

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 4839 OF 2016

O R D E R:

This Writ Petition is filed to declare the action of the 1st respondent in not constituting the 'Authority' under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for brevity 'the Act') and the Memo dated 10.02.2016 issued by the 3rd respondent as arbitrary and violative of Section 51 of the Act.

The brief facts, which are not in dispute, are as follows:

The petitioners claim right over the house property bearing No. 7-1-615/616 situated in T.S. No. 1/2, Ward No. 5, Block-H of Ameerpet Village & Mandal, Hyderabad, tracing their relationship with one late Rahamat Yar Jung, who is the original owner of the property. The family pedigree of the said Rahamat Yar Jung was set out in para 4 of the affidavit filed in support of the Writ Petition. While so, the notification in terms of Section 11 of the Act, dated 04.07.2015 was issued and published in the Gazette on 07.07.2015, wherein, proposals were made for acquiring the subject property for the purpose of metro rail project. The case of the petitioners is that in the notification, the name of one Sri Md. Masarathulla, S/o Karimatullah, the 4th respondent herein only was shown.

The petitioners had submitted their claim petition on 13.11.2015 along with documentary evidence to prove their entitlement to get compensation for the subject land. During the course of inquiry under Section 21 of the Act, the petitioners were heard personally on 13.11.2015 and 23.11.2015 and

ultimately, the final Award was passed on 05.12.2015, rejecting their claim on the ground that they failed to establish their title to the property.

The petitioners assert that they were not communicated with the Award, however, on coming to know of passing of the Award, on 05.12.2015, they obtained a copy thereof, and on 04.01.2016, they had made an Application to the Collector seeking reference to the 'Authority' under Section 64 of the Act. As there was no 'Authority' constituted, the petitioners, apprehending that the entire amount of compensation would be apportioned to unofficial Respondents 4 to 13, had filed Writ Petition No. 440 of 2016, wherein this Court granted interim order on 06.01.2016 restraining the Land Acquisition Officer from disbursing the Award amount in favour of Respondents 4 to 13. Thereafter, on 10.02.2016, the Collector rejected the request of the petitioners to refer the matter to the 'Authority' holding that they had failed to prove title to the property and thus, were not entitled to receive the compensation. Challenging the said order dated 10.02.2016, the present Writ Petition is filed asserting that neither the Land Acquisition Officer nor the Collector is competent to decide the title disputes and if at all such a dispute is raised, the Collector has no option but to refer the same to the 'competent authority'.

Learned counsel for the petitioners submits that though the Land Acquisition Officer, in the process of inquiry under Section 21 of the Act, is entitled to consider / decide to whom the compensation is to be paid, when an Application is made in terms of Section 76 of the Act raising a dispute as to the

apportionment thereof, the Collector is mandated to refer such dispute to the 'Authority' constituted in terms of Section 51 of the Act, which is required to decide the same in terms of Section 64. The learned counsel for the petitioners has placed reliance on the judgment of the Division Bench of this Court in **Govindu Venkata Reddy v. K. Krishna Rao**¹, decided under Section 30 of the Land Acquisition Act, 1894, wherein it has been held that the scheme of the 1894 Act and the one under Act 30 of 2013 is *in pari materia* except to the effect that the 'civil Court' referred to in Section 30 of the 1894 Act has been replaced with a 'competent authority' in terms of Section 51 read with Section 64 of the 2013 Act. In this context, it is apt to note the judgment in **Govindu Venkata Reddy's** case which reads as under:

“ 11. Thus, the Land Acquisition Act indicates a clear-cut scheme on the questions at issue, viz., where conflicting claims to the land acquired, or to the compensation payable, are preferred before the Collector (Land Acquisition Officer). He may choose either to decide the matter himself, or to refer the same to Civil Court. If he chooses to follow the first alternative, he will determine the area of the land, the amount of compensation and also the persons who, according to him, are entitled to compensation, and pass an award incorporating his decision on all these three questions. In such a case, the only remedy of the person aggrieved by the award is to ask for a reference under Section 18, within the period of limitation prescribed therein. If such an application is made, the Collector is bound to make a reference, notwithstanding his decision on the applicant's claims, and he is also bound to deposit the amount in the Court. But where he chooses to adopt the second alternative, he will determine the area of the land, the quantum of compensation and then make a suo motu reference under Section 30 of the Act to Civil Court, to decide the conflicting claims of the claimants before him. In such a case also, he has to send the amount of compensation determined by him, to the Court. Besides the

¹ AIR 1982 AP 86

above, a person who was not present or represented before the Collector during the award enquiry had a right raise a dispute as to apportionment or with respect to the right to receive the compensation, before the Collector, after the passing of the award. But, in such a case, the Collector may, or may not make a reference, having regard to the facts and circumstances of the case; and if Collector refuses to make such a reference, the only remedy of the persons concerned would be to institute a suit to establish his claims and contentions.”

The scheme of the Land Acquisition Act, 1894 and that of Act 30 of 2013 is almost identical, at least so far as the issues concerning determination of compensation, apportionment of compensation, disputes arising in determination of the compensation and adjudication process of such disputes. In terms of Section 76 of the 2013 Act, when the dispute is with respect to apportionment of compensation determined, the proper course for the Collector is to refer the same to the ‘Authority’ constituted under Section 51 of the Act.

Though, initially, the said proposition was disputed by Sri M.V. Suryanarayana, learned counsel for Respondents 4 to 13, on a careful perusal of the judgment, a consensus has already been arrived at to the effect that when a dispute is raised with respect to the title and entitlement of an individual claimant, and such dispute not having been accepted by the Land Acquisition Officer, when a request is made to refer such dispute to the ‘competent authority’ for adjudication of the final entitlement in terms of Section 64, the Collector is under obligation to comply with the same. However, Sri Suryanarayana would submit that the claim of the petitioners, even if it were to be accepted, would only be about 4%, as, their claim, essentially, relates back to the claim of M/s Abbasi Begum, the

other claimants, particularly, Respondents 4 to 13 are also entitled to major part of the compensation. In those circumstances, to bring a quietus to the controversy, the learned counsel has brought a proposal that the amount equivalent to percentage of claim made by the petitioners can be deposited before the 'Authority' and the latter cannot have any objection for disbursal of the balance amount as per the Award.

Learned counsel for the petitioners, on instructions, filed the affidavit of the 1st petitioner for and on behalf of the petitioners agreeing to the said proposal. Para 9 thereof reads as under:

“ It is submitted that petitioners herein have no objection for payment of compensation in favour of the claimants whose claims have been accepted by the Land Acquisition Officer to the extent of their undisputed share subject to the condition that the remaining amount of compensation awarded on which the petitioners have claim as contended by them before the Land Acquisition Officer is deposited before the Authority constituted under Section 51 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 and the reference with regard to the claim of the petitioners is referred to the authority constituted under Section 51 to the extent of claim of petitioners from and out of the total compensation awarded by the Land Acquisition Officer. It is submitted that petitioner's mother Smt. Afzal S.M. Khan is entitled to 25% share from and out of total 16.66% share of Yousufunnisa Abbasi Begum (mother of Smt. Afzal S.M. Khan) in the entire property under acquisition. It is pertinent to mention that petitioner No.1 is entitled to 40%, petitioner No.2 is entitled to 20%, petitioner No.3 is entitled to 20% and the petitioner's other sister namely Mrs. Siddika Almaina are entitled to 20% but she is not a petitioner in the present Writ Petition. Therefore, petitioners have no objection for contesting respondents withdrawing amounts which they are admittedly entitled to excepting the share of legal heirs of late Smt. Afzal S.M. Khan.”

Though the petitioners have mentioned as percentage of the share, it is agreed between the petitioners as well as the learned counsel for Respondents 4 to 13 that, in real terms, the amount of compensation in the event the petitioners succeed in establishing their claim would come roughly about 4.20% of the total compensation, which, obviously, includes the other statutory benefits under the Act and the accrued interest, if any.

In the light of the above, the Writ Petition is allowed, directing the Collector to refer the dispute to the Authority constituted under Section 51 and deposit the amount equivalent to 4.20% of the total amount that is payable under the Award with the Authority under Section 77, which, in turn, shall keep the said amount in interest-bearing fixed deposit with any nationalised bank as is required to be done in terms of Section 80 of the Act. Since there is no impediment for disbursement of the balance amount to the persons, who are entitled to in terms of the Award, the Land Acquisition Officer is directed to disburse the same. No costs.

The above-quoted judgment of the Division Bench makes it amply clear that when a reference is sought on a dispute being raised or in cases where there is no dispute raised, but the Land Acquisition Officer entertains a doubt to whom the compensation amount is likely to be paid, he is mandated to refer the same in terms of Section 76 of the Act to the 'competent authority' for determination under Section 64 of the Act. As this issue is likely to crop up in a large number of cases, and there being no judgment rendered under 2013 Act, necessary administrative instructions may be required to be

issued by the State to the respective Collectors / Land Acquisition Officers with regard to mandatory nature of the functions to be discharged when such situation arises.

As Writ Petition No. 440 of 2016 was filed when there was no 'Authority' and on constitution of such an 'Authority', the Application having been rejected, the relief claimed therein became infructuous and the same is accordingly, dismissed, by an order passed today.

The miscellaneous Applications, if any pending in this Writ Petition shall stand closed.

CHALLA KODANDA RAM, J

13th March 2019

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