

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.32221 of 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed requesting to issue a writ of Mandamus declaring the action of respondents 1 & 2 in not considering various representations filed by writ petitioner with regard to the property of Bandi family, viz., joint family property of an extent of Ac.5.75 cents in Sy.nos.7, 9 & 11 out of Ac.19.12 cents at Penubarthi village, Rampur Mandal, Nellore District, which was acquired by the Government of Andhra Pradesh for Telugu Ganga Project, and their further action in not paying the compensation due to the petitioner and in paying the same to the respondents 6 & 7 as arbitrary and illegal. A consequential request to direct the respondents 1 & 2 to pay to the petitioner a 1/5th share of compensation amount payable under the Award No.2/ 1991-92, dated 10.06.1991, in respect of the above land, and not to pay the same either to respondents 6 & 7 or to anybody else pending disposal of LAOP no.4/ 2011 on the file of the V Additional District Judge-MACT, SPSR Nellore District.

2. I have heard the submissions of *Sri P.Gopal Das*, learned counsel appearing for the writ petitioner; of the learned Government Pleader for Revenue (AP) appearing for the 1st respondent; of the learned Government Pleader for Land Acquisition (AP) appearing for the 2nd respondent; and, of *Sri K.G.Krishna Murthy*, learned senior counsel representing *Sri K.Venugopal Reddy*, learned counsel appearing for respondents 6, 7, 10, 11, 13, 14 & 15. I have perused the material record.

3. The case of the petitioner, as per the pleadings and submissions made before this Court, in brief, is this:

Bandi family of Penubarthi village consisted of five brothers, namely, (i) Bandi Veera Reddy; (ii) Bandi Venkata Narsa Reddy; (iii) Bandi Ramakrishna Reddy; (iv) Bandi Siva Reddy; and, (v) Bandi Venkatasubba Reddy. They owned and possessed the properties at Penubarthi village. Some of their properties are also in Lingapalem village. The said five brothers left behind them, the petitioner and the respondents 3 to 16. Respondents 3 to 5 are the daughters of late B.Veera Reddy. Respondents 6 & 7 are the sons of late Penchal Reddy. Respondents 8 to 10 are the sons of Ramakrishna Reddy. The 11th respondent is the daughter of late Bandi Ramakrishna Reddy. The 12th respondent is the son of Bandi Siva Reddy. The respondents 13 to 15 are the daughters of Bandi Siva Reddy. And, the 16th respondent is the widow of late Bandi Venkata Subba Reddy. The father of the petitioner- Venkata Narsa Reddy died in the year 1974. Therefore, she became entitled to a $1/5^{\text{th}}$ share in the joint family properties by virtue of succession. There was no division of the properties during the life time of the said five brothers. Even after the deaths of the said brothers, the properties of the family have not been divided among the legal heirs by metes and bounds. Bandi Penchala Reddy, the father of respondents 6 & 7 and Bandi Gopal Reddy, who is the 9th respondent, are managing the joint family properties. They were and are paying $1/5^{\text{th}}$ share of income either in cash or kind to the petitioner since the death of her mother in the year 1979. They so paid her share till about 1986, that is, till the disputes arose between the petitioner and the father of respondents 6 & 7 and the 9th respondent, who is the brother of the petitioner. The disputes arose with regard to the share of compensation amount awarded for the lands acquired, which are situated at Lingapalem village. The said lands were acquired for Telugu Ganga Project in the

year 1986. The father of respondents 6 & 7 and the 9th respondent wanted to take undue advantage and knock away entire compensation payable in respect of the said lands. Having come to know of the same, the petitioner got issued a registered notice to the Land Acquisition Officer claiming her 1/5th share in the compensation amount and sought for reference to the Civil Court. A reference was accordingly made and a 1/5th share in the compensation amount, which comes to about Rs.49,000/- is placed in Court deposit and the said dispute in LAOP No.102 of 1988, is pending before the civil Court. While so, the lands at Penubarthi village were also proposed for acquisition by the Government for the purpose of Telugu Ganga Project. The father of respondents 6 & 7 and the 9th respondent left no stone unturned for claiming entire compensation by manipulating the revenue records. They wanted to do so to the detriment of this petitioner. There are no other landed properties owned by the Joint Family. The petitioner is not claiming a share in the movable and house properties of the joint family having voluntarily given up her share in the said properties. In view of hostile attitude of her family members in general and the father of respondents 6 & 7 and the 9th respondent in particular, she felt that there is no justification to allow the family properties to be joint. Therefore, she had sought partition and allotment of her 1/5th share in the joint family properties. She is a co-sharer in joint possession of the joint family properties, since the death of her parents; and, is entitled to claim partition and separate possession of her share in the properties. She was constrained to file a suit in O.S.no.92 of 1990 on the file of the Court of the learned Subordinate Judge, Gudur, for partition and separate possession of her 1/5th share out of the plaint schedule lands situated at Penubarthi village. She also stated in the plaint that she is

not claiming any share in the movable and house properties of the joint family and that she has given up her claim to a share in the said properties voluntarily in favour of the coparceners. The learned Senior Civil Judge was pleased to pass a decree and judgment, dated 16.01.1991, granting the relief of partition and separate possession of 1/5th share in the suit schedule properties. Bandi Penchal Reddy, the father of respondents 6 & 7 filed an appeal in A.S.no.930 of 1997 on the file of this Court. A Division Bench of this Court dismissed the said appeal. Against the judgment, dated 02.09.2004, passed in A.S.no.930 of 1997, no further appeal was preferred. Thus, the decree in the said suit for partition has become final. In the said suit schedule, this petitioner did not mention the land of Ac.5.75 cents in Sy.nos.7, 9 and 11 since several suits are pending between Ch. Subba Naidu and the Manager of the Joint family, Bandi Penchal Reddy, the father of respondents 6 & 7 besides the suit in O.S.no.118 of 1988 on the file of the Court of the Junior Civil Judge, Venkatagiri. She came to know recently that the plaintiff therein and Bandi Penchal Reddy (father of respondents 6 & 7) compromised with the defendant therein and he got Ac.5.75 cents in Sy.nos.7, 9 and 11 out of Ac.24.87 cents. Challa Narsareddy, without any knowledge, filed another suit in O.S.no.134 of 1991 on the file of the Senior Civil Court, Gudur for declaration that he is the owner of the suit land and is entitled to compensation for the acquired land admeasuring Ac.34.03 cents in Sy.nos.2,3,7, 9 & 11. The said suit was filed against Bandi Penchal Reddy, Cheruku Venkata Subba Naidu, B.Krishna Reddy and Special Deputy Collector, Land Acquisition Officer. The said suit was dismissed for default, by judgment dated 27.12.1996. By that time, A.S.no.930 of 1997 was pending on the file of this Court. Therefore, petitioner did not mention the above said land of

Ac.5.75 cents in the schedule of the former suit for partition. Therefore, it can be held that the properties in Penubarthi village were purchased by sons of Penchal Reddy after selling their properties at Kesamanenipally village and it may be further held that the said properties are joint family properties of sons of Bandi Penchal Reddy. The writ petitioner, who is the daughter of one of the sons of Bandi Penchal Reddy is thus entitled to 1/5th share. Earlier, this petitioner filed W.P.no.7859 of 1991 against late Penchal Reddy, the father of respondents 6 & 7, and another in respect of the acquired land admeasuring Ac.59.08 cents which was in various survey numbers. This Court disposed of the writ petition on 11.04.2004. The present award no.2/91-92, dated 10.06.1991, relates to properties of Penubarthi, which are joint family properties. The father of respondents 6 & 7, that is, late Penchal Reddy, behind the back of the petitioner and having knowledge of the previous litigation had denied 1/5th share of the petitioner having colluded with the others. He wanted to defeat the rights of this petitioner. Hence, he compromised the suit in O.S.no.118 of 1988 on the file of District Munsif, Venkatgiri, and got Ac.5.75 cents in Sy.nos.7, 9 & 11 of Penubarthi village. In the said suit, this petitioner and other legal heirs of Bandi family were not impleaded to grab the legitimate 1/5th share of the petitioner and to deny her the share of compensation in the said extent of Ac.5.75 cents in Sy.nos.7, 9 and 11 of Penubarthi village. Hence, the present writ petition is filed.

4. The case of the official respondents 1 & 2 as stated in the counter affidavit of the Special Deputy Collector, Telugu Ganga Project, in brief, is this:

Bandi Raghava Reddy, the 6th respondent herein and Bandi Penchala Narasa Reddy filed petition before this Court in LAASMP No.825

of 2016 in LAAS No.62 of 2016. This Court allowed the said petition, by orders, dated 13.02.2017, and directed the 1st respondent therein, that is, the Special Deputy Collector (Land Acquisition), Telugu Ganga Project, to deposit 20% of the enhanced compensation for the land of an extent of Ac.5.75 cents covered by Sy.Nos.7, 9 & 11. As the said amount was not deposited, Bandi Raghava Reddy and another filed SLP No.2105 of 2018 before the Supreme Court; and the Supreme Court, by order, dated 09.04.2018, directed to deposit 20% of the amount due in terms of orders, dated 13.02.2017, of this Court within a period of eight weeks. The Government issued Memo No.30025/ 8/ 2017, Water Resources (LA) Dept., dated 07.6.2018, and directed the District Collector, SPSR Nellore District, to take immediate action to comply with the orders of the Supreme Court and to deposit 20% of the amount of Rs.2,81,46,598/- within the stipulated time. Action is being taken to deposit the amount in the Court below as directed by the Government. Land to an extent of Ac.5.75 cents in Sy.nos.7, 9 & 11 of Kasulanativari Kandriga, H/o Penubarthi village was acquired for foreshore submersion of Kandaleru Reservoir. The petitioner referred to the decree & judgment, dated 16.01.1991, on the file of the Principal Subordinate Judge's Court, Gudur, but the said survey numbers are not covered by the above said decree. Hence, the writ petition may be dismissed.

5. The 7th respondent filed a counter affidavit on behalf of the contesting respondents. The case of the said respondents and the submissions made on their behalf, in brief, are as follows:

The writ petition, which is filed invoking common law remedy, is liable for dismissal *in limine*. The material allegations in the affidavit filed in support of the petition are all false. Some of the respondents in the writ petition died long time back. Death certificates of deceased

respondents are filed to substantiate the said submission of the contesting respondents. The five brothers, who constituted Hindu Joint Family died intestate is false. The writ petitioner approached this Court with unclean hands to obstruct payment of compensation to the eligible claimants and to make a wrongful claim. Respondents 3, 4, 5, 8, 9, 12 and 16 died long back. The family is still joint and she is entitled to 1/5th share, as stated in the writ petition, is false. The writ petitioner filed O.S.no.92 of 1990 before the Principal Subordinate Judge Court, Gudur, showing in the said suit schedule, all the family properties, which are acquired by the State authorities for public purpose. The compensation payable in respect of suit schedule property was already deposited to the credit of the suit before the trial Court. Some of the parties have withdrawn their respective amounts. The subject property in Sy.nos.7, 9 & 11 was not shown in that suit schedule. Kasulanativari Kandrika, where the land in Sy.nos.7, 9 & 11 are situated, is a separate revenue village and the lands in the survey numbers are covered under Award No.2/ 1991-92, dated 10.06.1991. Out of total extent of Ac.34.03 cents, which was acquired, Ac.24.87 cents belongs to one Venkata Subbaiah Naidu. The said extent was purchased by him under registered document no.593/ 1975. The said land was given on lease to one Bandi Penchal Reddy, who is father of respondents 6 & 7. The said Bandi Penchal Reddy filed O.S.no.118 of 1998 before the District Munsif Court, Venkatagiri against one Venkata Subbaiah Naidu, the landlord, in regard to lease and rental kharar Agreement. In that suit, a compromise decree was passed in respect of entire extent of Ac.24.87 cents. As per the terms of the said compromise decree, Bandi Penchal Reddy is entitled to an extent of Ac.5.75 cents in the said survey numbers and the landlord Venkata Subbaiah Naidu is entitled to Ac.19.12 cents. The

compromise decree is dated 12.02.1990. The suit in O.S.no.92 of 1990, which was filed, on 24.07.1990, relates to joint family property. The writ petitioner is no way concerned with the subject property and she cannot claim the said properties as joint family property. The lease is between landlord Venkata Subbaiah Naidu and Bandi Penchal Reddy. The father of respondents 6 & 7, that is, Bandi Penchal Reddy and the 9th respondent, Bandi Gopal Reddy, are managing the properties is false. Respondents 6, 7 & 9 paid her share of income either in cash or kind till 1986 is false. Her marriage was performed about 50 years back and cash and gifts in kind were paid to her towards her share, as per the joint family system. It is true that the Government acquired lands in Lingapalem village and the petitioner claimed a share in that land. It appears that some amount was deposited in the civil Court in respect of the said land. Respondents 6 & 7 believed that they are not having any piece of land in Lingapalem village. This respondent came to know that LAOP no.102 of 1998 related to Lingapalem and Penubarthi villages was disposed of long back. According to the division of the joint family properties, the respective shares were separately recorded in the revenue records in the names of the sharers and after the land in Lingapalem village was acquired, the awarded amounts were also paid separately. The writ petitioner is aged 78 years and her marriage was performed about 60 years back. In the partition suit, she never claimed the lands in the said survey nos.7, 9 & 11, which belong to Venkata Subbaiah Naidu. In respect of the said land, Bandi Penchal Reddy was a tenant and in the suit filed by Bandi Penchal Reddy in O.S.no.118 of 1988, a compromise decree was passed. Hence, the writ petitioner has no right to claim a share in the subject property by claiming it as a joint family property. After getting the compromise decree from the Munsif

Court, Venkatagiri, late Penchal Reddy produced the same before the Land Acquisition Officer and received compensation, on 10.09.1991. The said fact is known to the petitioner. But, she had kept quiet. Since she is aware of all the facts, she did not mention the lands in Sy.nos.7, 9 & 11 in the schedule of the partition suit. In the partition suit, which is filed for the partition of the properties mentioned in the schedule therein, she has stated that except the properties mentioned in the said schedule, there are no other properties owned by the joint family. Hence, the writ petition may be dismissed.

6. From the pleadings, submissions made and the contents of the documents filed by both the sides, the following facts are noticeable.

The relationship of the parties as stated before this Court is as follows: 'Bandi Veera Reddy, Bandi Venkata Narsa Reddy, Bandi Ramakrishna Reddy, Bandi Siva Reddy, Bandi Venkata Swamy Reddy (since died unmarried) and Bandi Venkata Subba Reddy are brothers. They are the sons of Bandi Penchal Reddy (senior). The petitioner is the daughter of one of the brothers, viz., B.Venkata Narasa Reddy. Respondents 3, 4 & 5 are the children of Bandi Veera Reddy. The said respondents 3 to 5 died. Bandi Penchal Reddy (Junior-since died), 8th respondent, Bandi Rami Reddy, 10th respondent, Bandi Penchala Subba Reddy, 9th respondent, Bandi Gopal Reddy and Sampooramma, the 11th respondent, are the children of Bandi Rama Krishna Reddy. Respondents 8 & 9 died. Bandi Ramana Reddy, the 12th respondent, (since died) is the son of Bandi Siva Reddy. Bandi Venkata Swamy Reddy, another son of Penchal Reddy died unmarried, as already noted. Bandi Narayanamma (since died) is the wife of one of the brothers, Venkata Subba Reddy. Anjana Sukhavenamma (13th respondent), Andena China Venkamma (14th respondent) and Mandi Venkamma (15th respondent) are

the children of said Narayanamma and Bandi Venkata Subba Reddy.' The petitioner, who is the daughter of one of the five brothers, having claimed that she is entitled to a 1/5th share in the joint family properties filed a suit O.S.no.92 of 1990 on the file of the Court of the learned Principal Senior Civil Judge, Gudur, SPSR Nellore District. The learned Principal Senior Civil Judge, Gudur, decreed the said suit by a preliminary decree and judgment, dated 15.05.1997. A Division Bench of this Court, by judgment, dated 02.09.2004, dismissed the appeal in A.S.no.930 of 1997 preferred by Bandi Penchal Reddy, the father of the respondents 6 & 7, who was the 4th defendant. It appears that the said preliminary decree in the partition suit has become final. Now, in this writ petition the petitioner's claim is related to 1/5th share in the amount of compensation payable in respect of Ac.5.75 cents of land in Sy.nos.7, 9 & 11 of Kasulanativari Kandriga, H/o Penubarthi village. Admittedly, this land was not the subject matter of suit for partition and the petitioner herein did not include this land in the schedule of the suit for partition. Hence, the above said land is not subject matter of the preliminary decree granted in favour of the petitioner in the above said suit. However, the petitioner gives an explanation for not including this property in her said suit for partition as follows: "By the date she filed the suit for partition of the joint family property, there is a litigation, and civil suits are pending. Challa Narasa Reddy filed O.S.no.134 of 1991 on the file of the Additional Senior Civil Court, Gudur, against Bandi Penchal Reddy, the father of the respondents 6 & 7, and others in respect of lands of total extent of Ac.34.03 cents in Sy.nos.2,3,9, 7 & 11 and claimed compensation *inter alia* stating that the said lands are acquired for Telugu Ganga Project and seeking a perpetual injunction restraining the defendants 1 to 3 therein from drawing compensation

from the 4th respondent, Special Deputy Collector-cum-Land Acquisition Officer, in respect of the said lands. The said suit was dismissed for default. Further, O.S.no.118 of 1988 was filed by Bandi Penchal Reddy, the father of the respondents 6 & 7, against Cheruku Venkata Subbaiah Naidu on the file of the District Munsif Court, Venkatagiri, in respect of Ac.24.87 cents in Sy.nos.7, 9 & 11 of Kasulanativari Kandriga, H/o Penubarthi village. Hence, the above said subject properties are not included in the earlier suit for partition, which was preliminarily decreed in favour of this petitioner.” Further, the petitioner contends that in view of the fact that the partition suit was decreed and that the decree in the partition suit has become final on the dismissal of the appeal suit and in view of the decree in the said judgment, it can be held that she is entitled to claim a 1/5th share in the compensation in respect of the land in an extent of Ac.5.75 cents in Sy.nos.7, 9 & 11, that is, the subject land of Kasulanativari Kandriga, H/o Penubarthi village, though the said land is not the subject matter of the suit for partition filed by her and the subject land was not mentioned in the schedule of the preliminary decree granted in the suit for partition. Be that as it may. She admits that Bandi Penchal Reddy filed one of the above suits, viz., O.S.no.118 of 1988 against C.Venkata Subbaiah Naidu *inter alia* stating that the entire extent of Ac.24.87 cents belonged to said Venkata Subbaiah Naidu and that Bandi Penchal Reddy is a tenant in the subject land and that the said suit ended in a compromise and that as per the compromise decree, it was held that Bandi Penchal Reddy is entitled to Ac.5.75 cents out of total extent of Ac.24.87 cents in Sy.nos.7, 9 & 11 and that the defendant therein, Venkata Subbaiah Naidu is entitled to the remaining extent of Ac.19.12 cents only in Kasulanativari Kandriga, H/o Penubarthi village. The petitioner now makes allegations as to the collusive nature

of the said compromise decree in the said suit. Since her suit for partition in respect of the joint family properties was decreed, she now claims a 1/5th share in the subject land of Ac.5.75 cents in Sy.nos.7, 9 & 11 of Kasulanativari Kandriga, H/o Penubarthi village, which is the subject matter of compromise decree in the above said suit between Bandi Penchal Reddy and Venkata Subbaiah Naidu and which land is admittedly not included in the schedule of the suit for partition which was decreed in her favour. She makes such a claim on the premise that her suit for partition was decreed and that she could not include the above said subject property in her suit for partition as civil litigation is pending and, therefore, it can be held that she is also entitled to a 1/5th share in the compensation payable in respect of the land, which is not the subject matter of her suit for partition. Mere pendency of litigation does not preclude a party from including the properties, which are subject matter of litigation, in a comprehensive suit for partition and therefore, the explanation that because of pendency of litigation and civil suits, she did not mention the subject lands in her suit for partition needs no countenance. Such a contention requires to be stated only to be rejected. She did not admittedly challenge the compromise decree or pursue any common law remedy before a competent civil Court in respect of her claim for 1/5th share in the compensation amount related to the subject land. In the partition suit, she clearly stated that except the properties mentioned in the schedule annexed to the plaint in the said suit, the joint family has no other properties. Therefore, the contesting respondents contend that the subject property is not a joint family property even according to the admission of the petitioner. Her said admission in the plaint in the suit for partition clinches the issue against her. Be that as it may. The petitioner earlier filed W.P.no.7859

of 1991. The said writ petition was disposed of, by an order, dated 11.02.2004. In the said writ petition, she claimed that she is entitled to 1/5th share in the land acquired. The order in the said writ petition reflects that the Government initiated proceedings under the Land Acquisition Act, 1894, for acquiring the land admeasuring Ac.59.08 cents comprised in various survey numbers of Penubarthi village. This Court in the operative portion of the said order passed in the said writ petition held as follows:

“Therefore, it would be proper if a direction is issued to the respondents 1 and 2 to consider the representation of the petitioner for reference under Section 30 of the Act if the amount of compensation is not already disbursed to respondents 3 and 4, and pass appropriate orders on the same, if the application had been made by her within time. It is also made clear that if the respondents 1 and 2 or either of them already disbursed entire amount of compensation, petitioner may avail common law remedy to claim her alleged share from respondents 3 and 4.”

In the said orders, this Court categorically observed to the effect that if the compensation has already been disbursed, the petitioner may avail common law remedy to claim her alleged share from the respondents concerned. LAOP 102 of 1988 on the file of the Principal Subordinate Judge Court, Gudur, relates to acquired lands covered by the Award no.796 of 1987, dated 31.10.1987, viz., lands in Sy.nos.16/ 1, 15/ 3, 15/ 4 and 15/ 6 of Lingapalem village. In the judgment, dated 15.05.1997, passed in LAOP by the learned Principal Senior Civil Court, Gudur, the claim of the writ petitioner herein who is the 2nd respondent therein was upheld and she was entitled to 1/5th share in the compensation in respect of the lands in Sy.nos.16/ 1, 15/ 3, 15/ 4 and 15/ 6 of Lingapalem village. However, the present subject land is not a subject matter of above LAOP. Thus, the petitioner is very much aware of the remedies

which are available to her under law and also the legal avenues which she has to pursue in the matter, in the event she wants to make a valid claim in respect of her alleged 1/5th share in the compensation payable in respect of the subject land, that is, land in Sy.nos.7, 9 & 11. However, she simply filed the writ petition by deliberately showing some of the parties, who are dead, also as respondents, without pursuing the remedies, which the law permitted. She did so despite the fact that the preliminary decree in the partition suit and that the compromise decree in the suit between Bandi Penchal Reddy and Venkata Subbaiah Naidu related to the subject land do not help her cause. She did not admittedly seek a remedy under the provisions of Land Acquisition Act, 1894, which the law permitted. Despite the orders passed in the writ petition, she further failed to pursue till this day, the common law remedy as well, despite lapse of long time. Her claim related to entitlement to a share in the subject land and consequently to a share in the compensation payable in respect of the subject land being a pure and complex question of fact, this Court need not resolve the said alleged claim by resorting to adjudication of the complex issue of fact, as a question of this nature requires detailed examination and is to be determined by a competent authority or the civil Court in an appropriate proceeding, after full-fledged enquiry or trial. The same principle also extends to matters involving mixed questions of fact and law. A petition under Article 226 of the Constitution cannot be converted into a reference under the Land Acquisition Act or a suit to resolve the instant factual controversies. And, in general, disputed question of fact is not investigated into in a writ petition of this nature, more particularly, when an alternate efficacious remedy is available under law and the same is deliberately not pursued by the petitioner till date.

7. On the above analysis of facts and settled legal position, this Court finds that the writ petition, which is devoid of merit, is liable to be dismissed.

8. Before parting, it is to be noted that the learned counsel for the petitioner contended that since the writ petition instituted in September, 2017 is pending since then, the writ petition need not be dismissed on the ground that the petitioner can avail the alternative remedy and that in this writ petition, which is pending since a long time, the relief can be granted. However, the facts of the case do not warrant consideration of such a submission as in the instant case, the petitioner is aware of her rights and the remedies open to her; but, failed to deliberately to pursue the remedies. Hence, none of the contentions of the petitioner merit consideration.

9. In the result, the Writ Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

24th August, 2018
RAR

M. SEETHARAMA MURTI, J