

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.8882 of 2016

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to issue a writ of mandamus declaring the action of the respondents 1 to 4 in not considering the representation of the petitioner, dated 16.02.2016, and in taking steps to pay compensation to the respondents 5 & 6 in respect of the lands admeasuring Ac.9.05 cents in RS.no.34/1 and Ac.6.13 cents in RS.no.39/3, at Singanapalli Village of Polavaram Mandal, West Godavari District, pursuant to the proceedings in Ref.no.B1/63/2016, dated 09.02.2016, as illegal & arbitrary and consequently direct the respondents 1 to 4 to pay the compensation to the petitioner in respect of the above mentioned lands.

2. I have heard the submissions of Sri *Naram Nageswara Rao*, learned counsel appearing for the petitioner; and of the learned Government Pleader for Land Acquisition (AP) appearing for the respondents 1 to 4; and of Sri *Ghanta Sridhar*, learned counsel appearing for the respondents 5 & 6. I have perused the material record.

3. The case of the petitioner is this: He belongs to Scheduled Tribe community. He is a permanent resident of Singanapalli Village. He is the absolute owner of the afore-stated lands. He is cultivating the said lands, being in possession of the said lands. The said lands originally belonged to the ancestors of Late Boragam Subbaiah, who is his grandfather. Late Boragam Pothu Raju, the father of the petitioner is one of the two sons of the said Boragam

Subbaiah. There is a dispute between the petitioner on one hand and the respondents 5 & 6 on the other. An LTR case is pending before the Special Deputy Collector. Respondents 1 to 4 acquired large extent of land for the purpose of construction of Indira Sagar Project known as Polavaram Project. For the said purpose, the lands of the petitioner were also acquired. The respondents 1 to 4 issued the proceedings in Ref.no.B1/63/2016, dated 09.02.2016, in connection with the said acquisition proceedings. A notification, dated 10.02.2016, was also published in Eenadu Daily Telugu News Paper. Immediately thereafter, the petitioner submitted a representation, dated 16.02.2016, requesting the respondents 1 to 4 not to pay compensation to the respondents 5 & 6 in respect of the above said land, as they are not the owners and as this petitioner is the owner of the said land. The Special Collector, Land Acquisition, Rajamahendravaram, East Godavari District, the 2nd respondent herein, sent a letter, dated 25.02.2016, to the Special Deputy Collector, Right Main Canal, Polavaram Project, Kovvur, West Godavari District, the 3rd respondent herein, requesting to enquire into the matter. However, there is no response from the 3rd respondent. The respondents 5 & 6, who are non-tribals, are influential persons. They are trying to get compensation from the respondents 1 to 4 for the subject land of the petitioner. The land is in an agency area. Hence, the writ petition is filed.'

4. On 01.04.2006, this Court admitted the writ petition and granted interim direction as prayed for in WPMPNo.11260 of 2016.

5. Requesting to vacate the afore-said interim order, the 5th respondent filed WVMP.No.398 of 2017.

6. At the hearing, a request was made to hear and dispose of the writ petition instead of the vacate petition.

7. The case of the official respondents as stated in the counter affidavit of the 3rd respondent – the Special Deputy Collector (LA) (FAC), Right Main Canal, Polavaram Irrigation Project, Unit No.1, Kovvur, West Godavari District, in brief is this: ‘The land acquisition related to submergence villages under Polavaram Irrigation Project was taken up under four different spells for administrative convenience. The Executive Engineer concerned sent a requisition along with schedules for acquisition of Ac.59.35 cents in RS.nos.1 & 3/1, which are going to be submerged under the said project. A preliminary notification under Section 11(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, ‘Act 30 of 2013’) and Declaration in Form-VII under Section 19(1) of the Act 30 of 2013 read with Sub-Rule 1 of Rule 25 of the Act 30 of 2013 were finalised and were got duly approved by the Special Deputy Collector (LA), Polavaram Irrigation Project, Rajahmundry, and the same were published in the prescribed manner. The details of the publication of Preliminary Notification and the Declaration insofar as the 3rd and 4th Spells are as follows:

	3 rd Spell	4 th Spell
DN		
Gazette	PIP/45/2016, dt.08-02-2016	PIP/50/2016, dt.15-02-2016
Locality	17-02-2016	22-02-2016
News Papers	Eenadu, dt.09-02-2016 Praja Sakthi, dt.09-02-2016	Andhra Jyothi dt.15-02-2016, Andhra Prabha dt.15-02-2016
Last date of publication	17-02-2016	22-02-2106
Declaration		
Gazette	PIP/85/2016, dt.13-04-2016	PIP/89/2016, dt.13-04-2016

Locality	02-05-2016	16-05-2016
News Papers	Andhra Jyothi, dt.18-04-2016 Praja Sakthi, dt.18-04-2016	Visalandhra dt.29-04-2016 Sakshi dt.29-04-2016
Last date of publication	02-05-2016	16-05-2016

The extent claimed by the petitioner was covered by 3rd and 4th spells. The award was approved by the Special Collector (LA), Polavaram Irrigation Project, Rajahmundry, as detailed below:

	P.N	6B	Declaration	Award
Spell-III	B1/63/2016 Dt.08-02-2016	B1/63/2016 Dt.09-04-2016	B1/63/2016 Dt.13-04-2016	B1/63/2016 Dt.03-06-2016
Spell-IV	B1/63/2016 Dt.15-02-2016	B1/63/2016 Dt.18-04-2016	B1/63/2016 Dt.28-04-2016	B1/63/2016 Dt.03-06-2016

The 6B report was approved by the Special Collector (LA), Polavaram Irrigation Project, on 09.04.2016, *vide* proceedings Roc.no.63/2016 B1. The petitioner endorsed that he will produce documentary evidence at the time of Award enquiry for taking further action for payment of compensation for the land. The writ petitioner has to prove his title and enjoyment over the land; and, if any disputes are there, he can approach the Revenue Divisional Officer, Jangareddigudem, along with his documents and prove his title over the subject lands. Award enquiry was conducted, on 13.05.2016 and 28.05.2016 respectively, for the two spells/two phases. And, at the time of enquiry, the petitioner has not filed any objections before the Special Deputy Collector (LA), Polavaram Irrigation Project, Kovvur. The Award was passed with the condition to deposit the compensation amount related to unsettled extent of Singannapalli Village lands before the Rehabilitation and Resettlement Authority as and when constituted by the Government under Section 77 of the

Act 30 of 2013. The persons, who are in possession and enjoyment of the lands as per the records as notified in award are as follows:

Spell-III	34/1	Kunche Challamani, W/o.Veeraju	Ac.7.51 cents
		Kunche Appala Raju, S/o. Venkata Rao	
		Kunche Venkata Ratnam, S/o. Venkata Rao	
		Valavala Atchuthamani	
	34/1	Jarepalli Ganga Raju	Ac.0.18 cents
		Jarepalli Subba Rao	Ac.0.17 cents
		Jarepalli Veera Swamy	Ac.0.17 cents
		Kovvasu Appa Rao	Ac.0.17 cents
		Mede Venkatagiri	Ac.0.17 cents
		Jarepalli Bhaskara Lakshmi	Ac.0.17 cents
		Kulum Bebamma	Ac.0.17 cents
		Mede Sri Ramulu	Ac.0.17 cents
		Mede Ramayamma	Ac.0.17 cents
Spell-IV	39/3	Karri Venkata Narsamma	Ac.6.13 cents
		Kovvasu Sr Ramulu	
		Jarepalli Krishna Murty	
		Boragam Sivaji	
		Madakam Nagendra	

The Settlement Officer-cum-Revenue Divisional Officer [SO-cum-RDO], Jangareddigudem, has issued Settlement Orders in favour of Kunche Chellamani – S.R.No.114/2015, dated 29.02.2016, for an extent of Ac.6.17 cents in R.S.No.34/1. The land owners, who prove their title over the acquired lands, will be paid compensation. The writ petitioner, without proving his title to the subject lands, approached this Court. All the proceedings related to acquisition were taken up in accordance with the provisions of Act 30 of 2013. The writ petitioner filed objection petitions, on 20.02.2016 and 23.04.2016, and the same were received by the office of the Special Deputy Collector (L.A), Polavaram Irrigation Project, on 25.04.2016. The petitioner requested to stop payment of compensation to the 5th respondent for the land in an extent of Ac.9.05 cents in RS.no.34/1

and to one Pentapati Pulla Rao, S/o. Rama Rao, for an extent of Ac.6.13 cents in RS.no.39/3 of Singannapalli Village, as per the orders of this Court in WPMP.no.11260 of 2016 in this writ petition. The 6B report was approved by the Special Collector (LA), Polavaram Irrigation Project, on 09.04.2016, *vide* proceedings Roc.no.63/2016/B1. Based on the Ryotwari patta issued to the ryots by the SO-cum-RDO, Jangareddigudem, in respect of the lands in Singannapalli Village of Polavaram Mandal under Reg.2/70, the names of the interested persons have been notified in the Preliminary Notification, Declaration and Award. The SO-cum-RDO, Jangareddigudem, has issued Settlement Order in favour of Kunche Chellamani. The Settlement Orders are due for the remaining extents from the SO-cum-RDO, Jangareddigudem. The Surveyors made field visits and submitted sub-division record as per the enjoyment. Thereafter, preliminary notification was prepared. The petitioner is not in possession and enjoyment of the subject land as per the report of the Surveyors and as per the village records i.e., Adangal/1B etcetera. The contrary allegations in the affidavit of the writ petitioner are false.'

8. The case of the 6th respondent, in brief, is this: 'The 2nd respondent issued notification, dated 09.02.2016, in Form No.VI(A) under Section 11(1) of Act 30 of 2013 proposing to acquire various lands in Singanapalli Village for the purpose of Polavaram Irrigation Project. After completion of the enquiry, a declaration was also published under the said Act. Final Award was passed by the competent authority, on 03.06.2016. The writ petitioner appears to have submitted a representation, on 08.02.2016, only in order to blackmail the respondents. He later approached this Court and filed

the writ petition with false and untenable allegations. The writ petitioner has no semblance of right & title over the subject lands. The writ petition is misconceived. The petitioner has to prove that he belongs to Scheduled Tribe. The subject land belongs to ancestors of Late Boragam Subbaiah, who is the grandfather of the petitioner, is not correct. The subject property was purchased by the ancestors of this 6th respondent long time back, in the year 1917 under a registered sale deed. This respondent and the 5th respondent have been in continuous possession and enjoyment of the subject land. Earlier to that, their predecessors have been in continuous possession since the time of purchase of the subject lands. Neither the petitioner nor his predecessors have title and possession over the subject land. The Special Deputy Tahasildar, Tribal Welfare, Eluru no.II, filed a complaint before the Special Deputy Collector, Tribal Welfare, Eluru, under Section 3(A) of the A.P. Scheduled Areas Land Transfer Regulation (1) of 1959 as amended by Regulation (1) of 1970 stating that the scheduled mentioned lands belong to Boragam Surya Rao, S/o. Boragam Subbaiah (paternal uncle of the petitioner herein) and sought to evict the mother of the respondents 5 & 6, Kunche Rajamani and another. After enquiry, the Special Deputy Collector, Tribal Welfare, was pleased to dismiss the said petition after recording a finding that the petition schedule lands have been in possession and enjoyment of the 1st respondent therein, i.e., the mother of this respondent and the 5th respondent; that she is the predecessor in title; and that her predecessors in title have been in possession of the subject land from 04.05.1917, having purchased the same. The said order has become final. The writ petition is filed by suppressing the facts. The case as reflected in the Fair Adangal Copy Register is very vague and the same is denied. Once an award

was passed, the official respondents have no power whatsoever to deal with any issue and they cease to have jurisdiction. The award was passed by the official respondents concerned after following the due procedure established by law. The right of these respondents 5 & 6 was already determined by the competent authority long time back. The said orders have become final. Hence, the writ petition is liable for dismissal *in limini*.

9. On 01.04.2016, this Court granted an interim direction as prayed for to the petitioner. The petitioner, who claims right, title and interest in the subject land, which is the subject matter of acquisition for Polavaram Irrigation Project has not filed any document. His contention is that the lands belonged to his ancestor, Late Boragam Subbaiah, who is his grandfather and that his father is one of the two sons of the said Late Boragam Subbiah. In the writ petition, he further stated that between the petitioner on one hand and the respondents 5 & 6 on the other, an LTR case is pending before the Special Deputy Collector and pendency of the said case is reflected in copy of the Fair Adangal. Claiming compensation in respect of the subject land and raising objection for payment of compensation in respect of the subject land to the respondents 5 & 6, the petitioner gave a representation, dated 16.02.2016, to the official respondents. His contention is that the same is not considered by the respondents though at one stage, the 2nd respondent sent a letter, dated 25.02.2016, to the 3rd respondent to enquire into the matter and to pay compensation. *Per contra*, the non-official respondents contend as follows: 'The Special Deputy Tahasildar, Tribal Welfare, Eluru no.II, filed a complaint before the Special Deputy Collector, Tribal Welfare, Eluru, under Section 3(A) of

the A.P. Scheduled Areas Land Transfer Regulation (1) of 1959 as amended by Regulation (1) of 1970 stating that the scheduled mentioned lands belong to Boragam Surya Rao, S/o. Boragam Subbaiah (paternal uncle of the petitioner herein). He sought to evict the mother of the respondents 5 & 6, Kunche Rajamani, and another from the property. After thorough enquiry, the Special Deputy Collector, Tribal Welfare, was pleased to dismiss the said complaint petition. He recorded findings to the effect that the schedule lands have been in possession and enjoyment of the 1st respondent therein, i.e., the mother of the respondents 5 & 6, who is the predecessor in title; that the predecessors in title of the non-official respondents have been in possession of the subject land from 04.05.1917, having purchased the same. The said order has become final. A copy of the said order is filed with the counter of the respondents 5 & 6.'

10. A perusal of the said order of the Special Deputy Collector, Tribal Welfare, Eluru, dated 25.07.2009, passed in S.R.No.69/78 reflects that the lands of Singanapalli Village of Polavaram Taluk, in Paimash Nos.74, 72, 73, & 95, of a total extent of Ac.8.00 have been in continuous possession and enjoyment of the 1st respondent therein i.e., the mother of the respondents 5 & 6, and her predecessors in title from 04.05.1917, i.e., even prior to the enactment of the Agency Tracts Interest and Land Transfer Act I of 1917 and that the provisions of the Agency Land Transfer Regulations do not apply to the case. Accordingly, the said authority dismissed the petition of Boragam Surya Rao, who is said to be the paternal uncle of the writ petitioner. It is not disputed before this Court that the said order has become final. In the afore-stated facts and circumstances, the non-official respondents contend that the

contention of the petitioner that the said respondents cannot hold the land in a tribal area and that the ratio in the decision in **VUPPULURI VEERA VENKATA RAJU v. SPECIAL DEPUTY TAHSILDAR, TRIBAL WELFARE, GANGAVARAM, EAST GODAVARI DISTRICT**¹, does not *prima facie* advance the case of the petitioner any further. They also submit that now that the award has been passed, the only remedy open to the petitioner is to invoke a provision of Section 64 of Act 30 of 2013 for reference of his case to the Land Acquisition, Rehabilitation and Resettlement Authority established under Section 51 of Act 30 of 2013 by invoking the provision of Section 64 of Act 30 of 2013, which reads as under:

“Reference to Authority – (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such applicant shall be made-

(a) if the person making it was present

¹ 2007 ALT Volume 5 Page 418

or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an applicant after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso."

11. In view of the factual matrix and the legal position obtaining, this Court finds that without expressing any opinion on the merits of the matter, the Writ Petition can be disposed of reserving liberty to the petitioner to invoke the provisions of Section 64 of Act 30 of 2013 and make an application to the Collector concerned requiring his matter be referred for determination of the authority.

12. Accordingly, the Writ Petition is disposed of reserving liberty to the petitioner as aforestated. It is needless to state that in the event the petitioner makes any such application, the Collector shall deal with the same, in accordance with the law & the procedure.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

M.SEETHARAMA MURTI, J

04th October, 2018

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320

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**WRIT PETITION No.8882 of 2016**

Date:04.10.2018

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