

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

W.P.No.24539 of 2007

ORDER:

This writ petition is filed seeking a writ of mandamus to declare the award No.33 of 2006-07 passed in Rc.No.B.2847/2006 dated 28.04.2007 by the 3rd respondent-Revenue Divisional Officer and Land Acquisition Officer, Nuziveedu, Krishna District, as illegal and arbitrary.

2. As per the averments in the writ affidavit, the petitioners are absolute owners and possessors of the agricultural lands to an extent of Ac.0.12 cents in R.S.No.62/3, Ac.0.33 cents in R.S.No.62/6, Ac.0.03 cents in R.S.No.62/8 and Ac.0.59 cents in R.S.No.62/11. It is asserted that the original name of the 2nd petitioner is Veeramachineni Bhagavathi Devi and she is also the absolute owner and possessor of agricultural land to an extent of Ac.0.14 cents in R.S.No.62/2 and that after the death of her husband, by name, Veeramanchineni Hanumantha Rao, who is the owner of the land to an extent of Ac.0.26 cents in R.S.No.62/4, she bequeathed his property and in total, she owned the land to an extent of Ac.0.40 cents. It is further asserted that without conducting proper enquiry, the 3rd respondent passed the award dated 28.04.2007, mentioning the name of the 2nd petitioner as Veeramachineni Bhavani and also the name of her husband late Veeramachineni Hanumantha Rao, and as such, the award was

passed mentioning the wrong name and the name of the expired person, which is clearly non-application of mind by the 3rd respondent.

It is further asserted that the 3rd petitioner is the absolute owner and possessor of the land to an extent of Ac.0.04 cents in R.S.No.62/10 and 4th petitioner is the absolute owner and possessor of the land to an extent of Ac.0.16 cents in R.S.No.62/5. It is asserted that the original name of the 4th petitioner is Sunkara Lakshmi Narasimha Rao, whereas his name was mentioned as Sunkara Narasimha Rao in the award. It is asserted that the 5th petitioner is the absolute owner and possessor of the agricultural land to an extent of Ac.0.04 cents in R.S.No.62/7, but the 3rd respondent was wrongly mentioned the owner's name as N. Chidambaram, who is the son of the 6th petitioner. It is asserted that all the lands of the petitioners i.e., Ac.1.36 cents, are situated at Ponukumadu Village, Unguturu Mandal, Krishna District. In addition to the said lands, the respondents had also acquired other lands in the village to provide house sites under 'Indiramma Padakam' to the weaker sections of people. It is asserted that the respondents, without issuing any notice to the petitioners, acquired their lands, and after knowing the same, they made representations to the 3rd respondent to drop the land acquisition proceedings, but no orders have been passed. However, the impugned award was passed fixing the compensation of Rs.1,20,000/-per acre without giving any

opportunity of hearing to the petitioners. Hence, the petitioners filed the present writ petition.

3. The writ petition was admitted on 20.11.2007. On 09.08.2011, it was reported that possession of lands was taken and the compensation amount was deposited in Senior Civil Judge's Court, Gudivada on 25.06.2007 under Section 31(2) of the Land Acquisition Act, 1894 (for short 'the Act'). In those circumstances, no stay was granted by this Court.

4. Later, the 3rd respondent filed counter stating that the procedure as contemplated under the Act was strictly followed by issuing notices to the land owners on 25.08.2006 and conducting enquiry under Section 5-A of the Act on 14.09.2006, on which date, the land owner Smt Sunkara Lakshmi Sujatha had attended the enquiry. It is stated that though notices were issued to the other land owners, none of them filed objections or attended the enquiry. Therefore, Draft Declaration under Section 6 of the Act was submitted to the District Collector vide letter dated 18.10.2006 for approval and thereafter, the same was published in the District Gazette and local newspapers. Subsequently, the 3rd respondent issued notices under Sections 9(1) and 10 of the Act on 03.02.2007 and finally, award was passed on 28.04.2007 and possession of the lands in question was also taken on 15.11.2007 under a cover of panchanama. It is stated that as the petitioners have not attended the award enquiry by establishing their title over the lands in

question, the matter was referred to the Civil Court under Section 31(2) of the Act. Hence, he prays to dismiss the writ petition.

5. When the matter is taken up for hearing, learned Government Pleader for Land Acquisition, has placed on record the instructions received from the 3rd respondent dated 06.04.2018.

6. Heard learned counsel for the petitioners, learned Government Pleader for Social Welfare for respondent No.1 and learned Government Pleader for Land Acquisition for respondents 2 to 5.

7. As can be seen from the averments in the writ affidavit as well as counter-affidavit, there is no dispute that the award was passed by the 3rd respondent on 28.04.2007 fixing a sum of Rs.2,94,577/- as compensation for the total land to an extent of Ac.1.80 cents belonging to the petitioners. A perusal of the award discloses that the lands acquired by the respondents are small extents and in many cases less than one acre and that the procedure as contemplated under the Act was followed strictly. It is to be noted that there is no reply affidavit filed by the petitioners to the counter-affidavit.

8. The important aspect of the matter in the present case, as stated in the counter-affidavit, is that since the land owners have not attended the enquiry conducted under Section 5-A of the Act to establish their title over the lands, the cases were referred to the

Civil Court under Section 31(2) of the Act. Further, there is no averment in the counter-affidavit with regard to payment of compensation to the landowners or deposit under Section 31(2) of the Act in the civil Court. Even, as per the instructions dated 06.04.2018, it is stated as under:

“The land to an extent of Ac.1.80 cents in R.S.Nos.62/1 to 12 of Ponukumadu Village of Unguturu Mandal was acquired vide Award No.33/2006-07 dated 28.04.2007. Since the land owners have not attended the award enquiry, the title over the lands is not proved and as the title was not established beyond reasonable doubt, the compensation amount was ordered to be kept in CCD under Section 31(2) of the Act, as under;

Sl.No.	R.S.No.	Extent Ac.cents	Name of the awardee	Amount of compensation Rs.
1.	62/1	0.40	Sunkara Sambasiva Rao	65,461/-
2.	62/2	0.14	Veeramachineni Bhavani	22,912/-
3.	62/3 62/6 62/8 62/11	0.12 0.33 0.03 0.11	Sunkara Janardhana Rao	96,556/-
4.	62/4	0.26	Veeramachineni Hanumantha Rao	42,550/-
5.	62/5	0.16	Sunkara Narasimha Rao	26,185/-
6.	62/7	0.04	Nadendla Chidambaram	6,546/-
7.	62/9	0.04	Nadendla Seetharavamma	6,546/-
8.	62/10	0.04	Veeramachaneni Sambasiva Rao	6,546/-
9.	62/12	0.13	Sunkara Bapanaiah	21,275/-
	Total:	1.80		2,94,577/-

It is submitted that the matter was referred to the Hon'ble Senior Civil Judge's Court, Gudavada, under Section 31(2) of the Land Acquisition Act on 25.06.2007, 24.03.2008 and 36.06.2015. But, it was not admitted by keeping abeyance until the expiry date of related cheque and returned for revalidation of

cheque from time to time repeatedly and it is still not admitted for the above same reason.”

The above extracted instructions make it clear that even as on date, the compensation amount is neither deposited in the civil Court nor paid to the petitioners.

9. In this context, it is to be noted that the Land Acquisition Act, 1894, has been repealed by virtue of the provisions under Section 114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short ‘Act 30 of 2013’). However, to some extent, the acquisition proceedings initiated under the Act were saved under Section 24 of the Act 30 of 2013. Section 24(2) of the said Act reads as under:

“(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.”

10. In terms of Section 24(2) of the Act 30 of 2013, even in case where an award is made five years or more prior to the commencement of the said Act, but the physical possession of the land has not been taken or the compensation has not been paid, the land acquisition proceedings shall be deemed to have been lapsed

and the appropriate Government is at liberty to initiate fresh proceedings under the provisions of the said Act.

11. In the present case, the award was passed on 28.04.2007 and admittedly, as on date, compensation amount has not been paid. Though it is asserted by the 3rd respondent that the compensation amount has been deposited in the Civil Court in terms of Section 31(2) of the Act, the pleadings in the counter affidavit coupled with the instructions provided by the 3rd respondent to the learned Government Pleader for Land Acquisition on 06.04.2018, it is abundantly clear that as on date, the compensation amount is neither paid nor deposited in the civil Court. It is to be noted that even assuming that the said amount could be deposited at present, the same does not specify the requirements of Section 31 of the Act. In those circumstances, the land acquisition proceedings shall be deemed to have been lapsed and the award passed by the 3rd respondent is required to be set aside in terms of Section 24(2) of the Act 30 of 2013.

12. Though the learned Government Pleader for Land Acquisition has placed on record the latest instructions dated 07.12.2018 stating that an amount of Rs.2,94,577/- was deposited on 17.07.2018 before the Senior Civil Judge's Court, Gudivada, to the account of O.P.No.76 of 2018, the same does not specify the requirement of deposit of the compensation amount in terms of Section 31(2) of the Act since the mandate of the said Act is to deposit the compensation

amount immediately on the date of passing of the award. Therefore, the question of depositing the amount in the account of said OP or before the Civil Court entertaining the OP in 2018 does not arise. Viewed from any angle, the land acquisition proceedings do not survive and the award impugned is liable to be set aside.

13. Accordingly, the Writ Petition is allowed, setting aside the award No.33/2006-07 in R.C.No.B.2847/2006 dated 28.04.2007 passed by the 3rd respondent. No order as to costs. Miscellaneous petitions, if any, pending in this petition shall stand closed.

CHALLA KODANDA RAM, J

10th December, 2018

sj

