

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.3428 of 2013

ORDER :

Heard the counsel for petitioner, the learned Government Pleader for Land Acquisition for respondents.

2. The petitioner herein has filed this Writ Petition challenging the action of 2nd respondent in withholding compensation amount determined vide Award No.18/2011-12, dt.18.08.2011, in respect of petitioner's lands admeasuring 2794 Sq.Mts. in Sy.No.369/12 and 2640 Sq.Mts. in Sy.No.369/13 in S.V. Puram Village Accounts, Vadamalapet Mandal, Chittoor District, and for a direction to the 2nd respondent to pay the same to petitioner with interest at the rate of 24 % per annum.

3. The petitioner contends that the above land was acquired for the purpose of widening and four-laning on Tirupathi – Tiruthani (T.N. / A.P. Border Section) of National Highway No.205, under a notification issued under Section 3A(1) of the National Highway Act, 1956, (for short, 'the Act') published in the Gazette of India on 20.08.2008. Declaration of acquisition under Section 3D(1) of the Act was published in the Gazette of India on 13.08.2009; and thereafter, Award No.18/2011-12 S.V. Puram Village in proceedings ROC.No.F/2419/2011 dt.18.08.2011 was passed by 2nd respondent determining the compensation payable for the land, trees, structures, etc., as Rs.5,04,90,238/-.

4. The Award stated that the competent authority and the Revenue Divisional Officer, Chittoor (2nd respondent) had conducted enquiry on 23.10.2009 in his Office for finalization of title and apportionment of lands pertaining to pattadars for making payment of amount for compensation; and the Tahsildar, Vadamalpet Mandal had submitted a report with regard to persons eligible for payment of compensation basing on the records. As an Annexure to the Award, the subject land is mentioned with the name of petitioner as 'occupier', and it is also stated that there is no other claim in regard to the land; and the total amount of compensation payable to the petitioner is specifically mentioned as Rs.36,01,835/-.

5. It is, thus, evident that even by the time the Award was passed on 18.08.2011, there was no rival claim for compensation in respect of the same land. However, compensation was not paid to petitioner in spite of passing of Award on 18.01.2011, which the petitioner contends to be illegal and unsustainable.

6. Counter-affidavit is filed by respondents stating that though the subject land was assigned to petitioner under *ex-servicemen* quota, the petitioner had not submitted any claim at the time of enquiry, and so the compensation payable to him was kept in a civil deposit. It is further stated that the Tahsildar submitted that one Smt. B. Rathnamma, got issued a notice dt.29.08.2011 through her counsel to the District Collector, Revenue Divisional Officer, Chittoor and Tahsildar, Vadamalapet, not to pay compensation to petitioner

since the land is in her possession and enjoyment as a rightful owner, and that she had purchased it from the lawful owner in 1965. It is further stated that the assignment was allegedly made to petitioner under the *ex-military* quota in 1977 though he was discharged from service on 03.01.1988; that as per G.O.Ms.No.1117 Revenue Assignments (I) Department Dt.11.11.1993, *ex-servicemen* were entitled to sell away their land after a period of ten (10) years, but he had to obtain 'No Objection Certificate' from Collector to sell it; and that the compensation amount was sent to the III Additional District Judge, Tirupathi under Section 3H(4) of the Act.

7. Reliance is also made to certain proceedings under Assigned Lands (Prohibition of Transfers) Act, 1977 to which the petitioner is a party; and it is stated that the Mandal Revenue Officer passed orders in 2008 restoring the land to the original assignee, and also issued pattadar pass book and title deed to the petitioner in 2008.

8. Having regard to the admission in the counter-affidavit of the 2nd respondent that the pattadar pass book and title deeds were issued to petitioner in 2008 after the enquiry under the provisions of the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977, undisputedly it is the petitioner alone who is entitled to compensation for the acquired land, since at the time of passing of the Award on 18.08.2011 there was no rival claim by Smt. B. Ratnamma, and such rival claim came for the first time only through the legal notice on 29.08.2011, after the passing of the Award.

9. A learned Single Judge of this Court in WP.No.31159 of 2012 dt.21.11.2012 considered similar situation where the matter was referred to the Civil Court under Section 3(H) of the Act after passing of the Award on the ground that the Tahsildar, Renigunta, reported that there was a civil dispute in respect of the subject land pending before the Principal Junior Civil Judge, Tirupathi. Adverting to the said contention, this Court held as follows :

“On the admitted facts of this case, no person other than the petitioner has approached respondent no.2 claiming compensation. In the absence of any such competing claim for payment of compensation, there can be no question of any dispute arising either as to the person, who is entitled to receive compensation, or to its apportionment. The provisions of Sections 3G and 3H of the Act or for that matter any other provision of the Act do not authorize the competent authority to take cognizance of any dispute pending before a Court between two parties. Such disputes do not fall within the ambit of ‘dispute’ referred to in Section 3H(4) of the Act. Unless more than one claimant approaches the competent authority or any person makes a claim in response to the public notice issued under Section 3G(3) of the Act, it cannot be said that a dispute within the meaning of Section 3H(4) has arisen before the competent authority. I am, therefore, of the opinion that respondent no.2 has acted contrary to the scheme of the provisions of Sections 3G and 3H in referring a non-existent dispute to the civil Court and depositing the compensation in the Court. The impugned award to this extent, therefore, cannot be sustained and the same is, accordingly, set aside.

As the claim of the petitioner that she is the owner of the subject property has not been rebutted by any party before respondent no.2, the latter shall pay the compensation therefore, as determined by him in award, dated 24.08.2011, to the petitioner within one month from the date of receipt of a copy of the order.

The Writ Petition is, accordingly, allowed to the extent indicated above.”

10. Thus, it has been categorically held in the above decision that there should be a competing claim for payment of compensation for it to be said that there is a dispute as to who is entitled to receive compensation under Section 3H(4) of the Act, and such a claim must be made before the competent authority in response to the public notice issued under Section 3G(3) of the Act.

11. When Smt. B. Rathnamma made no such claim in the above manner, there cannot be a reference of an non-existent dispute to the Civil Court invoking Sections 3G and 3H of the Act and deposit of the compensation in the Court by the 2nd respondent.

12. Accordingly, the Writ Petition is allowed; and the action of the respondents in depositing in the Civil Court the compensation determined in respect of the subject land under the Award dt.18.08.2011, without paying it to the petitioner, is declared as illegal, arbitrary and violative of Articles 14 and 300-A of the Constitution of India as well as the provisions of the Act; and the respondents are directed to have said amount re-transferred to the 2nd respondent from III Additional District Judge, Tirupathi and pay the same to the petitioner with interest at the rate of 9% per annum from 18.08.2011 till the date of payment, within a period of three (03) months from the date of receipt of copy of the order. No order as to costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 09.07.2018

Ndr/*

