

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.1469 of 2017 (I.A.No.1 of 2017) in
WPMP.No.20461 of 2016 in WP.No.16588 of 2016

and

WVMP.No.3518 of 2016 (I.A.No.1 of 2016) in
WPMP.No.20461 of 2016 in WP.No.16588 of 2016

and

WP.No.16588 of 2016

COMMON ORDER :

In this Writ Petition, the petitioners assail proceedings in Rc.No.21/2015 Unit 13 Inavolu, dt.29.04.2016 issued by the 5th respondent in exercise of power conferred on the 5th respondent under Sections 48 and 50 of the Andhra Pradesh Capital Regional Development Authority Act, 2014 (for short, 'the Act'), holding that the 6th respondent is entitled to compensation under the said enactment in respect of land admeasuring Acs.21.25 cents in Survey No.26 of Inavolu Village, Thullur Mandal, Guntur District; and for a consequential direction to the 5th respondent to pay land compensation / annuity to the petitioners as per their application in Form 9.3.

2. The petitioners contend that they are absolute owners and possessors of an extent of Acs.19.25 cents in Survey No.26 of Inavolu Village, Thullur Mandal, Guntur District which they had purchased under registered sale deeds from their vendors after paying consideration on different dates; that pattadar pass books and title deeds were issued under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971 in their favour; that land pooling scheme was introduced by the State Government for acquisition of

land for the Capital Region of the State of Andhra Pradesh; that on issuance of declaration of intention to undertake the said scheme in Form 9.1 under Rule 6(2) by the 5th respondent, the petitioners submitted consent applications enclosing documents to substantiate their claim for benefits under the land pooling scheme.

3. They contend that their predecessors-in-title were granted *ryotwari* patta on 05.10.1977 in I.A.C.3291 / 1976 by the Deputy Tahsildar – Inams, Guntur under Section 4 of the Andhra Inams (Abolition and Conversion into Ryotwari) Act, 1956; that the 6th respondent also filed a claim petition on 08.12.2015 through the Inspector Auditor, Wakf, Guntur claiming ownership over an extent of Acs.21.25 cents in Survey No.26, including the land claimed by the petitioners; and in that application the latter had contended that the said land forms part of Peerla Manyam and sale of such lands without prior permission of the Wakf Board is void as per Section 51 of the Wakf Act, 1995; and that the 6th respondent relied upon a xerox copy of a document dt.31.03.1956 of the Assistant Commissioner which contained information relating to Inavolu Village Jagir for Kazi Services in Guntur District.

4. The petitioners further contend that the 5th respondent then referred the matter to the Government Pleader, District Court, Guntur for his opinion on 15.03.2016 in order to help him to take a decision in relation to payment of annuity and compensation for the said land;

and on the basis of the opinion dt.12.04.2016 of the Government Pleader, he passed the impugned order in favour of 6th respondent.

5. The counsel for petitioners contended that under Sections 48 and 50 read with Rule 8 of the Andhra Pradesh Capital Regional Development Authority (Formulation and Implementation) rules, 2015, the 5th respondent should himself come to an independent conclusion on the rival claims made by petitioners and 6th respondent and the 5th respondent cannot 'outsource' his decision-making to the Government Pleader at the District Court, Guntur and abdicate his power to take a decision in the matter, and therefore, the impugned order deserves to be set aside.

6. On 26.05.2016 in WPMP.No.20461 of 2016 in WP.No.16588 of 2016, this court directed the 5th respondent not to disburse the amount, pursuant to the impugned order dt.29.04.2016 passed by him, to the 6th respondent.

7. I.A.No.1 of 2017 is filed by the 6th respondent to vacate the said order.

8. In the counter-affidavit filed by the 6th respondent along with the Vacate Stay application it is contended that the order passed on 29.04.2016 by the 5th respondent holding that the 6th respondent is entitled to compensation under the Act is valid in law and that the 5th respondent passed the order after examining the claims in detail. It is alleged that the petitioners have no semblance of right to claim land

compensation / annuity in their 9.3 consent application, that the title of the petitioners to the subject property is also disputed and that their plea is time-barred under Section 6 of Wakf Act, 1954 as well as Section 6 of the Wakf Act, 1995. It is also contended that the plea of adverse possession or limitation cannot be raised against the 6th respondent in view of Section 107 of the Wakf Act, 1995. Reliance is placed on a Survey Commission's Report dt.31.03.1956 of Inavolu Village Jagir, Kazi Services, Guntur District. It is also stated that petitioners played fraud and obtained ryotwari patta on 05.10.1997 under the provisions of the Andhra Pradesh (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 and that the Village Fair Land Register allegedly indicated that the land was being used for religious purpose since time immemorial as a grant for Peerla Manyam. The 6th respondent also stated that the contention that the 5th respondent ought not to have called for the opinion from the Government Pleader in the matter and he was influenced by it, is far-fetched, that it is a misconception and such contention cannot be countenanced. Certain decisions rendered under the Wakf Act have also been relied on in the counter-affidavit.

9. I have noted the contentions of both sides.

10. Since it is the principal contention of the counsel for petitioners that the 5th respondent had not independently applied his mind to the rival claims of petitioners and the 6th respondent in regard to the subject land and had outsourced his decision-making to the

Government Pleader in the District Court, Guntur, and since this contention is opposed by the 6th respondent, I shall first consider the said point.

11. A consideration of the impugned order dt.29.04.2016 passed by the 6th respondent indicates that the petitioners filed 9.3 consent applications under the land pooling scheme along with others in respect of an extent of Acs.19.25 cents in Survey No.26 of Inavolu Village, Thullur Mandal, Guntur District and another person filed a claim for a different extent of Acs.2.00 in the same survey number; that the 6th respondent filed a requisition on 11.05.2015 asserting that this land of Acs.21.25 cents in Survey No.26 of Inavolu Village, Thullur Mandal, Guntur District is Peerla Manyam as per Village Fair Land Register and it is Wakf property and payment of compensation should be made in favour of the Chief Executive Officer, Andhra Pradesh State Wakf Board, Hyderabad.

12. The contentions of both sides were thereafter extracted by the 5th respondent in the impugned order.

13. The 5th respondent noted that the Wakf Board had not filed any cases for recovery of property in any Civil Court nor had it taken any action to evict unauthorized persons, though the encumbrance certificate issued by the Registration Department indicates that there was alienation of Khazi Service Inam lands which are Wakf lands by private persons from 1985 onwards, and that Adangals, I.B. Register

and Webland and enjoyments were recorded as well as pattadar pass books and title deeds were issued to the persons in occupation under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971, but they are to be considered as having been erroneously issued. While making the above observation, there is no discussion about how the 2nd respondent came to the conclusion that the subject land is a Wakf land.

14. Next, the 5th respondent records that the matter was placed before the Government Pleader, District Court, Guntur on 15.03.2016 for detailed examination and legal opinion to take decision for further action relating to payments of annuity / compensation for the land, and the Government Pleader gave an opinion through his letter dt.12.04.2016.

15. The contents of the opinion of the Government Pleader are then extracted by the 5th respondent and then a conclusion is drawn on that basis that the petitioners and others claimants were not entitled for the payment of land compensation / annuity as claimed in 9.3 consent application by them, and that their claims are rejected. It is then stated that in exercise of powers conferred on 5th respondent under Sections 48 and 50 read with Rule 8 of the Andhra Pradesh Capital Regional Development Authority (Formulation and Implementation) Rules, 2015, the ownership of this land is confirmed on the Andhra Pradesh State Wakf and its representative Chief Executive Officer and that the latter is eligible to enter into agreement with the Andhra

Pradesh Capital Regional Development Authority in land pooling scheme and entitled for returnable benefits for this land. It is however stated that this order would not preclude the petitioners from approaching any competent Civil Court.

16. It is this clear that the 5th respondent had simply ‘outsourced’ his decision-making power under Sections 48 and 50 of the Act to the Government Pleader of the District Court, Guntur and abdicated his responsibility under the Act to apply his mind and decide entitlement of the parties to the land compensation / annuity under the provisions of the Act. This is impermissible since such a decision can only be taken by the 5th respondent. So, the decision of the 5th respondent is vitiated and is unsustainable.

17. Merely because the 5th respondent observed that petitioners can approach a competent Civil court, the petitioners cannot be prevented from approaching this Court and invoke Article 226 of the Constitution of India challenging the impugned order passed by the 5th respondent.

18. In this view of the matter, the Writ Petition is allowed. The order dt.29.04.2016 of the 5th respondent is set aside. The 5th respondent is directed to independently apply his mind to the rival claims of the petitioners and the 6th respondent for land compensation / annuity under Sections 48 and 50 of the Act and decide the same

uninfluenced by the Government Pleader's opinion contained in his letter dt.12.04.2016.

19. This exercise shall be completed within three (03) months from the date of receipt of copy of the order and a fresh hearing shall be conducted in the matter by the 5th respondent after giving notices to the petitioners, the 6th respondent and any other claimants.

20. Accordingly, the Writ Petition is allowed with the above directions. Consequently, WVMP.No.1469 of 2017 (I.A.No.1 of 2017) in WPMP.No.20461 of 2016 in WP.No.16588 of 2016 and WVMP.No.3518 of 2016 (I.A.No.1 of 2016) in WPMP.No.20461 of 2016 in WP.No.16588 of 2016, are dismissed. No order as to costs.

JUSTICE M.S.RAMACHANDRA RAO

Date: 04.10.2018

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