

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Petition Nos.7455 and 19932 of 2019

COMMON ORDER:

Both these writ petitions are disposed of by this common order as the subject matter in both these writ petitions is one and the same.

The petitioner in W.P.No.19938 of 2019 claims to be the owner and possessor of land in Sy.No.39/36 for an extent of Ac.2.09 gts., and in Sy.No.76 for an extent of Ac.1.07 gts., totaling Ac.3.16 gts., in Jagannadhapuram village, Sattupally Mandal, Khammam District, and has filed the writ petition with the following prayer:

..... issue a writ of mandamus declaring the inaction of the respondent authorities with regard to non-passing of an award and non-payment of compensation to the writ petitioner in respect of land situated in Sy.No.39/36 in an extent of Ac.2.09 gts., and in Sy.No.76 in an extent of Ac.1.07 gts., (total Ac.3.16 gts.,) in Jagannadhapuram village, Sattupally Mandal, Khammam District, as being illegal and arbitrary and violative of the rights guaranteed under Articles 14, 21 and 300-A of the Constitution of India and issue appropriate directions for payment of compensation and to pass....

The petitioner in W.P.No.7455 of 2019 is a villager of Rudhrakshapalli village, Sathupalli Mandal, Khammam District, and has filed the writ petition with the following prayer:

.....issue Writ, Order of Direction, more particularly one in the nature of Writ of Mandamus declaring the action of the respondents in referring the name of the 5th respondent in respect of Government Assigned land meant for ST people in Sy.No.39/36 to an extent of Ac.2.10 gts., Sy.No.76 to an extent of Ac.1.07 gts., at Jagannadhapuram village, Sathupalli Mandal, Khammam District, and also direct the respondents No.2 to 4 not to award any compensation to the 5th respondent, consequently direct the respondents 1 to 4 to conduct enquiry on the application, dated 04.02.2019, filed by the petitioner and to pass

This court, vide order, dated 16.09.2019, has clubbed the two cases.

It is the case of the petitioner in W.P.No.19932 of 2019 that he is the owner of the land in Sy.No.39/36 for an extent of Ac.2.09 gts., and in Sy.No.76 for an extent of Ac.1.07 gts. (total Ac.3.16 gts.) in Jagannadhapuram village, Sattupally Mandal, Khammam District, and in support of his case, he has filed Pattadar Passbooks and title deeds, Adangals (pahanies), Final Patta Certificate, and the Will executed by Sri Bonam Pulla Reddy, S/o.Rami Reddy in his favour, dated 14.02.1983, to substantiate his claim that he is the owner of the subject property. It is the case of the petitioner that pursuant to the requisition proposals for alienation of Government land/Assignment lands to an extent of Ac.177.29 gts., for the purpose of external dump yard of Kistaram OCP of SCCL Ltd., in the village limits of Jagannadhapuram of Sathupalli Mandal under G.O.Ms.No.571, dated 14.09.2012, the Special Deputy Collector (LA) & Land Acquisition Officer, IPT & Railways, Khammam, has issued sanction orders vide proceedings in Rc.No.C/11/2-018, dated 09.07.2019, and as per the notification, the lands of the petitioner were acquired, but till date, due to the legally untenable and frivolous objections filed by the writ petitioner in W.P.No.7455 of 2019, the award amounts are not disbursed to him.

The learned Counsel appearing for the petitioner in W.P.No.19932 of 2019 has drawn the attention of this Court to the award enquiry vide Rc.No.C/11/2018, dated 09.07.2019, wherein at page No.11 at para 2 it is held as under:

Sri Ganta Srinivasa Rao, S/o.Ratnam have filed W.P.No.7455 of 2019 before the Hon'ble High Court with a request to not to pay the land compensation in Sy.No.39/36 to an extent of Acs.2.10 gts., and Sy.No.76 to an extent of Ac.1.07 gts., in favour of 5th respondent i.e., Chilukuri Jagan Mohan Reddy, S/o.Raghava Reddy. Hence, the

land compensation has not awarded to any one awardees, after receiving the final orders in the above WP, the same will be awarded in separate proceedings.

Even though, no stay has been granted by this Court in W.P.No.7455 of 2019 nor is there any order directing the official respondents not to disburse the award amount to anyone, yet the official respondents, on their own volition, are not disbursing the amount, only on account of the pendency of the writ petition No.7455 of 2019. It is the further contention of the learned Counsel that the writ petitioner in WP No.7455 of 2019 is an influential personality in the village, and even though he was neither the owner, possessor nor having any personal interest in the subject property, the authorities under his influence have not disbursed the compensation amount. The petitioner in W.P.No.7455 of 2019 has no *locus* to file any objections under the scheme of things envisaged under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short, 'the Act'). The learned Counsel has drawn the attention of this Court to the various provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, especially Sections 3(n), 3(v), 3(w), 3(x), 15, 23, 64, 65, 75, 77 and 77 thereof to canvas his case that a stranger to the property under acquisition cannot have any say nor can he raise any objection for payment of the compensation to the rightful owner.

Learned Counsel for the petitioner in W.P.No.19932 of 2019 submits that on the basis of the will deed executed by Sri Bonam Pulla Reddy in favour of the petitioner, the subject lands were mutated in the name of the petitioner, he is in physical possession and enjoyment and continues to be the pattedar of the above said survey numbers. That

due to the fictitious objections filed by the petitioner in W.P.No.7455 of 2019, the award amount has not been disbursed by the authority to the petitioner in W.P.No.19932 of 2019, but the same has been referred to the competent authority under Section 74 of the Act.

In the counters filed by the official respondents in both the writ petitions, it is stated that the District Collector, Khammam, forwarded the representation given by the petitioner in W.P.No.7455 of 2019 to the respondent No.2 in W.P.No.19932 of 2019 i.e. The Special Deputy Collector (LA) & Land Acquisition Officer, and in turn, the respondent No.2-Land Acquisition Officer has forwarded the representation to Tahsildar/respondent No.4 to enquire into the matter. In the enquiry conducted by the Tahsildar, it has come to light that the land was originally assigned to one Sri Bonam Pulla Reddy, S/o.Rami Reddy by the then Tahasildar, Madhira, vide Final Patta Certificate No.RDIS.7096/61/E1 in Sy.No.39/36 to an extent of Ac.2.09 gts., and subsequently vide Final Patta Certificate in Rc.No.A3/2832/82, dated 11.11.1982 to an extent of Ac.1.07 gts., and the said extents have been recorded in the Faisal Patties of 1969 and 1983.

Per contra, the learned counsel for the petitioner in W.P.No.7455 of 2019 while reiterating that the land that is sought to be acquired by the authorities is an assigned land, which was assigned to the vendor of the 5th respondent/petitioner in W.P.No.19932 of 2019, has contended that the assignment made in favour of the original assignee should be cancelled as the same was issued contrary to the assignment policy and the rules thereunder, that the vendor of the 5th respondent/petitioner in W.P.No.19932 of 2019 was having vast tracts of land and therefore, no assignment ought to have been made by the authorities and sought for cancellation of the assignment. In case, the lands are acquired for the purpose of external dump yard of Kistaram OCP of

SCCL Ltd., in the village limits of Jagannadhapuram of Sathupalli Mandal under G.O.Ms.No.571, dated 14.09.2012, the award amount should not be paid to the writ petitioner in W.P.No.19932 of 2019, but should be disbursed among the Scheduled Castes and Scheduled Tribes.

In W.P.No.7455 of 2019, counter is filed by the respondents No.1 to 4, on the very same lines as that of the counter filed in W.P.No.19932 of 2019.

Heard Sri V.Mallik, the learned Senior Counsel arguing on behalf of M/s.B.Geeta, the learned Counsel for the petitioner in W.P.No.19932 of 2019, Sri P.Giri Krishna, the learned Counsel for the petitioner in W.P.No.7455 of 2019, and the learned Government Pleader for Land Acquisition.

Whenever the lands are acquired for any public purpose or for any other requirements as envisaged under the Act, the procedure contemplated under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which was enacted in the year 2013, is to be followed. The procedure contemplated under the Act is a comprehensive one and the same has to be followed by the authorities while acquiring the lands and a detailed procedure is envisaged, which gives numerous rights to the land owners and also imposes certain obligation and the duties on the authorities.

In order to dispose of the present writ petitions, it is necessary to extract the following Sections of the Act:

Section 3(n) defines "*holding of land*" means the total land held by a person as an owner, occupant or tenant or otherwise;

Section 3(x) defines "*person interested*" means –

- (i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

- (ii) the Scheduled Tribes and other traditional forest dwellers, who have lost any forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (2 of 2007);
- (iii) a person interested in an easement affecting the land;
- (iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and
- (v) any person whose primary source of livelihood is likely to be adversely affected;

Section 15 defines "Hearing of objections":--

- (1) Any person interested in any land which has been notified under sub-section Hearing of (1) of Section 11, as being required or likely to be required for a public purpose, may within objections, sixty days from the date of the publication of the preliminary notification, object to-
 - (a) the area and suitability of land proposed to be acquired;
 - (b) justification offered for public purpose;
 - (c) the findings of the Social Impact Assessment report
- (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by an Advocate and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 11, or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled, for the decision of that Government.
- (3) The decision of the appropriate Government on the objections made under sub-section (2) shall be final.

A reading of the above makes it ample clear that the petitioner in

W.P.No.7455 of 2019 is neither the owner nor an interested person

within the meaning of Sections 3(n) and 3(x) of the Act. The petitioner in W.P.No.19932 of 2019 has filed ample evidence to show that the lands in Sy.Nos.39/36 and 76 belong to him and that he is the owner and possessor of the same. The District Collector/2nd respondent without going into the genuinity of the representation/complaint made by the petitioner in W.P.No.7455 of 2019 has mechanically referred the matter to the competent authority under Section 74 of the Act.

A reading of Section 15 of the Act clearly shows as to who can file the objections before the Land Acquisition Officer for objecting to the payment of the compensation amount as per the award. *Prima facie*, the amounts will be paid to the person whose name finds place as the owner in the notification under Section 11 of the Act. An elaborate procedure has been contemplated under the Act, in case the Land Acquisition Officer comes to a *prima facie* conclusion that the claim of the objector is genuine, he can refer the same under Section 74 of the Act to the competent authority for apportionment. But, in this case, the objections of the person i.e. the petitioner in W.P.No.7455 of 2019 is neither the owner nor can be called as a person interested, and as such, the very reference made by the Land Acquisition Officer is not only bad but the same is unwarranted.

Section 23 defines Enquiry and land acquisition award by Collector:--

On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which any person interested has stated pursuant to a notice given under Section 21, to the measurements made under Section 20 and into under Section 21, to the value of the land at the date of the publication of the notification, and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of –

- (a) the true area of the land:
- (b) the compensation as determined under Section 27 along with Rehabilitation and Resettlement Award as determined under Section 31 and which in his opinion should be allowed for the land; and
- (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

The provisions of the Act are enacted to get a better compensation to the land looser and cannot be used as a tool to harass the genuine land owner, if there is a serious dispute to title by any of the interested persons like other members of family, co-owner, etc., the Land Acquisition Officer is required to refer the same to the competent authority under Section 64 of the Act, but not otherwise.

Section 64 defines 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 application shall be made—

- (a) if the person making it was present 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 application 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.

Section 76 defines Dispute as to apportionment:--

When the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority.

Section 77 defines Payment of compensation or deposit of same in Authority:--

- (1) On making an award under Section 30, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by someone or more of the contingencies mentioned in sub-section (2).
- (2) If the person entitled to compensation shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the

Authority to which a reference under Section 64 would be submitted:

Admittedly, the writ petitioner in W.P.No.7455 of 2019 is totally a stranger who does not have any semblance of right, title, possession, etc. to lay any claim to the compensation award, therefore, his objection ought to have been rejected by the authorities. Admittedly, the petitioner in W.P.No.7455 of 2019 does not have any semblance of right or title to the subject property and as such, the very reference by the Land Acquisition Officer to the competent authority under Section 64 of the New Act is not only bad but the same is contrary to the provisions of the Act.

In view of the above, the writ petition in W.P.No.19932 of 2019 is allowed and the petitioner is directed to approach the competent authority by making an application for payment of the compensation, and on such application being made, the competent authority shall pass necessary orders for payment of compensation amount to the petitioner on the said application within a period of two weeks thereafter. The authorities, under the guise of some objections or pendency of any proceedings, cannot stop the payment of compensation to the petitioner in W.P.No.19932 of 2019. It is needless to mention that the petitioner is bound by the proviso to Section 77 of the Act, which reads as under:

.....

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

By no stretch of imagination, the prayer sought for by the petitioner in W.P.No.7455 of 2019 can be granted as he does not fit into the scheme of things envisaged under the Act. Even for the sake of argument, if the representation given by the petitioner in W.P.No.7455

of 2019, to cancel the assignments made to the vendor of the petitioner in W.P.No.19932 of 2019 is ultimately ordered and the assignment is cancelled, there is absolutely no legal requirement for disbursing the compensation amount for the lands in Sy.Nos.39/36 and 76 to the villagers of Jagannadhapuram village.

For the above mentioned reasons, W.P.No.7455 of 2019 is devoid of merit and the same is hereby dismissed. However, it is made clear that this order does not preclude the petitioner from making another application before the competent authority for cancellation of the assignment for whatever reason and in case, the authority concerned is of the view that any enquiry has to be conducted, the same shall be conducted in accordance, with the rules and procedure contemplated under the relevant Act. It is needless to mention that the petitioner in W.P.No.7455 of 2019 and W.P.No.19932 of 2019 will be put on notice and given an opportunity of hearing before passing any orders on the same.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

A.ABHISHEK REDDY, J

Date :15.06.2020

Note : L.R. Copy to be marked.

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