

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.5469 OF 2006

ORDER:

This writ petition is filed challenging the action of the respondents in withdrawing land acquisition proceedings and not re-delivering the lands of the petitioners in Ac.2-22 guntas in Sy.No.420 and Ac.1-81 guntas in Sy.No.422/2A, situated at Mandagiri Village, Adoni Taluk, Kurnool District.

2. It is the case of the petitioners that they are the absolute owners and possessors of subject lands, having succeeded the same from their fathers viz., Shair Khan Mohammed Ibrahim, Shair Khan Mohammed Abdullah, Shair Khan Mohammed Ishaq and Shair Khan Mohammed Rahman, who succeeded the same from their father Shair Khan Ahmed Hussain Saheb. While so, the Government proposed to acquire the subject lands for the purpose of providing house sites to hut dwellers of S.Cs, B.Cs and E.B.Cs of the Adoni Village and Town and issued Kurnool District Gazette in Rc.No.240/79, dated 2.01.1984 under Section 4(1) of Land Acquisition Act, 1984. Thereafter, though the Government withdrawn the notification as the lands proposed for acquisition are expensive and the Government vide Memo No.4822/C2/87-7, dated 26-04-1991, issued communication to identify alternative lands and the Government did not pay any compensation or re-delivered the lands to the petitioners, in spite of their

representations. Challenging the same, the petitioners filed the present writ petition.

3. Sri M.Basith Ali Yavar, learned counsel for the petitioners, relying on the judgment of this Court in **Sri Narendra-Veerabhadra Swamivarla Devasthanam V. State of A.P**¹ and the judgments of Supreme Court in **Awadh Bihari Yadav Vs. State of Bihar**², **Laxmi Devi Vs. State of Bihar**³ and **Satendra Prasad Jain Vs. State of U.P**⁴ contended that in view of the ratio laid down in the aforesaid judgments, the respondents shall pay compensation to the petitioners or to re-delivery of the subject lands to them.

4. Sri Soma Raju, learned Assistant Government Pleader for Land Acquisition, *per contra*, contended that though the Government had issued notification for acquisition of the subject lands of the petitioners, it has withdrawn the same before possession of the subject lands was taken and thus the question of payment of compensation or re-delivery of possession of the subject lands to the petitioners does not arise. He further contended that encroachment by the hut dwellers upon the lands of the petitioners is purely a private dispute and no relief can be claimed against the respondents and he vehemently opposed the claim of the petitioners and argued to dismiss the writ petition.

¹ 2013 (4) ALD 365

² AIR 1996 SC 122

³ 2015 (5) ALD 135 (SC)

⁴ AIR 1993 SC 2517

5. It is not in dispute by both the parties that a notification was issued by the respondents for acquiring the lands of the petitioners for the purpose of providing house sites for hut dwellers. It is also not in dispute that the said notification has been withdrawn by the Government. Insofar as the judgments relied by the learned counsel for the petitioner are concerned, the land acquisition proceedings initiated in the cases cited supra traveled to an extent and thereafter, they were withdrawn, but in the present case, though notification was issued on 5.12.1987, even before any further steps are initiated in pursuance of the notification for taking possession of lands or payment of compensation, the notification was withdrawn, which is pertinent by the proceedings dated 26.04.1991 the consequential communication of the respondents. Therefore, the judgments cited by the learned counsel for the petitioners are not applicable to the present case.

6. The issue now revolves around the encroachments on the subject lands by the hut dwellers. It is not the case of the petitioners that the hut dwellers have been put in possession of the subject lands by the Government by way of any patta or any other proceedings. It is clear that as the occupants are private persons and the case falls for consideration as a civil dispute for the alleged encroachments.

7. Thus, no relief can be granted to the petitioners as claimed by them for redelivery of the subject lands or payment of

compensation by the Government. In the light of the above, this writ petition is liable to be dismissed.

8. The writ petition is accordingly dismissed, giving liberty to the petitioners to avail remedies that are available to them under law. As a sequel, the miscellaneous petitions pending if any shall stand closed. No order as to costs.

T.AMARNATH GOUD, J

Date: 07-09-2018
TJMR

