

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.18479 of 2019

Narmali Anjaiah and others

...Petitioners

Vs.

The State of Telangana,
Rep. by its Principal Secretary,
Revenue Department (Land Acquisition),
Secretariat Buildings, Saifabad,
Hyderabad, and others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 30.08.2019

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment
may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wishes to
see the fair copy of the Judgment? Yes/No

CHALLA KODANDA RAM, J

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!Counsel for the Petitioners

: Smt. B. Rachna Reddy

Counsel for the Respondents

: GP for Irrigation
Standing Counsel for NHA
GP for Revenue (LA)
Assistant Solicitor General

< Gist :

> Head Note:

? Cases referred:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No. 18479 of 2019****ORDER:**

Petitioners assert that the land acquisition proceedings were initiated invoking the provisions of the National Highways Act, 1956; that they are all land losers and while passing Award dated 27.03.2019, the respondent authorities have failed to consider their claim in relation to the rehabilitation and resettlement aspects and that they are not satisfied with the compensation awarded as the same is not in line with the real market value and thereby, they filed the present Writ Petition challenging the said Award.

Learned counsel for the petitioners while reiterating the case of the petitioners, would submit that by virtue of the notification issued by the Central Government in S.O.No.2368(E) dated 28.08.2015, under Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'the Act'), the matters with respect to determination of compensation, rehabilitation and resettlement were made applicable to the cases of land acquisition under the National Highways Act, 1956 (for short 'the 1956 Act'), as well, though under Section 105 of the

Act, the provisions of the Act were initially excluded from its purview. She would also submit that without providing for rehabilitation and resettlement benefits, taking possession of the land is impermissible, thereby, prays for issuance of directions to the respondents not to carryout the work until the said aspects are determined by the competent authority in terms of Section 3G of the 1956 Act.

Learned Standing Counsel for the National Highways Authority of India appearing for the seventh respondent would submit that the competent authority would consider not only with regard to the aspect of higher compensation but also with regard to rehabilitation and resettlement issues and that petitioner No.17 had already invoked sub-section (5) of Section 3G of the 1956 Act and submitted an application before the Arbitrator for higher compensation, and therefore, the petitioners may be relegated to the Arbitrator by invoking sub-section (5) of Section 3G of the 1956 Act.

Learned Assistant Government Pleader would submit that Section 38 of the Act deals with the aspect of monetary compensation and in terms of the second proviso thereof, the aspects of rehabilitation and resettlement are required to be

fulfilled by the State in a time frame of eighteen (18) months, as such, there cannot be any stoppage of the work.

For appreciation of the arguments of the respective parties and as the issue is cropping up on every alternate day, Section 38 of the Act may be reproduced hereunder:

38. Power to take possession of land to be acquired.—(1)

The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30.

Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award. (emphasis applied)

Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired.

(2) The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

As can be seen from the above, the argument of the learned Assistant Government Pleader commends acceptance.

It is to be noted that in all cases, where there is delay in providing resettlement and rehabilitation, execution of the work cannot be stopped. Even assuming that there is some delay, it would not be in the interest of the project, which is of national importance and in public interest. Stoppage of work would only result in escalation of project costs apart from depriving the benefits of execution of the projects to the public at large. The three principles which are to be kept in this kind of cases, as repeatedly emphasized by the Apex Court in various judicial pronouncements, are *prima facie* case, balance of convenience and irreparable loss. The aspect of irreparable loss has also been further elaborated that the loss should be of such nature which cannot be compensated monetarily. Inasmuch as the said three aspects are absent in the case on hand, as admittedly, the Award was passed only on 27.03.2019 and in view of the fact that there is eighteen (18) months time provided for fulfilling the obligations under Section 38 of the Act with respect to rehabilitation and resettlement, the prayer of the learned counsel for the petitioners for stoppage of the work cannot be acceded to. As on date, petitioner No.17 had approached the third respondent – District Collector, Land Acquisition Department, Kamareddy District, with a request to refer the matter to the Arbitrator. The third respondent shall refer the case of petitioner No.17 to the

Arbitrator expeditiously. So far as the other petitioners are concerned, they are required to make applications therefor. In view of the same, on filing such applications, the third respondent shall consider and dispose of the same within six (6) months thereafter, without fail. Likewise, though the Act provides for eighteen (18) months with respect to providing the components of rehabilitation and resettlement, keeping in mind the outer limit of the time fixed, the third respondent shall endeavour to complete the process as expeditiously as possible.

Subject to the above, this Writ Petition is disposed of.

Miscellaneous Petitions, if any pending, shall stand closed.

There shall be no order as to costs.

CHALLA KODANDA RAM, J

30th AUGUST, 2019.

Note: L.R. Copy be marked.

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