the horticultural species to the petitioners as fixed by the Assistant Director of Horticulture on 30.08.2006 as per G.O.Ms.No.357, dated 22.03.2006 within a period of eight (8) weeks from the date of receipt of a copy of this order. No order as to costs.

9. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE M.GANGA RAO

06-03-2018
anr

THE HON'BLE SRI JUSTICE M.GANGA RAO



WRIT PETITION No. 8490 OF 2007

06-03-2018

anr