

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.21858 OF 2008

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a Writ of Mandamus declaring the action of the respondents in earmarking the lands of the petitioner in Survey Nos.388/9 to 20, 389/1, 389/2, 390/1, 4, 10, 11, 388/7, 13, 14, 15, 287/4 and 232/7, admeasuring Ac.11-15 cents situated in Solikiri Village, Bhamini Mandal, Srikakulam District, for construction of Vamsadhara Flood Bank, without issuing notice or following the procedure and law, as illegal, arbitrary and violative of Articles 14, 21 and 300A of the Constitution of India and to consequently direct the respondents not to acquire the said lands of the petitioner.

2. I have heard the submissions of the learned counsel for the petitioner and of the learned Government Pleader for Land Acquisition. I have perused the material record.

3. Learned counsel for the petitioner submitted as follows: "The petitioner is the owner of the subject lands. When there was interference by the respondents with the possession and enjoyment of the petitioner over the subject lands, the petitioner, having invoked the provisions of the Right to Information Act, addressed a letter to the Information Officer/Tahasildar, Bhamini Mandal, Bhamini, Srikakulam District, and sought information. A reply has been issued by the said Tahasildar/Information Officer vide letter No.25/08, dated 03.04.2008, stating that there are no details in his office, as he is not the Land Acquisition Officer and that the Executive Engineer, Special Investigation

Division, Irrigation Department, Srikakulam, is the officer concerned to furnish the information. Unless the subject lands of the petitioner are acquired by following the procedure established by law, the respondents are not entitled to interfere with the possession and enjoyment of the petitioner over the subject lands.

4. Learned Government Pleader for Land Acquisition having submitted that a counter has been filed by the 1st respondent-Executive Engineer urged as follows: “As per the policy and norms of the Government, Flood Banks are to be constructed; that accordingly, necessary preparation was made for erecting Flood Bank at two meters higher level than the observed maximum flood level of the river; that such construction of Flood Bank is necessary to protect the agricultural lands as well as the villages from inundation; that such construction is in public interest; that, therefore, proposals were made for acquisition of lands in Survey Nos.388/9 to 20, 389/1, 2, 388/7, 13 to 15, 390/1, 4, 10 and 11 to an extent of Ac.1-80 cents; that the entire extent of Ac.11-15 cents mentioned by the petitioner in the writ affidavit is not necessary; and that in view of the necessity and public interest, the acquisition was proposed.”

6. It is clear from the pleadings that, as on today, neither the entire subject lands nor any part of the subject lands of the petitioner is acquired by following the procedure established by law. In the event, if the Government requires any part of the subject lands of the petitioner, it is needless to state that the Government should follow the procedure and law for acquisition of the subject lands of the petitioner or any part thereof.

7. Having regard to the facts and submission, the Writ Petition is disposed of directing the respondents not to interfere with the subject lands of the petitioner or any part of thereof. It is needless to observe that if the Government are still desirous of acquiring the subject lands or any part of the subject lands of the petitioner, in future, either for the originally intended purpose or for any other purpose, this order shall not preclude the Government from doing so by following the procedure established by law.

There shall be no order as to costs.

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

September 10, 2018
MD

M.SEETHARAMA MURTI, J

