

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.7063 OF 2006

ORDER:

This Writ Petition is filed to issue a writ of Mandamus declaring the action of the first respondent in not referring the petitioners' petition filed under Section 30 of the Land Acquisition Act, 1894 (for short 'the Act') to competent Civil Court for deciding the rights of the petitioners over the land acquired, as illegal and arbitrary.

2. The case of the petitioners is that the first petitioner's husband Late Mudam Kashiram was the Village Sunkari and he was given Inam land to an extent of Acs.5-29 guntas in survey No.116, Acs.12-14 guntas in survey No.117 and Ac.0-12 guntas in survey No.118 situated at Dammannapet Village, Medipalli Mandal of Karimnagar District. The same was reflected in the revenue records in Sethwar as Seth Sindhi Inam land. The first respondent initiated land acquisition proceedings for the flood flow canal project. When respondents 4 to 7 in collusion with respondents 2 and 3 got their names entered in the pahanies and tried to withdraw the award amount, the petitioners submitted an objection petition dated 09.03.2005 to the Special Deputy Collector, Land Acquisition Unit, Karimnagar, but invain. The land was not sold to anybody. The petitioners again filed petition on 13.03.2006 under Section 30 of the Act before the first respondent to refer the matter to competent Civil Court for adjudication of ownership and for payment of compensation. It appears that the petitioners earlier filed Pre-Litigation Case No.5/2005 before the Chairman, Mandal Legal Services Committee, Jagityal, seeking a

direction not to pay the compensation amount to anybody and deposit the award amount in the Court. When there is no possibility of compromise, on 04.03.2006 the petitioners were directed to file appropriate suit/petition before appropriate Court. Thereafter, the petitioners filed petition on 13.03.2006 under Section 30 of the Act seeking reference to Civil Court before the first respondent. But, the first respondent failed to refer the matter to Civil Court. Hence, this Writ Petition.

3. The first respondent filed a counter affidavit stating that dry lands to an extent of Acs.4.08 guntas in survey No.116, Acs.10.14 guntas in survey No.117 and Ac.0.12 guntas in survey No.118 of Damannapet (V), Medipally (M) of Karimnagar District, were acquired for the purpose of excavation of the flood flow canal. Notices under Section 9 (3) and Section 10 of the Act were issued on 08.03.2006 to the concerned persons including the objection petitioners while fixing the award enquiry in the village on 24.03.2006. Even after service of notices, the petitioners had not turned up to attend the award enquiry and not produced any recorded evidence before the Land Acquisition Officer, whereas the respondents/purchasers had attended the award enquiry and produced the pattadar pass books and pahani patrika for the year 2004-2005. It is further stated that one Sri K.Venkateshwar Rao filed an application in P.L.No.5/2005 before the Chairman, Mandal Legal Services Committee. Since there was no possibility of any compromise, vide order 04.03.2006 the petitioners were directed to file appropriate suit/petition before appropriate Court. The Land Acquisition Officer-Special Deputy Collector, Karimnagar, has passed award on 02.05.2005 for the entire land covered under the

draft notification and draft declaration issued under the Act and the amounts pertaining to survey Nos.116, 117 and 118 were kept in PWD account, due to title dispute pending before the Chairman, Mandal Legal Services Committee, Jagtial. After obtaining the legal opinion from the Assistant Government Pleader, Jagtial, on 07.04.2006 stating that the compensation could be paid to the purchasers/respondents, the Land Acquisition Officer issued order of withdrawal of amounts from PWD account vide proceedings No.C/155/04 dated 12.04.2006 and the amounts were paid to the respondents under proper acknowledgement. Therefore, there is no illegality or arbitrariness in paying the amounts to the respondents/purchasers and the petitioners have no right to seek reference under Section 30 of the Act. The claim of the petitioners for reference is not maintainable as the award was passed on 02.05.2005 and application was filed on 13.03.2006 without valid documents.

4. Heard both sides and perused the material on record.

5. Sri K.Venumadhav, learned counsel for the petitioners would contend that the land of the petitioners was acquired by the first respondent for the purpose of flood flow canal project and no notice as required under the provisions of the Act was issued and served on the petitioners at any stage of the land acquisition proceedings. The petitioners filed application under Section 30 of the Act on 13.03.2006 before the first respondent seeking to refer the matter to Civil Court for adjudication of the ownership rights and payment of compensation amount to the petitioners. When the petitioners came to know that the first respondent in collusion

with respondents 4 to 7 trying to disburse the amounts, the petitioners filed Pre-Litigation Case No.5/2005 before the Chairman, Mandal Legal Services Committee, Jagtial. In view of pendency of the said application, the first respondent could not pay the compensation amounts to the respondents as per the award. The first respondent ought to have referred the matter to Civil Court under Section 30 of the Act. In support of his contentions, the learned counsel relied on ***Nagosha Pochha @ Nagosha Poshetty and another vs. Special Deputy Collector and Land Acquisition Officer, Sri Komaram Bheem Project, Adilabad and others***¹ wherein this Court held that when a dispute is raised before the Land Acquisition Officer, the Collector shall refer the case to the Civil Court as required under the provisions of the Act keeping in view the object and intention behind the said legislation and the authorities are required to be more cautious and transparent in their action.

6. Per contra, the learned Government Pleader while reiterating the averments of the counter would contend that the petitioners have filed application on 13.03.2006 without participating in the award enquiry in pursuance to the notices issued under Sections 9 (3) and 10 of the Act on 08.03.2006. As per the orders of the Chairman, Mandal Legal Services Committee, Jagtial, passed in P.L.No.5/2005, the petitioners have not filed proper suit or petition before the Civil Court and after taking opinion from the learned Assistant Government Pleader, the amounts were withdrawn on 12.04.2006 and paid to the respondents. The petitioners' application under Section 30 of the

¹ 2014 (3) ALD 544

Act is not maintainable as the same is submitted after passing of the award and the petitioners have also not participated in the award enquiry. Further, the Collector has the discretionary power under Section 30 of the Act. He would further contend that under Section 30 of the act, the Collector has wide powers to refer a dispute as regards the apportionment of the amount of compensation or where a dispute arises as to persons to whom the same or in part thereof is payable. In support of his contentions, learned GP relied on decision of larger bench of this Court in ***Repaka Bhyravamurthy vs. Muppidi Venkataraju***² wherein this Court held as follows:

“32. The power of reference under Section 30 is wider than the power of reference under Section 18. Can it in this situation be said that a person who did not appear before the Land Acquisition Officer has no *locus standi* to get himself impleaded as a party? The answer to the same must be rendered having regard to the facts and circumstances of each case. A person may not appear either having not been issued any notice or otherwise before the Collector and still his interest may be protected by the Collector and an award can be passed in his favour. However, an enquiry made by the Collector under Section 11 of the Act cannot be held to have such a repercussion with those who had not been found to be interested in the claims as they would not have say at all. However, a subsequent discovery or question of interest as regards the entitlement to receive the compensation or a part of it by reason of a subsequent event, in our opinion, may give rise to a situation where an application under Order 1 Rule 10 C.P.C. may be maintainable. The devolution of such interest may not be confined to the situation contained in Section 146 of the Code of Civil Procedure, more so, when a question of title is involved.

² 2001 (5) ALT 565 (L.B.)

7. Learned GP further relied on the decision of the Supreme Court in ***Dr.G.H.Grant v. The State of Bihar***³ to contend that under Section 18 of the Act, the Collector is bound to make a reference on an application filed by a person interested. The Collector, under Section 30 of the Act, is enjoined to make a reference. He may relegate the person raising the dispute to agitate the same in a suit and pay the compensation in the manner declared by his award. Hence, there are no merits in the writ petition and the same is liable to be dismissed.

8. In the facts and circumstances of the case, in considered view of this Court, the lands of the petitioners situated in survey Nos.116, 117 and 118 of Dammannapet (V), Medipally (M) of Karimnagar District, were acquired for the purpose of flood flow canal project by the first respondent. No notices under the provisions of the Act were issued/served on the petitioners *in spite* of the fact that their names are reflected in the notifications issued under the provisions of the Act. When the first respondent tried to pay the compensation amount to respondents 4 to 7, the petitioners filed petition on 13.03.2006 under Section 30 of the Act seeking to refer the matter to Civil Court and in support of their claim, they filed certified copy of Setwari. Instead of referring the matter to Civil Court, the first respondent paid the amounts to respondents 4 to 7 under the guise of legal opinion rendered by the Assistant Government Pleader, Jagtial. This Court and Hon'ble Supreme Court again and again reiterated that the rights of the parties under the provisions of the Land Acquisition Act and their rights to receive the amounts should not be denied on hyper

³ AIR 1966 SC 237

technical grounds. The contention of the learned Government Pleader that the petitioners' application under Section 30 of the Act is not maintainable stands refuted by the plain reading of Section 30 of the Act. When the petitioners raised a well founded dispute to refer the matter to Civil Court under Section 30 of the Act, the word 'may' in Section 30 of the Act will become 'shall' on fulfilling the conditions of the provision of Section 30 of the Act and the discretion loses its significance and the Collector shall refer the matter to the Civil Court. As such, the first respondent ought to have referred the matter to the Civil Court under Section 30 of the Act. As the first respondent has violated the provisions of the Act by deciding the civil dispute between the parties, this Court is of the view that the writ petition deserves to be allowed, in view of the ratio laid down by this Court in ***Nagoshha Pochha (1 supra)***.

9. Accordingly, the Writ Petition is allowed directing the first respondent to refer the matter to Civil Court for adjudication under Section 30 of the Act, within a period of two months from the date of receipt of a copy of this order. Further, liberty is given to the 1st respondent to recover the amounts paid to respondents 4 to 7 from respondents 4 to 10 (as R-7 died and his legal heirs R-8 to R-10 were impleaded).

10. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

(M.GANGA RAO, J)

23rd March, 2018
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