

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.27033 of 2018

ORDER :

Heard the counsel for petitioner and the learned Government Pleader for Land Acquisition, for respondent nos.1 and 3.

2. The petitioner has filed this Writ Petition seeking a *Writ of Mandamus* declaring the action of the respondents in not paying compensation in respect of his land admeasuring Acs.4.00 cents situate in Survey No.434/1 at Thamballagondi Village, Atloor Mandal, Y.S.R., Kadapa District duly initiating land acquisition proceedings as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India and contrary to the Land Acquisition Act, 1894; and also sought consequential direction to respondents to initiate such proceedings on par with proceedings initiated in respect of other land owners.

3. Originally, the said land was Government land and it was assigned to one Sangati Subbaiah, S/o. Gangaiah of Lingalakunta Hamlet of Thamballagondi Village, Atloor Mandal, Y.S.R., Kadapa District vide DKT Patta No.427/90 on 10.08.1981. The said assignee obtained loan amount from Kamalakur Primary Agricultural Co-operative Credit Society (for short 'the society'), and could not repay it.

4. The Society and the District Co-operative Central Bank, Kadapa obtained an award under Section 61 of the Andhra Pradesh

Cooperative Societies Act, 1964 against the assignee and brought the assigned land for public auction in 2002 for releasing the loan amount.

5. In the said open auction, the petitioner purchased the land on 22.04.2002 for Rs.59,000/- in E.P.No.2732 / 2001-02.

6. The said sale was confirmed on 09.07.2002 by the Special Deputy Registrar, District Co-operative Central Bank, Kadapa in petitioner's favour, and subsequently pattadar pass books and title deeds were also issued to him on the basis of the sale certificate in 2006.

7. This land was acquired along with some other lands for public purpose of 'Kalivikodi Project'.

8. *Ex gratia* proposals were submitted by the Revenue Divisional Officer, Rajampet for the land and trees located therein and *ex gratia* was determined at Rs.10,66,265/-, but the same was withheld from the petitioner on the ground that the land is assigned land and the petitioner is not entitled to receive it since it was not alienable.

9. The petitioner then filed WP.No.13994 of 2009 for a *Writ of Mandamus* declaring the action of the Land Acquisition Officer-cum-R.D.O., Rajampet, Kadapa in not paying the said *ex gratia* amount to him as illegal, arbitrary and consequently to direct the said officer to handover the cheque for the said amount to him.

10. Counter-affidavit was filed by the Revenue Divisional Officer, Rajampet stating that the land being assigned land of Subbaiah

payment of *ex gratia* to petitioner was stopped. It was also contended that the sale of land in public auction by the Society itself is null and void, and that the petitioner was informed to that effect by an endorsement in Reg.H/276/2008 dt.01.11.2008.

11. By order dt.06.12.2010, the said Writ Petition was allowed. This Court held that petitioner purchased the land in an open auction conducted in execution proceedings under the Andhra Pradesh Co-operative Societies Act, 1964 and the exemption under Section 6 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 will enure to him. It relied on the judgment of a Division Bench of this Court in **Sub-Registrar, Srikalahasti v. K.Guravaiah**¹ wherein this Court had held that when assigned land is put to sale by a Bank in terms of a mortgage, it loses its character as assigned land, that exemption is available under Section 6 and it continues to the purchaser in such sale.

12. This Court held in WP.No. 13994 of 2009 that since petitioner is not disputed to be the owner of the property by virtue of purchase in public auction which was approved by the competent authority, and since the land was acquired for public purpose, petitioner is entitled to *ex gratia* amount of Rs.10,66,265/- which was already fixed by the respondents. It therefore directed the District Collector (Land Acquisition), Kadapa District and the Land Acquisition Officer-cum-Revenue Divisional Officer, Rajampet, Kadapa District to pay the *ex*

¹2009 (2) ALD 250 (D.B.)

gratia of Rs.10,66,265/- to the petitioner as expeditiously as possible preferably within eight (08) weeks.

13. Vide Ref.No.D/1847/2007 dt.08.02.2012, the Special Collector, G.N.S.S., Kadapa released the said amount of Rs.10,66,265/- to the Special Deputy Collector (Land Acquisition), T.G.P., Unit-I, Kadapa for making payment to petitioner of the said amount.

14. The petitioner was paid the said amount vide Cheque bearing No.600309, dt.14.02.2012 on 17.02.2012 under proper acknowledgment.

15. The petitioner, after receiving the said amount, filed the present Writ Petition.

16. The petitioner contended that he had purchased the subject property through public auction by paying sale consideration under registered document; the land had lost its character as assigned land since exemption was granted under Section 6; and so the petitioner is entitled to receive compensation and not merely *ex gratia*.

17. He contended that though the respondents were aware of this, they paid only *ex gratia* and even while paying the same, obtained signatures of petitioner on blank papers to be used for administrative purpose.

18. The petitioner contended that he is entitled to compensation and by making representation therefor on 18.02.2012 requesting the respondents to pay compensation on par with adjacent land owners,

but the respondents did not take any action. The petitioner contended that merely because he received *ex gratia*, his statutory right to get compensation cannot be said to be taken away or infringed.

19. The petitioner contended that in respect of a neighbourhood land owner, by name S.V. Mahesh Madhava Kumar Reddy, S/o.Venkata Ramana Reddy, there was a land acquisition notification issued, but as far as the petitioner is concerned, nothing has been done, and the action of the respondents violates Articles 14 and 300-A of the Constitution of India.

20. Counter-affidavit is filed by the Land Acquisition Officer-cum-Revenue Divisional Officer, Rajampet stating that the sale of land in favour of the petitioner in the public auction held on 22.04.2002 is null and void, and that petitioner has no right or title over the said land.

21. This contention is without any merit in view of the order dt.06.12.2010 passed in WP.No.13994 of 2009 wherein this Court specifically held that the sale in petitioner's favor of the subject land is valid and the petitioner has valid title to the land purchased by him in the public auction conducted under the Andhra Pradesh Co-operative Societies Act, 1964. In fact, the Court also recorded that there was no dispute raised in the Writ Petition that petitioner became owner of the property. Therefore, the respondents are estopped from raising such a contention. Their plea would in fact amount to

committing contempt of the order dt.06.12.2010 passed in WP.No.13994 of 2009.

22. A further contention is raised by the respondents that petitioner, while receiving the cheque for Rs.10,66,265/- on 17.02.2012, gave a statement that he received the cheque satisfactorily without any pressure from others and so the present Writ Petition is not maintainable, and is liable to be dismissed.

23. No doubt, a reading of the statement dt.17.02.2012 given by the petitioner indicates that he received the said amount stating that he is satisfied with the said amount without any coercion. But the said letter cannot be understood as one where petitioner gave up his right to get compensation on market value basis along with other statutory benefits which any land owner whose private land is acquired would get.

24. It is not in dispute that the land of petitioner was acquired for public purpose after 2006 vide proceedings Ref.H/275/2008 dt.21.06.2008. *Ex gratia* proposals were submitted for this land of the petitioner without there being any notification under the then Land Acquisition Act, 1894.

25. When the respondents are aware that petitioner is the owner of the land, they deliberately treated him as a purchaser from an assignee and denied him even *ex gratia* for which he filed W.P.No.13994 of 2009. The Court merely determined that petitioner is entitled to

receive *ex gratia* but did not hold that he is disentitled to claim compensation as per the provisions of the Land Acquisition Act, 1894.

26. Since there can be no estoppel against law (See **Elson Machines (P) Ltd v. CCE**²), the petitioner cannot be deprived of compensation on market value basis with other statutory benefits under the applicable land acquisition law merely on the basis of the statement obtained from him on 17.02.2012.

27. Any such statement signed by the petitioner without independent legal advice cannot operate as an estoppel, and in fact, the conduct of the respondents in obtaining the same from the petitioner appears to be unconscionable and is hit by Section 23 of the Indian Contract Act, 1872 in view of the unequal bargaining power between the petitioner and the respondents as held in **Central Inland Water Transport Corporation v. Brojo Nath Ganguly**³.

28. Accordingly, the Writ Petition is allowed with costs of Rs.5,000/- to be paid by respondents to petitioner; the respondents are directed to issue a notification under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 in respect of petitioner's land and pay him market value compensation and all benefits thereunder, after deducting the amount already paid to petitioner, within a period of four (04) months from the date of receipt of copy of the order.

² AIR 1989 SC 617

³ (1986) 3 SCC 156

29. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24.10.2018

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