

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 22634 of 2007

ORDER:

Challenging the Memo No.F/1067/05, dated 31.03.2007, issued by the 2nd respondent, the present Petition is filed.

2) The grievance of the petitioners, who are all 104 in number, is that their application, under Section 28-A of the Land Acquisition Act, 1894 (in short "the Act"), for granting enhanced compensation with respect to the agricultural lands / houses / structures, wells and trees situated in Nusthalapur (V), submerged under Sriram Sagar Project Lower Manair Dam Reservoir (in short "LMD Reservoir"), was rejected. The Award came to be passed on 31.03.1994. The petitioners, being large in number and illiterate, did not file reference under Section 18 of the Act. The Government issued G.O.Ms.No.418, dated 31.08.1984 ordering acquisition of Nustulapur, Elgandal and Hanmajipally Villages in Karimnagar District and directed to take necessary steps under the Act. Notification under Section 4(1) of the Act came to be published on 28.04.1986. However, thereafter, by issuance of G.O.Ms.No.80, a proposal to acquire any future structures above +922 contour line was directed to be dropped. The Land Acquisition Officer sent withdrawal proposals of acquisition of the land and structures, which proposal was accepted and a Gazette Notification came to be published on 28.08.1989, which came to be challenged before the Court by filing W.P.No.18925 of 1987. This Court allowed the Writ Petition *vide* its order dated 06.04.1989, directing the Government to finalise the proceedings within four months. The order of the learned Single Judge was challenged in W.A.Nos.1540 and 1579 of

1989, which were disposed of on 22.04.1991. The reference made under Section 18 of the Act, on the file of the III Additional District Judge, Karimnagar, was numbered as O.P.No.116 of 2003, and thereafter, it was transferred to the learned Senior Civil Judge, Karimnagar and renumbered as O.P.No.99 of 2004. The said O.P. was allowed on 11.03.2005, enhancing the compensation by 100%. The Government challenged the same in LAAS No.1541 of 2005 before the High Court. Though, initially, stay was granted, the same was dismissed confirming the orders of the reference Court. On coming to know about the enhancement granted by the reference Court under section 18 of the Act, the petitioners filed an Application before the 2nd respondent on 08.09.2005, invoking Section 28-A of the Act and the said Application came to be rejected on 31.03.2007 holding that it was made beyond 90 days. Challenging the said rejection order, the present writ petition is filed.

3) A counter affidavit is filed by the Land Acquisition Officer-Special Deputy Collector.

4) Heard the learned counsel for the petitioners and the learned Government Pleader for Land Acquisition (TS).

5) The facts of the matter that the acquisition of the lands of the petitioners along with structures, reference made to the Civil Court under Section 18 of the Act, passing of the Order, dated 11.03.2005, by the Civil Court enhancing the compensation by 100% are not in dispute. The petitioners came to know passing of the Order by the Reference Court on 13.07.2005 and immediately thereafter they had applied for Certified Copy of the same, which came to be furnished on 03.08.2005, and on 08.09.2005 the

Application was made to the 2nd respondent. The factum of the petitioner being furnished the certified copy on 03.08.2005 is also not disputed. In those circumstances, the specific assertion of the petitioners that they came to know about the order and decree of the lower Court in O.P.No.99 of 2004, on 13.07.2005 cannot be doubted. By way of reply to the averments made in para-4 of the writ affidavit, it is admitted that the contention of the petitioners that they came to know about the order and decree in O.P.No.99 of 2004, dated 11.03.2005 may be correct. Therefore, the factum of the petitioners being furnished the certified copy on 03.08.2005 is not specifically denied.

6) In those circumstances, in terms of Section 28-A proviso, the time taken for obtaining Certified Copy is liable to be excluded from computation of the time for the purpose of reckoning 90 days period. Inasmuch as, the petitioners, as soon as they obtained the Certified Copy, sought for extension of the benefit under Section 28-A of the Act. In view of the above, the respondents ought not to have rejected the application for granting of the enhanced compensation in terms of the Award passed by the learned Senior Civil Judge, Karimnagar in O.P.No.99 of 2004.

7) Accordingly, the Writ Petition is allowed, setting aside the Memo No.F/1067/05, dated 31.03.2007 issued by the 2nd respondent. No costs.

8) Consequently, the Miscellaneous Applications pending, if any, shall stand closed.

CHALLA KODANDA RAM, J

Date: 19.11.2018
Ssv