

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No. 26701 of 2006

Between:

Muralidhar Singh and others ... Petitioners

And

1. The District Collector, Hyderabad District and others.

... Respondents

JUDGMENT PRONOUNCED ON: 06.06.2022

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No. 26701 of 2006**

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> Head Note:

! Counsel for the Petitioners: Mr. Vivek Jain

^ Counsel for the Respondents: Standing counsel for
GHMC

? Cases Referred:

¹. (2016) 12 SCC 504

² 1958 AIR (Punjab and Haryana) 111

³ (2016) 12 SCC 504

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No. 26701 of 2006****ORDER:**

Heard the learned counsel for the petitioners and Sri N.Ashok Kumar, learned Standing Counsel for GHMC.

2. The case of the petitioners, in brief, is that the respondent No. 1 issued Notification, dated 25-04-2006, No. D3/2760/2006 under Section 4(1) of the old Land Acquisition Act, 1894 (for short '1894 Act) to acquire 212.74 sq.yds of petitioner No. 1's land and the subject land is located near Afzia Towers near Begumpet, Hyderabad. Section 5-A inquiry of 1984 Act was dispensed with invoking urgency clause and Draft Declaration under Section 6 of 1894 Act dated 29.04.2006 was issued, but neither award was passed nor compensation was paid as per Section 11 of 1894 Act. On 15.07.2006 respondents (GHMC) decided to acquire 157.76 Sq.Yds. On 29.09.2006, a letter was

addressed by respondent No. 3 to petitioner No.1 stating that only 57.20 sq.yds. of land would be acquired. On 10.10.2006, petitioner No. 1 addressed letter to respondents stating that petitioners agreed for TDR (Transfer of Development Rights). But the respondents did not issue TDR till 2016. On 20.12.2006 petitioners filed present writ petition seeking setting aside of Section 4(1) Notification as respondents deviated from their actual plan. In the year 2015, W.P.No. 40579 of 2015 was filed by the 1st petitioner's son by name Sri. Anand Singh, seeking compensation under 2013 Act, but subsequently, however, on advise and in view of the fact that the present writ petition is pending, W.P.No. 40579 of 2015 was withdrawn. On 29.05.2015, respondent No. 3 forwarded plan stating actual land acquired was 35.87 Sq.yds. On 17.09.2016 respondent agreed for issuance of TDR certificate, after 10 years of petitioners' consent. On 17.09.2017, petitioner No. 1 filed amendment petition bearing No. WPMP No. 39923 of 2017 in W.P.No. 26701

of 2006 seeking granting of compensation as per new Land Acquisition Act, 2013. As the petitioner No. 1 is now 78 years old and as due to changed circumstances wherein respondent agrees for TDR after 10 years, it is however, difficult for the petitioners to make use of TDR. Section 24(1)(a) of new Land Acquisition Act, 2013 provides for grant of compensation under new Act, if Award has not been passed under old Land Acquisition Act, 1894. Therefore, the petitioners' prays that this Court may be pleased to direct the respondents to grant compensation under new Land Acquisition Act, 2013.

3. Learned counsel for the petitioners bring on record through a Memo dated 04.04.2022, three material documents, which are as follows :

- (1) Letter No.
A/931/TPS/RW/HO/GHMC/2016/1350, dated
17.09.2016.

(2) Letter

No.A/931/A/TPS/RW/HO/GHMC/2016/1620,
dated 05.11.2016.

(3) Letter No. 165/ACP/17/TPS/GHMC/2017,
dated 30.11.2017.

4. The main contentions of the learned counsel for the petitioners are as follows:

(1) Placing reliance on the letter dated 17.09.2016, it is contended that the said letter called upon Sri. Anand Singh and requested him to submit the registered Gift Deed along with Sketch Plan of affected land duly registered, so that GHMC will issue the TDR Certificate and the petitioners had not complied with the said request of City Planner, GHMC and had not submitted the registered Gift Deed as on date to the respondent GHMC.

(2) Placing reliance on the letter dated 05.11.2016, it is contended that Commissioner, GHMC refers to the earlier decision of GHMC to issue TDR which was agreed by the petitioners in

the year 2006 on 05.11.2016 and contends that there was inordinate delay on the part of the respondent -GHMC in acting upon GHMC's own decision to issue TDR in the year 2006 and therefore, the same is not permissible now at this length of time.

(3) Placing reliance on the letter dated 30.11.2017, it is contended that there is clear admission by the Assistant City Planner, GHMC that the petitioners had not availed the relaxation offered to the petitioners by the GHMC i.e. issuance of TDR, concessions etc. and therefore, the petitioners are entitled for payment of compensation under new Land Acquisition Act, 2013.

(4) The learned counsel for the petitioners places reliance on the Judgment dated 05.05.2016 in **Aligarh Development Authority v. Megh Singh and others**¹ and contends that in view of the fact that Section 24(1)(a) of the new Land Acquisition Act 2013 provides for granting of compensation

¹ (2016) 12 SCC 504

under new Act, if award has not been passed under old Land Acquisition Act, 1894. Therefore, the petitioners are entitled in the present case for a Writ of Mandamus directing the respondents to grant compensation under the new Land Acquisition Act 2013 for petitioners' property bearing No. 7-1-22/8 to an extent of 35.87 Sq.yards, which is admittedly taken over by the respondent GHMC under Road Widening from Greenlands to Leela Nagar as admitted in the letter issued by the Assistant City Planner, dated 30.11.2017

- (5) The learned counsel for the petitioners also relies upon a Judgment of Punjab High Court in **Sat Prakash and another v. Dr. Bodh Raj and another**² and draws attention of this Court to a portion of the said Judgment, which is extracted hereunder.

"Section 46 of the Indian Contract Act lays down that where, by the contract, a promisor is to perform his promise without application by the promisee, and no

² 1958 AIR (Punjab and Haryana) 111

time for performance is specified, the engagement must be performed within a reasonable time. It will, of course, depend on the facts and circumstances of each case as to what time should be deemed to be "reasonable" in that case. The, "reasonable time" will all the same be of the essence of the contract and if one of the parties does not perform the contract in reasonable time, the other party will be within its right to put an end to the contract or to treat the contract as having been repudiated. In Corbin on Contracts (Volume 3) at page 806 it is said as under :

"This is to say that tender of payment or conveyance can be delayed for ever. Performance within some time, limited by what is reasonable under the circumstances, will always be of the essence"

(6) The learned counsel for the petitioners contends that in view of the fact that there has been inordinate delay from 2006 till 17.09.2016 till the City Planner, GHMC called upon Sri. Anand Singh to submit the registered Gift Deed, the respondent - GHMC failed to respond and act in a reasonable time and therefore, the petitioners are entitled for the relief as prayed for.

5. The learned Standing Counsel for the respondent - GHMC, on the other hand, placing reliance on the Counter Affidavit filed in the writ petition in the month of December 2018 and contends as follows:

(1) That the son of the petitioner No. 1 i.e. Mr. Anand Singh had, vide his letter dated 27.10.2014, requested to pay compensation for the consumed extent of 35.87 Sq.yards and had approached this Court by filing W.P.No. 40579 of 2015 for the same relief as sought for in the present writ petition and therefore, the present writ petition is not maintainable, since the issue agitated is the same in both the cases.

(2) That, vide Letter dated 05.11.2016 of the Commissioner, GHMC, the TDR Certificate in lieu of land compensation was enclosed with the copy of the letter dated 05.11.2016 and forwarded to Sri. Anand Singh, son of the 1st petitioner herein and the petitioners having agreed for TDR Certificate in the year 2006 cannot turn back now and claim compensation under new Land Acquisition Act,

2013, and the writ petition is therefore, liable to be dismissed.

6. Taking into consideration the above referred submissions and having perused the material on record, this Court opines as follows:

(i) A bare perusal of the contents of the Letter No. A/931/TPS/RW/HO/ GHMC/2016/1350, dated 17.09.2016 would clearly evidence the fact that till as on 17.09.2016, the GHMC did not issue the TDR Certificate to the petitioners, in view of the fact that the petitioners did not submit the registered Gift Deed along with Sketch Plan of affected land, duly registered, till even as on 17.09.2016 and the son of the 1st petitioner Sri. Anand Singh was requested through the City Planner, GHMC letter dated 17.09.2016 to submit the registered Gift Deed along with Sketch Plan of affected land duly registered.

(ii) A bare perusal of the contents of the Letter No. A/931/A/TPS/RW/HO/GHMC/2016/1620, dated 05.11.2016 would clearly reveal that in the said

letter at Paragraph 1, the Commissioner, GHMC clearly admits the fact of the petitioner's property as having been taken over by MCH for the purpose of laying the road and formed the road in September 2006 itself and the same was informed vide reference MCH/TPS/ACP/C5/2016, dated 29.09.2006, but however, it was only in the year 2016, it was decided to issue TDR Certificate vide GHMC Office Letter No. A/931/TPS/RW/HO/GHMC/2016/1350, dated 17.09.2016.

(iii) A bare perusal of the contents of the Letter No. 165/ACP/17/TPS/ GHMC/2017, dated 30.11.2017 would clearly evidence that the Assistant City Planner, GHMC clearly admits the fact of Sri. Anand Singh's property bearing No. 7-1-22/8 to an extent of 35.87 Sq.yards as having been taken over for the purpose of road widening from Greenlands to Leela Nagar and also the fact that the owner of the subject premises have not availed the relaxation i.e. Issuance of the TDR Certificate and other concessions.

(iv) In view of the fact that the Assistant City Planner, GHMC in his letter dated 30.11.2017

clearly admitted that the owner of the subject premises have not availed the relaxation i.e. the TDR Certificate and other concessions, it has to be but inferred that the compensation was not given to the petitioners.

- (v) A bare perusal of Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 reads as under :

“24. Land acquisition process under Act No. 1 of 1894 shall be deemed to have lapsed in certain cases.–

(1) Notwithstanding anything contained in this Act, in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894,—

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or”

- (vi) Section 24 of the 2013 Act envisages mainly two situations

- (i) Where the land acquisition proceedings had already been initiated under the 1894 Act, but no award was passed till the date of the new Act came into force.***
- (ii) Where the award has been passed but neither the owner has been dispossessed nor has he been paid the compensation.***

Under the first, where the award has not been passed, the acquisition proceedings could continue but the compensation will have to be determined under the scheme of 2013 Act. Under the second category there is a statutory lapse of proceedings.

- (vii) In the present case, no award has been passed and the land value has not been given to the owner though the petitioners' subject property bearing No. 7-1-22/8, to an extent of 35.87 Sq.yards had been taken over by MCH and road formed way back in September 2006 and the same was informed vide MCH/TPS/ACP/C5/2016, dated 29.09.2006. The fact that the petitioners' subject land is taken over for the purpose of laying the land and road formed in the year 2006 itself is not disputed by the respondent - GHMC. It is however, an admitted position that no Award either under the

1894 Act or under the 2013 Act has been passed in respect of petitioners' subject property till as on date.

(viii) The Apex Court in its **Five Judges Bench Judgment dated 06.03.2020, passed in S.L.P.(C) Nos. 9036-9038 of 2016 in Indore Development Authority v. Manoharlal & Others**, dealt with correct interpretation of Section 24 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 (For short "the Act of 2013") which was the subject matter of reference to the said Five Judges Bench, at Para 363 answered the questions raised thereunder as under :

"Under the provisions of Section 24(1)(a) in case the award is not made as on 1.1.2014 the date of commencement of Act of 2013, there is no lapse of proceedings. Compensation has to be determined under the provisions of Act of 2013"

(ix) The Apex Court under identical circumstances in reported in **Aligarh Development Authority v.**

Megh Singh and Ors.³ dealt with payment of compensation for compulsory acquisition and clearly stated that ***“There is no question of ‘come and get’ the compensation while compulsorily acquiring the land; the approach required under law is ‘go and give;.***

- (x) Taking into consideration the law laid down by the Apex Court referred to above, this Court concludes that since in the present case award has not been passed till as on date, there arises no question of lapse. The land acquisition proceedings would continue, but with the rider that the Award will have to be passed and compensation determined under the provisions of 2013 Act. The respondents are therefore, directed to complete the acquisition proceedings by passing an Award in respect of the petitioners' subject property bearing No. 7-1-22/8, to an extent of 35.87 Sq.yards within a period of one (01) month from the date of receipt of a copy of the order and needless also to say that the entire compensation due to the petitioners would be calculated in terms of the 2013 Act and the same

³ (2016) 12 SCC 504

shall either be deposited with the Land Acquisition Officer or disbursed to the petitioners within one (01) month thereafter.

7. Accordingly, the writ petition is allowed as prayed for. However, there shall be no order as to costs.

Miscellaneous petitions pending, if any, pending in this writ petition shall stand closed.

SUREPALLI NANDA, J

Date: 06.06.2022

Note : l.r copy to be marked
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