

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.32428 of 2014

ORDER:

Petitioners are legal heirs of Mohd. Khaleel-ur-Rahman, who is the owner of an extent of Ac.4.28 gts in Sy.No.201 and Ac.3.23 gts in Sy.No.202 of Yenugonda village, Manahabubnagar Mandal and District.

2. A notification dt.26-12-1980 was issued by the State Government acquiring this land for the benefit of the 2nd respondent, which is a Society registered under the A.P. Cooperative Societies Act, 1964.

3. 2 awards were passed on 23-09-1986 and 31-03-1986 by the 1st respondent fixing the meager compensation of Rs.4.72 ps. per square yard. The petitioners' father sought reference under Section 18 of the Land Acquisition Act, 1894 and the references were numbered as O.P.No.68/1987 in respect of land in Sy.No.201 and O.P.No.3/1988 in respect of land in Sy.No.202.

4. By judgment and decree dt.06-04-1994, the Senior Civil Judge, Manahabubnagar fixed the market value at Rs.30/- per square yard.

5. This was challenged by the 1st respondent in this Court by filing A.S.No.1987 of 1996 and batch.

6. By judgment and decree dt.20-09-2000, the appeals were allowed and the matter was remanded to the Reference Court for fresh trial and disposal since 2nd respondent, which was the beneficiary, was subsequently impleaded at the appeal stage.

7. After remand, the Senior Civil Judge, Manahabubnagar rendered judgment and decree on 16-05-2002 fixing the compensation for the acquired land at Rs.13.34 ps. per square yard after deducting 1/3rd developmental charges.

8. Petitioners' father then filed A.S.Nos.174 of 2003 and 374 of 2003 before this Court seeking enhancement of compensation. Pending the said appeal, he died and the petitioners were brought on record as his legal heirs.

9. The appeals were disposed of on 02-04-2009 by this Court fixing the compensation at Rs.140/- per square yard along with other statutory benefits under the amended Land Acquisition Act.

10. The 1st respondent filed S.L.P. (C.C.) Nos.547-548 of 2012 before the Supreme Court, which were dismissed on 02-07-2012 confirming the judgment and decree of this Court in A.S.Nos.174 of 2003 and 374 of 2003.

11. Thereafter petitioners filed E.P.No.4 of 2014 in O.P.No.3 of 1988 and E.P.No.5 of 2014 in O.P.No.68 of 1987 before the Senior Civil Judge, Manahabubnagar for execution of the decrees.

12. The Executing Court after issuing notice to respondents, even issued attachment orders, but the respondents did not satisfy the decrees.

13. Petitioners contend that the action of respondents in not satisfying the said decrees is illegal, arbitrary and violates Article 300-A of the Constitution of India. They placed reliance on the decision of this Court in **Bhimidipati Annapoorna Bhavani Vs. Land Acquisition Officer, Yeluru Reservoir Project, Peddapuram, East Godavari District, A.P. and others**¹ wherein this Court held that if awards passed under the Land Acquisition law have become final and the Acquisition Officers did not pay compensation even after E.Ps. are filed, claimants can approach this Court under Article 226 of the Constitution of India.

14. Petitioners, therefore, seek a Writ of Mandamus to respondent Nos.1 and 2 to deposit the entire compensation amount due to the petitioners to the credit of E.P.No.4 of 2014 in O.P.No.3 of 1988 and E.P.No.5 of 2014 in O.P.No.68 of 1987 on the file of the Senior Civil Judge, Manahabubnagar.

15. The 1st respondent filed a counter-affidavit stating that some payments have been made to the Writ petitioners on 05-06-2010. But such payments were not in accordance with the judgment and decrees of this Court passed on 02-04-2009 in A.S.Nos.174 of 2003 and 374 of 2003.

¹ 2005(3) ALD 233 (LB)

16. It is stated that though notices have been issued to the 2nd respondent on 03-10-2012 to pay the enhanced compensation, it has not responded. It is stated that a demand notice was issued to all the members of the 2nd respondent Society on 27-02-2018 directing them to pay the enhanced compensation within 15 days from the date of receipt of notice, but they did not respond to the same. It is stated that distraint orders in Form-1 have been issued to the Society members on 10-06-2018 authorising the Revenue Inspector, Mahabubnagar to distraint the property of the defaulting members under A.P. Revenue Recovery Act, 1864 and notices are being served on the members. However, it is stated that original 259 members, who were allotted plots, are not residing at the given address and are not readily traceable. It is further stated that some of them have either sold the plots or houses built up on the plots and publication in the news papers of the proceedings of the distraint order issued under the A.P. Revenue Recovery Act is also being caused.

17. Time of four months is sought by the 1st respondent to comply with the entire recovery process.

18. On 27-06-2018 when this case was listed, the 2nd respondent was directed to file counter-affidavit and if not, appear before this Court. The matter was then adjourned to 05-07-2018. When the matter was listed on 09-07-2018, no counter-affidavit was filed by 2nd respondent and he also did not appear before this Court. Therefore, case was adjourned to today stating that if no counter-affidavit is filed

today, the right of the 2nd respondent to file counter-affidavit shall stand forfeited.

19. Today counter-affidavit is filed by 2nd respondent. The only plea of the 2nd respondent is that applications to review the judgments dt.02-04-2009 in A.S.Nos.174 of 2003 and 374 of 2003 had been filed before this Court vide A.S.M.P.No.69 of 2010 in Rev.C.M.P.S.R.No.12231 of 2009 and 12233 of 2009 on 15-12-2009, that the said Review petitions had not been listed for the last 9 years and therefore till the Review petitions are disposed of on merits, the 2nd respondent may not be compelled to deposit the E.P. amounts to the credit of E.P.No.4 of 2014 and E.P.No.5 of 2014.

20. In my considered opinion, this defence taken by 2nd respondent cannot be countenanced for the reason that mere filing of Review petitions does not operate as stay of the judgment passed by this Court on 02-04-2009 in A.S.Nos.174 of 2003 and 374 of 2003.

21. Therefore, the 2nd respondent is granted six (06) weeks time from today to comply with the judgment and decrees in A.S.Nos.174 of 2003 and 374 of 2003 by depositing the compensation determined to the credit of E.P.No.4 of 2004 and E.P.No.5 of 2014 pending before the Senior Civil Judge, Mahabubnagar. Till the amount is deposited, the 2nd respondent or its members shall not be permitted to sell or alienate any of the plots owned by the members of the said Society. It is open to the 1st respondent as well as the State of Telangana represented by Principal Secretary, Revenue Department to

sell the plots of the members of the 2nd respondent Society as well as the plots which are yet to be allotted by 2nd respondent for recovery of the compensation amount payable to the petitioners to satisfy the decree and judgment dt.02-04-2009 in A.S.Nos.174 of 2003 and 374 of 2003 and they shall proceed to do so, if within four (04) weeks period granted by this Court the 2nd respondent has not satisfied the decrees in A.S.Nos.174 of 2003 and 374 of 2003; and the Government of Telangana, after selling the property through distraint order proceedings under the A.P. Revenue Recovery Act, shall deposit the proceeds to the credit of E.Ps. referred to above. The 2nd respondent shall also pay costs of Rs.50,000/- (Rupees Fifty Thousand only) to the petitioners.

22. The Writ Petition is allowed with the above directions.

23. Miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 10-07-2018

Vsv