

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.9629 OF 2009

ORDER:

1.1. The landed and house properties of the petitioners situated at Sangam Village of Karimnagar District were acquired for the purpose of Lower Manair Dam (LMD) of Sri Ram Sagar Project during 1979 and 1981. It appears, the lands were acquired in 1979 and the houses and the house sites were acquired during 1980-81. The entire Sangam Village was submerged under LMD Reservoir. Notifications were issued under the Land Acquisition Act 1894 (for short 'LA Act 1894') and awards were passed on 30.05.1981 in respect of the houses and structures by respondent No.2 - Special Deputy Collector, SRSP, LA Unit, LMD Colony, Karimnagar. The petitioners purportedly found several discrepancies in the measurements, missing of structures etc., in the notices received under Section 9(3) of the LA Act 1894; that the petitioners submitted representations to respondent No.2 claiming that measurements of the subject lands were not taken in their presence, measurements are incorrect and there are several

discrepancies. It is stated that respondent No.2 passed the awards by omitting the structures. It is alleged that the authorities have obtained thumb impressions of the petitioners on the notices under Sections 9(3), 10 and 12 of the LA Act 1894; the authorities have made the mandatory provisions of the LA Act 1894 an empty formality. The Land Acquisition Officer passed the awards ignoring statutory provisions of the LA Act 1894. The petitioners have submitted representations to respondent No.2 and as no action was initiated thereon, they have approached the Special Collector, SRSP, the Chief Engineer, the Superintending Engineer and also the Government.

1.2. Acting on the representation of the petitioners, the Government has caused enquiries through the Collector and other authorities and on being satisfied that claims of the petitioners are genuine and *bona fide*, issued G.O. Rt. No.648 dated 04.02.2004 sanctioning *ex-gratia* amount of Rs.15,27,486/- towards houses. The said amounts were received by the petitioners on 02.03.2005 under protest. The petitioners have made a representation to respondent No.2 on 15.04.2005 to refer the matters to the Civil

Court under Section 18 of the LA Act 1894 within the statutory period of limitation. The petitioners sought enhancement of compensation with statutory benefits, solatium, additional market value, interest etc.

1.3. Grievance of the petitioners is that the Land Acquisition Officer neither referred the matter to the civil Court nor passed any orders therefor.

2.1. It is the case of the respondents that after the award was passed, the petitioners have submitted representations claiming that they were not granted compensation for the structures. Acting upon the representations of the petitioners a joint inspection was conducted by the Assistant Engineer and Tahsildar concerned and it was reported that there were no missing structures and it was also found that the house numbers quoted by them are newly constructed after publication of the draft notification and the draft declaration under the LA Act 1894 except House No.1-87/A, and therefore, claims were not entertained. The petitioners submitted representations to the Government for payment of compensation as

per the estimate prepared by the Engineering Department for the 322 (three hundred and twenty two) houses including the left over portions and structures etc. A Committee was constituted by the Government under G.O. Ms. No.743 dated 14.10.2003 consisting of the District Collector, Karimnagar and the Administrator cum Chief Engineer, Sriramsagar Project, LMD Colony. The Committee submitted its report to the Government vide Reference No.G1/7705/2003 dated 15.07.2004.

2.2. The Government considering the case of the petitioners sympathetically issued G.O Ms. No.648 dated 04.09.2004 without going into the aspect of genuinity of the structures and accorded sanction for payment of compensation for an amount of Rs.15,27,486.00 for the structures as a special case in the form of *ex gratia* while taking into consideration the submergence of the village and accordingly said amount was paid to the petitioners. The petitioners received the *ex gratia* under protest and made a request for reference to the civil Court under Section 18 of the LA Act 1894. The petitioners are not entitled to solatium, additional market value, interest on *ex gratia* amount. The *ex gratia* amount

was paid to the petitioners on humanitarian grounds and there is no provision for referring the matter to the civil Court under Section 18 of the Act.

3. Heard Mr. Y. Ramarao, learned counsel for the petitioners, and the learned Government Pleader for Land Acquisition appearing for the respondents, and perused the material on record.

4.1. Mr. Y. Ramarao, learned counsel for the petitioners, has submitted that the respondents could not have granted compensation to the petitioners as *ex gratia*. However, as advised legally, the petitioners received compensation for the structures which was meagre. The lands of the petitioners were acquired under the LA Act 1894. There were serious lapses committed by the authorities in passing the awards by omitting structures. On representation of the petitioners, when compensation was awarded for the structures, it has to be treated as a regular award under Section 12 of the LA Act 1894 and the action of respondents in treating the payment under the award as *ex gratia* is illegal,

arbitrary and in violation of Articles 14 and 300-A of the Constitution of India. The *ex gratia* amount paid to the petitioners under G.O. Ms. No.648 dated 04.02.2004 is nothing but award under the LA Act 1894 and representation of the petitioners under Section 18 of the Act for enhancement of compensation will have to be considered, as such, a direction may be issued to the respondents to refer the matter under Section 18 of the Act to the civil Court.

4.2. It is submitted that the petitioners are entitled to statutory benefits like *solatium*, additional market value, interest etc., and there is no term or expression as '*ex gratia*' in the LA Act 1894. There are 300 claimants who are claiming compensation for about 470 missing structures.

4.3. The learned counsel for the petitioners has submitted that this Court alternatively by exercising extraordinary jurisdiction under Article 226 of the Constitution of India may award compensation by treating this case as a peculiar and special case and by invoking the power under Section 28-A of the LA Act

1894. The learned counsel has submitted that similarly placed persons filed application under Section 18 of the LA Act 1894 challenging quantum of land acquisition compensation in O.P. No.77 of 1994 and the learned II Additional District Judge, Karimnagar, passed award under Section 18 of the LA Act 1894 dated 05.09.1994 by enhancing the compensation to double the market value granted by the Land Acquisition Officer. It is submitted that even in case of other land owners in O.P. Nos.494 and 493 of 1992 (under Section 18 of the LA Act 1894), the learned II Additional District Judge, Karimnagar, passed awards on 02.09.1994 and 25.07.1996 respectively enhancing compensation to double the market value for the land, houses, wells and trees covered under the acquisition. The award in O.P. No.494 of 1992 dated 02.09.1994 has been confirmed by this Court in Appeal No.167 of 1995 by the judgment dated 09.03.2004. No appeal is preferred against the award in O.P. No.493 of 1992 dated 25.07.1996.

4.4. The learned counsel for the petitioners relied on the judgment of erstwhile High Court of Andhra Pradesh in **Ahmed**

Abdullah (died) v. Special Deputy Collector, Land Acquisition, Hyderabad¹, and also judgments of the Hon'ble Supreme Court in **Vidya Devi v. State of Himachal Pradesh²**, **Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation³** and **Sukh Dutt Ratra v. State of Himachal Pradesh⁴**.

5.1. In Ahmed Abdullah's case (Supra 1), a Division Bench of this Court dealt with the grievance of the parties in the land admeasuring Acs.3-36 guntas in Survey No.147/1 of Begumpet acquired for the purpose of construction of Airport under the provisions of the Hyderabad Land Acquisition Act (for short 'HLA Act'); Notification was issued under Section 5 of the HLA Act (corresponding to Section 6 of the LA Act 1894) on 10.11.1947. Possession of the land was taken on 19.02.1948. However, with an abnormal delay of 31 years, award was passed on 20.02.1979 by the Special Deputy Collector, Land Acquisition Officer determining market value of the land acquired at Rs.1/- per square yard with statutory interest from 19.02.1948 till the date of passing

¹ 1998 (4) ALD 714 = 1998 (3) APLJ 152 (HC)

² (2020) 2 SCC 569

³ (2013) 1 SCC 353

⁴ 2022 LiveLaw (SC) 347

the award dated 20.02.1979. Taking note of the fact that there was no draft notification under Section 3(1) of the HLA Act (corresponding to Section 4(1) of the LA Act 1894) and that the award was passed with an abnormal delay of 31 years, the Division Bench held as follows:

“12. When statutory rights of an exceptional character of compulsorily acquiring the land of a subject have been created, the conditions prescribed by the statute for the exercise of such rights shall be strictly fulfilled. As the award passed does not conform to the provisions of the statute, the same is liable to be struck down.

13. It is true that for the infirmities of there being no draft notification, the award being passed with inordinate delay and it not conforming to the requirements of the statute of making a valuation regarding the market value, the acquisition proceedings have to fail. But, this Court has to adopt pragmatic approach in the peculiar facts and circumstances of this case. While the State's right to acquire the land has to be given preference and precedence, the subject's rights for just and fair compensation should also be protected. If the entire land acquisition proceedings are to be quashed, it will be detrimental to the cause of the society and will not act for public good. Likewise, if we sustain the award as it is,

even if it is utterly illegal, the petitioner/appellant has to face untold misery and hardship. The laches on the part of the Government in passing the award after 31 years, by no stretch of imagination, can be said as reasonable, and on other hand, they are highly arbitrary, unreasonable and oppressive. Of course, there are laches on the part of the petitioner/appellant in filing this writ petition after lapse of 13 years. In a situation like this, the Constitutional Court like ours, which is not only a Court of Law, but is also a Court of Justice, has to tackle the situation and administer justice in a manner conducive, protecting both public interest as also the interests of the individual. In the facts and circumstances of this case, we adopt the procedure as adopted by the Supreme Court in *Ujjain Vikas Pradhikaran vs. Raj Kumar Johri* (7) AIR 1992 SC 1538 and also in the case of *Chandra Bansi Singh vs. State of Bihar* (8) AIR 1984 SC 1768. In *Ujjain Vikas's* case (7 supra), the Supreme Court itself has fixed a notional date to deem it as a notification under Section 4(1) of the Land Acquisition Act, 1894 and in the later case of *Chandra Bansi Singh vs. State of Bihar* (8 supra), the Supreme Court had granted an equitable interest of 7½% per annum on the market value for the delay caused in taking possession of the land after draft notification. On the basis of the said judgments, we fix the date 19-2-1979 (date of passing of the award by the Land Acquisition Officer) as a notification deemed to have been issued under Section 3(1) of Hyderabad Land Acquisition Act. The

petitioner/appellant will be entitled for the statutory solatium of 15% and interest of 6% per annum as contemplated under Hyderabad Land Acquisition Act. In addition to the same, the petitioner/appellant shall be entitled for the equitable interest at the rate of 7½% per annum from 19-2-1948 to 19-2-1979 on the market value fixed by the Civil Court. We are not granting any equitable interest to the petitioner/appellant on account of his laches in approaching this Court by way of filing the writ petition, for 13 years (1979-1992). The writ petition is disposed of accordingly.

14. The CCCA is allowed and the O.P. No.243/1979 is remanded back to the Court of the I Additional Judge, City Civil Court, Hyderabad to make enquiry about the market value as was prevalent on 19-2-1979, after affording opportunity to either side and then computing 15% solatium thereon. Interest has to be awarded at the rate of 6% per annum from the date of taking possession i.e., 19-2-1948 till payment. In addition to the same, the claimants shall be entitled for the equitable interest of 7½ per cent per annum from 19-2-1948 to 19-2-1979. The lower Court shall complete the above exercise by 31st December, 1998. We direct the parties to bear, their own costs.”

5.2. In Vidya Devi’s case (Supra 2), the land of the appellant before the Hon’ble Supreme Court was taken over by the

State in 1967-68 for construction of road without taking recourse to the land acquisition proceedings. Some similarly placed persons whose lands were taken over by the State for the same public purpose filed C.W.P. No.1192 of 2004 (*Anakh Singh v. State of H.P.* - 2007 SCC OnLine HP 220) and the same was allowed by the High Court of Himachal Pradesh vide order dated 23.04.2007 directing the State to acquire the lands under the LA Act 1894. Having come to know about the said writ petition, the appellant before the Supreme Court filed C.W.P. No.1736 of 2010 before the Himachal Pradesh High Court wherein the following relief was granted to the appellant:

“15. In view of the aforesaid facts and circumstances of the present case, the respondent State is directed to pay the compensation on the same terms as awarded by the Reference Court vide order dated 7-7-2015 in *Anakh Singh case* (i.e. Land Reference No.1 of 2011 RBT No.01/13) along with all statutory benefits including solatium, interest, etc. within a period of 8 weeks, treating it as a case of deemed acquisition. An affidavit of compliance is directed to be file by the State before this Court within 10 weeks.”

5.3. The Hon'ble Supreme Court has also made the following observations:

“12.9. In a democratic polity governed by the rule of law, the State Could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi v. MIDC* [(2013) 1 SCC 353 : (2013) 1 SCC (Civ) 491] wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in *State of Haryana v. Mukesh Kumar* [(2011) 10 SCC 404 : (2012) 3 SCC (Civ) 769] held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right . Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension.

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it.”

5.4. In **Tukaram Kana Joshi's case** (Supra 3), as the appellants therein were deprived of their immovable property in 1964 without following due process of law, the Supreme Court held as under:

“17. Depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution. In a welfare State, statutory authorities are bound, not only to pay adequate compensation, but there is also a legal obligation upon them to rehabilitate such persons. The non-fulfilment of their obligations would tantamount to forcing the said uprooted persons to become vagabonds or to indulge in anti-national activities as such sentiments would be born in them on account of such ill-treatment. Therefore, it is not permissible for any welfare State to uproot a person and deprive him of his fundamental/constitutional/human rights, under the garb of industrial development.

18.

19. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but

also disrespect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their own hands.”

In paragraph No.22, the Supreme Court recorded statement of the learned Senior Counsel appearing for the State that the land of the appellant would be notified under Section 4(1) of the Act within a period of four weeks from the date of the order, declaration would be made under Section 6 of the Act within a period of one week thereafter and the award would be made within a period of three (3) months thereafter and accordingly disposed of the appeal.

5.5. In Sukh Dutt Ratra’s case (Supra 4), the lands of the appellants therein were acquired by the State for construction of a road in 1972-73 without initiating acquisition proceedings and compensation was not paid to the appellants. Similarly situated land owners filed writ petition before the High Court of Himachal Pradesh for initiating proceedings under the Land Acquisition Act whereby notice under Section 4 of the LA Act 1894 was issued on 16.10.2001 and the award was passed on 20.12.2001. Proceedings under Section 18 of the LA Act 1894 for enhancement of

compensation were initiated and the reference Court passed award on 04.10.2005 which attained finality. The Hon'ble Supreme Court while exercising extraordinary jurisdiction under Articles 136 and 142 of the Constitution of India, directed the State to treat the lands of the appellants as deemed acquisition and disbursed compensation to the appellants in the same terms as the order of the reference Court dated 04.10.2005 in Land Ref. Petition No.10-LAC/4 of 2004 and consolidated matters).

5.6. It may be noted that in **Sukh Dutt Ratra's case** (Supra 4), the Hon'ble Supreme Court granted relief to the appellants by exercising extraordinary jurisdiction under Article 142 of the Constitution of India. However, jurisdiction of the Constitutional Courts to render substantial justice wherever circumstances shock judicial conscience of the Court and the peculiar facts and circumstances warrant indulgence of the Court has been recognised in the decisions referred above.

6.1. The learned Government Pleader for Land Acquisition has submitted that *ex gratia* amount was paid to the petitioners on

humanitarian grounds and it is not an award passed under the LA Act 1894, as such, reference under Section 18 of the LA Act 1894 is unwarranted.

7. The aforesaid contention of the learned Government Pleader for Land Acquisition is without any merit. The Committee constituted by the Government vide G.O. Rt. No.743 dated 14.10.2003 has conducted a detailed enquiry and decided to grant compensation of an amount of Rs.15,27,486/- as *ex gratia*. No doubt, it was stated in the report of the Committee that as per G.O. Ms. No.648 dated 04.09.2004, the Government has taken a sympathetic view and decided to sanction *ex gratia* to the petitioners. The relevant portion of the order in G.O. Rt. No.648 dated 04.09.2004, is as under:

“The request of the Sangam villagers have been examined in consultation with Administrator-cum-Chief Engineer, Sriramsagar Project, Hyderabad / Special Collector, SRSP & AMRP, Tarnaka, Hyderabad and with reference to the records available and it is observed that it is a fact that requisitions for acquisition of houses were sent to the Special Deputy Collector in two spells i.e. during February, 1978 and April,

1979 when valuations statements were furnished after publication of DN & DD to the Special Deputy Collector during May 1979. They were returned along with representations of 250 villagers pertaining to 470 houses with instructions to verify certain missing items during January 1980 to April 1980. At this distance of time it is not possible to verify whether the additional plinth areas of plinth were constructed before or after DN / DD publication. Further observed that there is no dispute regarding the fact of actual construction and existence of additional plinth areas in the structures acquired but deleted from valuation / award due to uncertainty about their period of construction i.e. before or after DN/DD. Since the difference of amount is only about Rs.15.00 lakhs and structures involved are 322 and odd. Moreover as the house owners were poor, landless or marginal farmers having lost their entire households, properties etc, in submergence of LMD Reservoir. Therefore in view of exceptional circumstances, Government have constituted a committee in the reference sixth read above, consisting of District Collector Karimnagar & Administrator-cum-Chief Engineer, Sriramsagar Project Hyderabad and the said Committee was directed to go into the full details of the issued and work out a reasonable exgratia to the Sangam villagers in Karimnagar District basing on the available record and present financial condition and submit its report to the Government.”

8. It is not the case of the respondents that compensation was granted without there being any material evidence regarding deletion of structures of the petitioners at the time of passing the awards. The relevant paragraph from G.O. Rt. No.648 dated 04.09.2004 which is extracted in the preceding paragraph, clearly indicates that the Committee was not able to decide whether the plinth areas (structures) were made prior to draft notification / draft declaration and that the alleged additional areas were deleted due to uncertainty about the period of construction i.e., before or after the draft notification / draft declaration. The authorities ultimately decided to grant compensation for the structures albeit as *ex gratia*.

9. The claim of the petitioners is that compensation was given for the land/s, however, they were not paid compensation for the structures. In G.O. Rt. No.648 dated 04.09.2004, it is specifically mentioned that the Government has decided to sanction compensation for the deleted additional areas as “*ex gratia*.” The recommendation of the Committee to pay

ex gratia for 322 houses / structures which were deleted in the award is not disputed. Thus, the respondents ought to have passed supplementary award under Section 12 of the LA Act 1894. Instead of doing so, the respondents have awarded compensation in the form of *ex gratia* which does not meet the requirements of the LA Act 1894.

10. It is contended by the respondents that *ex gratia* is not an award under the LA Act 1894, as such, the petitioners are not entitled to reference under section 18 of the Act. It is pertinent to point out that the lands of the petitioners have been acquired under the provisions of the LA Act 1894 and the respondents are bound to act in accordance with law. Award should have been passed for the land/s and structures. According to the petitioners, compensation was not paid for the structures. Later, having conducted an enquiry as per G.O. Rt. No.648 dated 04.09.2004, compensation was paid to the petitioners which according to the respondents is *ex gratia* amount and not an award. Such contention cannot be accepted. It is settled law that if an act is to be done in a particular manner, it should be done in that manner

only. It is not for this Court to decide as to how lapses have been committed by the authorities. The respondents did not contend that compensation is paid to the petitioners without any proof of loss of structures and deletion of such structures in the land acquisition award. Hence, in the opinion of this Court, the compensation paid as *ex gratia* has to be treated as supplementary award. However, taking long passage of time in to consideration, it would be unreasonable to direct reference to be made under Section 18 of the LA Act 1894 at this point of time.

11. The Court has to balance the competing claims by considering the interest of the petitioners / land owners and the State which may have to shell down huge amounts in the form of statutory benefits viz., solatium, interest on solatium, additional market value, interest on main land acquisition component etc. This will lead to a burden on the State exchequer. In order to do substantial and equitable justice to the petitioners, the respondents are directed to pay compensation to the petitioners for their structures / houses at double the rate of the compensation (as was granted to similarly placed persons by the award in O.P. No.77 of

1994 dated 05.09.1994 and O.P. Nos.494 & 493 of 1992 dated 02.09.1994 and 25.07.1996 respectively) fixed by the proceedings in G.O. Rt. No.648 dated 04.02.2004 along with interest at the rate of 9% per annum from 04.02.2004 till the date of payment within two (2) months from the date of receipt of a copy of this order.

12. With the above directions, the writ petition is allowed.

No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the writ petition stand closed.

B. VIJAYSEN REDDY, J

January 4, 2023.
PV

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
HYDERABAD**

WRIT PETITION No.9629 OF 2009

Between:

Ammigalla Rajaiah & 9 others .. Petitioners

v.

Government of A.P.,
Rep. by its Secretary to Govt. (Projects)
Irrigation & CAD (Projects Wing-SLM) Dept.,
Secretariat, Hyderabad & 3 another .. Respondents

DATE OF ORDER PRONOUNCED: 04-01-2023

SUBMITTED FOR APPROVAL :

HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals. : Yes
3. Whether Their Ladyship/Lordship wish
to see the fair copy of the Judgment? : Yes

B. VIJAYSEN REDDY, J

*** HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY**

+ WRIT PETITION No.9629 OF 2009

% Date: 04-01-2023

Ammigalla Rajaiah & 9 others .. Petitioners

v.

**\$ Government of A.P.,
Rep. by its Secretary to Govt. (Projects)
Irrigation & CAD (Projects Wing-SLM) Dept.,
Secretariat, Hyderabad & 3 another .. Respondents**

! Counsel for the Petitioners : Mr. Y. Ramarao

^ Counsel for the respondents : G.P. for Land Acquisition

< GIST:

> HEAD NOTE:

? CASES REFERRED:

1. 1998 (4) ALD 714 = 1998 (3) APLJ 152 (HC)
2. (2020) 2 SCC 569
3. (2013) 1 SCC 353
4. 2022 LiveLaw (SC) 347

C/15