

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.15752 of 2007

ORDER:

The brief averments in this Writ Petition are that:

The petitioner claims that he had acquired the land to an extent of Acs.12.17 guntas in Survey No.5 situated at Konaipalli Shivar Village, Gandhari Mandal, Nizamabad District, vide registered gift deed, dated 04.06.2006, from his mother; that in 2002, the respondent authorities raised Konaipalli Canal Bund under Neeru-Meeru programme, on account of which, the subject land was submerged under the backwater; that at that stage, the petitioner's mother filed Writ Petition No.15363 of 2002, which was disposed of on 29.08.2002, with directions to the respondents to get the matter enquired so as to ascertain whether the land is submerged in the tank on account of raising of the bund and if so, whether the proceedings could be initiated under the Land Acquisition Act, 1894 (for short 'the Act'), and to complete the said exercise within two months from the date of receipt of the order; that in spite of the said direction, nothing has been done by the respondents; that once again, in the first week of December, 2006, the respondents started digging the land by employing 50 labourers and further raised the bund and that the respondents

neither paid any compensation nor initiated any proceedings, as required under the Act. Hence, he filed this Writ Petition seeking a direction to the respondents to initiate proceedings for acquiring the subject land and consequently, pay the compensation in accordance with law, as may be determined.

The fifth respondent – Executive Engineer PWD (IB) Division, Kamareddy, filed the counter-affidavit denying the allegations of the petitioner and stating that there was no programme under ‘Neeru-Meeru’ taken up by the respondents; that the silt was removed from the tank bed land in order to strengthen the bund and there was no raise of the bund at any point of time and it was taken up to its original height; that the tank was made over to Irrigation Department in 2005 and in Writ Petition No.15363 of 2002 filed by the mother of the petitioner herein, the Irrigation Department was not a party respondent, as such, they were not aware of the order passed therein; that the water spread area of the tank is about Acs.23.30 guntas, out of which, lands to an extent of Acs.11.13 guntas and Acs.12.17 guntas are in Survey Nos.4 and 5 respectively and the lands in both such Survey Numbers are located within Full Tank Level boundary of Konaipally Cheruvu since its construction i.e., more

than 70 years; that the fact that the tank is in existence since 70 years is evident from the letter, dated 04.07.2018, of the Tahsildar, hence, the question of any fresh submergence does not arise and the allegation of the petitioner with respect to the same is false; that the silt was removed in an extent of Acs.5.00 under Mission Kakatiya; that the land, which the petitioner claims, is in the midst of the tank; that the assertion of the petitioner that it is a wet land is not correct and it is only ek phasla land; that inasmuch as the subject land being a sikam land, the question of the petitioner having any right or patta over the same does not arise and that the petitioner is entitled to cultivate the subject land as and when the water level recedes.

Heard learned counsel for the petitioner and learned Government Pleader for Irrigation appearing for the fifth respondent and perused the material on record.

On 08.11.2018, this Court, in view of the specific assertion of the learned counsel for the petitioner that even with respect to the sikam lands, acquisition proceedings are required to be initiated, directed the learned counsel to place on record any case law with respect to the same and thereby, adjourned the matter.

When the matter is taken up today, neither of the parties places any material before this Court.

It is to be noted that the specific assertion of the fifth respondent is that the tank was in existence since 70 years and the subject land is in the midst of the tank and to that effect, a village map was filed along with the counter-affidavit filed by the fifth respondent, as attested by the Deputy Executive Engineer, I.B. Sub Division, Yellareddy. It leaves no manner of doubt that the subject land could not have been cultivated. In the circumstances, there being no right to the petitioner in the subject land and he being only at best ek phasla lease holder, his claim that the land is required to be acquired legally does not stand.

In those circumstances, there being no merit, this Writ Petition is dismissed.

Miscellaneous Petitions, if any pending, shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

22nd NOVEMBER, 2018.

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