

(2014) 03 AP CK 0029

Andhra Pradesh High Court

Case No: Writ Petition No. 13136 of 2010 and WVMP No. 1131 of 2013

Gourishetti Narayana

APPELLANT

Vs

Spl. Deputy Collector

RESPONDENT

Date of Decision: March 28, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 226, 300A
- Land Acquisition Act, 1894 - Section 10, 18, 18(2), 23(1), 30

Citation: (2014) 6 ALD 684 : (2014) 6 ALD(Cri) 684

Hon'ble Judges: Akula Venkata Sesha Sai, J

Bench: Single Bench

Advocate: P. Prabhakar Reddy, Advocate for the Appellant; V. Hari Haran, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.V. Sesha Sai, J.

This Writ Petition, under Article 226 of the Constitution of India, is filed seeking the following relief:

"To issue an order or direction more particularly one in the nature of Writ of Mandamus declaring that the action of the 1st respondent in not awarding compensation to the petitioner in respect of his share in joint family property i.e. house bearing Nos. 5-64/1, 5-64/2, 5-64/3 situated at Kondapally village, Mancherial mandal, Adilabad District and in not considering his application dated 20.8.2008 seeking reference under Section 18 and 31 of the Land Acquisition Act and in taking steps to pass award as per the draft award in proceedings No. A/21/2008 dated 30.6.2009 passed by the 1st respondent is highly arbitrary, bad and illegal."

2. The facts pertinent and essential for the disposal of the present Writ Petition are as under:

3. The petitioner and the Respondents 3 and 4 are the sons and 2nd respondent is the wife of late Gourishetti Lachaiah and petitioner and respondents 3 and 4 have two sisters namely Kalluri Vijaya and Komma Kousalya. Late Gourishetti Lachaiah was the pattadar of the lands admeasuring 0.06 gts. in S. No. 39 and Ac.5.09 1/2 gts. in S. No. 44 and Ac.4.11 gts. in S. No. 108 of Rapally village, Mancherial mandal, Adilabad District and he also owned a house bearing No. 5-64 at Kondapally village, Mancherial mandal, Adilabad District. As per the petitioner herein, his father acquired the said property from his grand father, as such, the petitioner has also a share along with respondents 2 to 4 and his sisters.

4. A notification under Section 4(1) of the Land Acquisition Act, 1894 (for short "the Act") was issued on 27.1.2008, proposing to acquire the entire village of Kondapally including house bearing Nos. 5-64/1, 5-64/2 and 5-64/3 consisting of 1694 sq. yards for the purpose of Sripada Sagar Project, Yellampally. The District Collector, Adilabad vide proceedings Rc.No.B6/350/08 dated 4.2.2008 issued a declaration under Section 6 of the Act. As per the petitioner herein, his name was not shown either in the 4(1) notification or Section 6 declaration, but the names of respondents 2 to 4 were shown. On coming to know about the payment of compensation to respondents 2 to 4, the petitioner herein made an application to the 1st respondent on 20.8.2008 under Sections 18 and 31 of the Act, requesting the 1st respondent to refer the matter to the Civil Court for resolution of the dispute and to deposit the amount in the Civil Court. Challenging the action of the 1st respondent in not considering the said application of the petitioner and while stating that the suit in O.S. No. 262 of 2006 is pending consideration on the file of Junior Civil Judge's Court, Mancherial, for partition of the subject properties, the present Writ Petition has been filed.

5. In the counter affidavit filed by 1st respondent, it is stated that the petitioner is not owner or possessor of the house and his objections were not taken into consideration and that the petitioner's name was not mentioned in the award as he is neither owner nor possessor of house bearing Nos. 5-64/1, 5-64/2 and 5-64/3 and that the compensation amount is not disbursed in view of interim; order dated 15.7.2010. The counter affidavit of the 1st respondent further states that during the course of award enquiry, the respondents 2 to 4 appeared and submitted a stamped agreement executed by the petitioner herein, stating that he has no right in the properties. A reply affidavit is filed by the petitioner herein, denying the execution of stamped agreement by him.

6. A counter affidavit is also filed by respondents 2 to 4, stating that late Lachaiah was the pattadar of various extents of lands in Survey Nos. 39, 44 situated at Kondapally village and Survey No. 188 situated at Rapally village, Mancherial mandal, Adilabad District and that after his death, the respondents 3 and 4 constructed subject house and living therein along with 2nd respondent, as such, the petitioner has nothing to do with the landed and house properties. The counter

of respondents 2 to 4 further avers that the petitioner contacted love marriage in the year 1982 and left the house without informing to the parents and left the parents to their fate and that thereafter, at the intervention of elders, petitioner gave an undertaking stating that he would not have any right over the properties and that he relinquishes his right. The counter further states that since 1982, the petitioner, being eldest son, never bothered to look after the welfare of the family and not taken the responsibility of either performing the marriages of sisters and other issues and that now for the first time, the petitioner has come forward, claiming that he has got a share in the property.

7. In the light of the above pleadings, contentions and submissions, now the question this Court is called upon to answer is whether the petitioner is entitled for the relief sought in the present Writ Petition?

8. Right to property is a constitutional right as enshrined under Article 300-A of the Constitution of India, which mandates that no citizen shall be divested of his/her property except in accordance with the procedure established by law. Article 14 prohibits illegal and arbitrary actions by the State and its instrumentalities. The Land Acquisition Act is an ex-proprietary legislation, which empowers and authorizes the State to compulsorily acquire the private properties of the citizens without reference to their consent, as such the provisions of the said legislation are required to be adhered to and followed scrupulously, thoroughly and meticulously and any deviations from the same by the authorities, while discharging their statutory functions, would undoubtedly render such actions invalid, non-est and nugatory.

9. In the instant case, the draft notification and draft declaration were issued on 27.1.2008 and 4.2.2008 respectively, admittedly without showing the name of the petitioner herein. There is absolutely no dispute with regard to the relationship of the petitioner with respondents 2 to 4 and his submission of application dated 20.8.2008, requesting to refer the matter under Sections 18 and 30 of the Act. There is also no dispute with regard to submission of application by the petitioner and receipt of the same by the respondents. The pendency of suit O.S. No. 262 of 2006 on the file of Court of Junior Civil Judge, Mancherial instituted by the petitioner for partition of subject properties is also not disputed. The material on record clearly shows that no award enquiry notice was issued to the petitioner in spite of submitting application dated 20.8.2008 by the petitioner, requesting for reference under Section 18 and 30 of the Act to the Civil Court. A perusal of the award shows that the award enquiry commenced on 18.6.2009 and completed on 19.6.2009 and while dealing with the subject properties at Serial Nos. 50, 51 and 52, the Land Acquisition Officer in the award held as under:

"As per the SES record and Notification U/Sec. 4(1) of the L.A. ACT 1894, Smt. Gourishatti Gangamma, Gourishatti Venkanna and Gourishatti Buchanna were notified as owners of house bearing H. Nos. 5-64/1, 5-64/2 and 5-64/3. During the award enquiry, Smt. Gourishatti Gangamma W/o Lachiah, Sri Gourishatti Venkanna

S/o Lachaiah and Sri Gourishatti Buchanna S/o Lachaiah are appeared and given deposition and claimed compensation for the acquired house. No other claims and objections have been received. Hence the award is passed in favour of Smt. Gourishatti Gangamma W/o Lachaiah, Sri Gourishatti Venkanna S/o Lachaiah and Sri Gourishatti Buchanna S/o Lachaiah and the compensation is ordered to be paid as per the statement appended".

10. Unreasonable and preposterous attitude on the part of the authorities is writ large on the face of the above referred portion of the award. Despite the receipt of the application dated 20.8.2008 submitted by the petitioner, the Land Acquisition Officer in the award recorded that there were no claims and objections received. The said award also does not refer to any documents produced by the unofficial respondents herein. Admittedly, the 1st respondent passed the award on 17.8.2012. There is no plausible explanation forthcoming as to why no award enquiry notice was given to the petitioner in spite of receipt of the said application of the petitioner. Peculiarly, for the first time, the counter of the 1st respondent refers to an agreement dated 3.3.1982 said to have been executed by the petitioner, relinquishing his right in the properties and a copy of the same is also enclosed with the counter. A perusal of the same shows that it was with regard to patta land, but not the house property. In fact, in the reply affidavit, the execution of the same is also denied by the petitioner.

11. Another significant aspect which needs mention at this juncture is that the petitioner in his application dated 20.8.2008 categorically brought to the notice of the authorities about the pendency of suit O.S. No. 262 of 2006 before the Junior Civil Judge, Mancherla. The judgment of this Court in [Govindu Venkata Reddy Vs. K. Krishna Rao and Another](#), would not render any assistance to the petitioner in view of factual and circumstantial variations. There is absolutely no dispute with regard to the powers of Land Acquisition Officer and his discretion either to go into the questions of title to refer the matter to Civil Court, but the said discretion, in the considered opinion of this Court, should not be exercised in a mechanical manner and without considering the material available on record. In Govindu Venkata Reddy's case (supra), the person concerned, in spite of being served with a notice, did not choose to adduce any evidence in support of his claim in regard to his share, but in the instant case, no such notice was issued to the petitioner in spite of factum of receipt of application dated 20.8.2008 submitted by the petitioner. At this juncture, it would be appropriate to refer to the judgment in [Shyam Rao Vs. Land Acquisition Officer \(Spl.\) cum-Dy. Collector Singoor Project of Sanga Reddy and others](#). In the said judgment, this Court at paragraphs 13 and 14 held as under:

"13. As pointed out above, one of the contingencies referred to in S. 31(2) can be said to have occurred "if there be any dispute, as to title to receive the compensation or as to apportionment of it, such dispute arising in the course of the award inquiry itself. The words "there be any dispute", in our view, do not mean that

there must have arisen a fresh dispute after the passing of the award by the Collector. The contingency refers to the dispute which has already arisen in the award inquiry and in such a case, the Collector is statutorily "prevented" from making any payment as per the award and he is bound to wait and see till the expiry of the period of limitation under S. 18, whether any of the parties to the award is not satisfied with the title to the compensation or its apportionment as decided by him. If any such reference is sought for under S. 18 to the civil Court, he is bound to deposit the compensation - at any rate, the disputed part of the compensation - in the civil Court along with the reference under S. 31(2). The idea is that the amount should be "ready" for disposal as soon as the Civil Court, acting on the reference, decides the question of title and apportionment.

14. It is, however, argued that the words "prevented" used in S. 31(1) and the words "stop" used by the Division Bench of this Court in [Govindu Venkata Reddy Vs. K. Krishna Rao and Another,](#), meant that unless the Collector is "prevented-or stopped" afresh, after the passing of the award, from distributing the compensation as per the award, he could distribute the same notwithstanding the existence of any of the contingencies in S. 31(2). In our view, this contention cannot be accepted. The "prevention or the stoppage" of the distribution flows directed by force of the statute itself and no fresh action by the parties is contemplated. If there had been a dispute as to title or apportionment in the award inquiry the Collector cannot distribute the compensation amount on the basis of the award before the expiration of the period of limitation specified in S. 18(2)."

12. In [Arulmighu Lakshminarasimhaswamy Temple Singirigudi Vs. Union of India \(UOI\) and Others,](#), the Hon"ble Apex Court at paragraph 2 of the said judgment, held as under:

"On the admitted facts, the approach of both the learned Single Judge and of the Division Bench in the writ petition and the WA No. 1358 of 1995 indicated in the impugned order made on 30-1-1996 cannot be sustained. Notification under Section 4(1) of the Land Acquisition Act, 1894 was published on 4-6-1987 acquiring the land in question for the public purpose. After compliance of the notice under Sections 9 and 10 of the Act and enquiring, the award came to be passed by the Land Acquisition Officer on 7-2-1990. The possession thereafter was taken on 30-10-1990. The question, therefore, would be: what would be the proper procedure to be adopted in case of dispute as to the title of the land acquired under the Act? The learned Single Judge declared title of the petitioner in the writ petition and the Division Bench directed the civil court to decide the title. Both views are obviously erroneous in law. The Land Acquisition Officer has to determine the extent of the land, the persons entitled to compensation and the compensation to be determined under Section 23(1) of the Act. If he finds that there is any dispute as to the person entitled to receive the compensation, necessarily he has to deposit the amount under Section 31 of the Act into the court to which reference would lie. On such a

dispute having arisen, he has to make a reference to the court under Section 30 of the Act to decide the dispute between the competing persons who set up rival title to the compensation. Under those circumstances, the only legal course open is that a direction be issued to the Land Acquisition Officer to make a reference under Section 30 to decide the inter se title to receive the compensation either by the appellant or by the fourth respondent, as the case may be and the Reference Court would decide the matter in accordance with law."

13. The authorities while dealing with the property rights of the citizens and while discharging the functions as quasi-judicial authorities are required to be highly cautious and transparent in their actions and in the absence of the same, there is every threat of the people losing credence and faith in our democratic system, which would not be in the interest of our nation. It is to be noted at this juncture that in his application dated 20.8.2008, petitioner claimed only 1/4th share in the subject property and the same has been disputed by the unofficial respondents.

14. The facts and circumstances and the material available on record drives this Court towards an irresistible conclusion that the Land Acquisition Officer ought to have referred the matter to the Civil Court for a decision on the respective rights of the parties in accordance with the provisions of Land Acquisition Act. Since the petitioner herein claims only 1/4th share in the subject property, this Court deems it appropriate and apposite to direct the Land Acquisition Officer to deposit the amount equivalent to the said share in the Civil Court while asking for reference.

15. For the aforesaid reasons and having regard to the law laid down in the above referred judgments, this writ petition is disposed of, directing the 1st respondent herein to make the reference to the competent Civil Court by duly taking into consideration the representation dated 20.8.2008 submitted by the petitioner herein requesting for reference under the Land Acquisition Act along with 1/4th share being claimed by the petitioner, within a period of two months from the date of receipt of this order. After the amount is so deposited, it shall be open to the Civil Court to invest the same as per Section 32 of the Land Acquisition Act. It is however, made clear that the 1st respondent is at liberty to pay 3/4th amount to the unofficial respondents as per award. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.