

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT APPEAL Nos.50 and 58 of 2016

COMMON ORDER: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

W.A.No.58 of 2016 is arising out of order dated 18.12.2013 passed in W.P.No.25971 of 2013 by the learned Single Judge.

The facts of the case reveal that a writ petition was preferred by A. Malleshham, who is respondent No.1 in the present writ appeal, stating that he was the owner of land admeasuring Ac.04.17 guntas in Sy.No.167/AA situated in Dacharam Village, Jinnaram Mandal, Medak District, and without following due process of law, the respondents therein were taking over his land.

In the writ petition a reply was filed by the District Collector, Medak District, Sanga Reddy, stating that in the year 1960, the patta lands and the Government lands to an extent of Acs.2,399.04 guntas covering seven villages were acquired for establishment of Air Force Academy at Dundigal Village and later on the Government of India has granted sanction for establishment of Open Test Range facility for Radar Cross Section Antenna Measurements by the Director (RCI), Hyderabad. It was also stated that the Government of India transferred land admeasuring Acs.1,492.16 guntas to RCI for the said project and the petitioner's land admeasuring

Ac.4.17 guntas in Sy.No.167 was to be acquired. A joint inspection took place on 26.11.2011 and on an affidavit it was stated by the Collector that the matter is under enquiry and as the defence agency is the requisitioning department, has to place a requisition and thereafter, an award will be passed and compensation will be paid to the petitioner. In those circumstances, the learned Single Judge has allowed the writ petition and passed the following order:

“In the light of the above-noted contents of the counter affidavit of respondent No.2, which clearly reveal that the petitioner’s land admeasuring Acs.4.17 guntas in Survey No.167 is required by the RCI for establishment of Open Test Range facility for Radar Cross Section Antenna Measurements, the respondents are directed to initiate the land acquisition proceedings, complete the same and pay compensation to the petitioner within a period of three months from the date of receipt of a copy of this order.

As a sequel to disposal of the writ petition, W.P.M.P.No.32073 of 2013 filed by the petitioner for interim relief is disposed of as infructuous.”

Meaning thereby, the Collector, Sangareddy District, on affidavit has stated before this Court that no award has been passed in the matter and no compensation has been paid. In those circumstances, the learned Single Judge has directed the District Collector, Sangareddy, to pass an award and to pay compensation. After the order was passed, the State Government preferred a review petition i.e., Review WPMP.No.28256 of 2015 and came up with altogether new plea that an award was passed in the year 1962 and compensation was paid to the father of the petitioner. The State Government except for making a bald statement that an award was passed and compensation was paid, did not place

the award on record nor furnished any details in respect of compensation in spite of grant of repeated opportunities. In those circumstances, the learned Single Judge has arrived at a conclusion in review petition that no inference can be drawn only on the basis of a bald statement that compensation was paid to the petitioner's father. Paragraphs 8 and 9 of the order passed in review petition are as under:

"8. The learned Government Pleader for Revenue (TS) has placed heavy reliance upon the order dt. 31.03.2015 of the learned Single Judge of this Court passed, dt.31.03.2015, in W.P.Nos.32743 of 2014 and batch wherein he has rejected the claims of other similarly placed persons. A perusal of this order would show that the Government was able to place before the Court, copies of notifications issued under Sections 4(1), 6 and 9, and also the Awards proving that not only the land acquisition proceedings were initiated, but also the same were completed. As noted above, in respect of the subject land, except copy of declaration under Section 6 of the Act, no other documents connected with the acquisition have been filed. When this Court has allowed the writ petition based on the specific stand taken by applicant No.2 that the subject land was taken over for the purpose of Open Test Range Facility by RCI, unequivocal documentary evidence needs to be produced by the applicants to persuade it to review its order. Merely based on a copy of the declaration under Section 6 of the Act and the Ain Izafa (assessment free) lands certificate issued by the officer concerned, an inference that compensation has been paid to the petitioner cannot be drawn. There can be no presumption that in every case where acquisition proceedings are initiated the same would have culminated in passing of Award and payment made to the owner of the land and more so, such a presumption cannot be drawn in a review petition for denying the relief already granted in the writ petition. Even if there was possibility of Award being passed in respect of the subject land, unless unimpeachable evidence is placed before the Court, it cannot presume passing of such Award. As the applicants have failed to file such evidence, despite this Court granting adjournments time and again, I do not find any reason to review order dt. 11.12.2013 in W.P.No.25971 of 2013.

9. For the above mentioned reasons, I do not find any merit in this application and the same is accordingly dismissed."

W.A.No.50 of 2016 is arising out of order dated 04.12.2015 passed in Review WPMP.No.28256 of 2015 in W.P.No.25971 of 2013.

Before this Court also the State Government except making an oral statement that award was passed and compensation was paid to the father of respondent No.1 herein has not brought on record any such document, which substantiates the claim of the State Government. Therefore, in the considered opinion of this Court, as there was an admission on the part of the State Government that no award was passed and no compensation has been paid, the same cannot be brushed aside.

Learned counsel for Union of India has informed that pursuant to the order passed by the learned Single Judge in W.P.No.25971 of 2013, the Indian Air Force has already deposited a sum of Rs.40,17,875/- with the Collector, Sangareddy. Meaning thereby, so far as the Air Force is concerned, they have already complied with the order passed by the learned Single Judge by depositing the amount in respect of the land, which they are in possession and therefore, the question of passing any orders so far as the Air Force is concerned does not arise.

Resultantly, as the learned counsel for the State has not been able to make out any case for interference by this Court in the matter, both the writ appeals are dismissed.

Miscellaneous petitions, if any, shall stand closed.

There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

N. TUKARAMJI, J

21.12.2021
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