

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NO.11867 OF 2014

Between:

G.Ramesh, S/o.Mallaiah

...Petitioner

AND

1. The State of Andhra Pradesh, Represented by the Principal Secretary, Revenue Department (Land Acquisition), Andhra Pradesh, Secretariat, Hyderabad and four others.

...Respondents

JUDGMENT PRONOUNCED ON: 30.12.2022

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

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

MUMMINENI SUDHEER KUMAR, J

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR**+WRIT PETITION NO.11867 OF 2014**

%Dated 30.12.2022

G.Ramesh, S/o.Mallaiah

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Principal Secretary, Revenue Department (Land Acquisition),
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...Respondents

! Counsel for Petitioner : Mr. M.Jagannatha Sarma

^ Counsel for Respondent Nos.1 to 5 : Government
Pleader for
Land Acquisition

< GIST :

> HEAD NOTE :

? Cases referred :

1. (2020)8 SCC 129

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMARWRIT PETITION NO.11867 OF 2014**ORDER:**

This is a case where the land of the petitioner situated in Survey Nos.184 and 186 of Velgipoor Village, Ellanthakunta Mandal, Karimnagar District, together with a well situated in Survey No.184 of the said Village was sought to be acquired by issuing a notification under Section 4(1) and 6 of the Land Acquisition Act, 1894 ("the Act, 1894" for brevity) dated 19.08.2012 and 20.08.2012 respectively by invoking the urgency clause under Section 17(1) of the Act, 1894. Through the said notifications, the possession of the land was also taken over by the respondents for the purpose of construction of underground tunnel of Pranahitha Chevella Sujala Sravanthi Project Scheme. However, no compensation is paid to the petitioner and no award is passed till date. Aggrieved by such inaction on the part of the respondents, the petitioner approached this Court by filing the present Writ Petition seeking a direction to the respondents to acquire the land that was taken over by the respondents by invoking the urgency clause under Section 17 of the Act, 1894 and to pay compensation for the same.

2. According to Mr. M. Jagannatha Sarma, learned counsel for the petitioner, the petitioner is the absolute owner and possessor of a total extent of Acs.6.00 gts i.e. Acs.2.00 gts each situated in Survey Nos.184, 186(AA) and 186(AAA) of Velgipoor Village, Ellanthakunta Mandal and that there was a well existing in Survey No.184, which is the source of irrigation for the entire extent of Acs.6.00 gts of land. Out of the said extent of Acs.6.00, the land admeasuring Ac.0.32 gts in Survey No.184 and Ac.0.18 gts in Survey No.186 has been acquired by the respondents by taking over possession together with a well existing in Survey No.184 but no compensation is paid till date. He further contended that the respondents in the counter stated that they have intended to delete the subject land from the acquisition proposals on the ground that the surface of the land is available for cultivation and as such there is no necessity to pay compensation, but such a plea is not available to the respondents. He further contended that, once possession is taken over by the respondents, the question of withdrawal of proposal from acquisition does not arise in the light of Section 48 of the Act, 1894. He also placed reliance on a judgment of

the Hon'ble Apex Court in the case of **Indore Development Authority v. Manoharlal¹**.

3. From a perusal of the counter affidavit, it is noticed that there is no dispute about taking over possession of the subject property by the respondents for construction of underground tunnel but after having constructed the underground tunnel, the respondents appear to have felt that the surface of the subject land is available to the petitioner to cultivate and as such, there is no necessity to acquire the subject land and intended to delete the same from the acquisition proposal. For that reason, the respondents stated to have not passed any award nor paid compensation to the petitioner. The relevant portion from the counter affidavit filed by the respondents reads as under:-

“Further, it is submitted that, the Special Collector, LA, SRSP, Hyderabad has physically inspected the Lands including the lands in Sy.No.184, 186 and 231l existing in Sy.No.184 which are coming under ground tunnel for Pranahita Chevella Sujala Sravanthi Project Scheme in the limits of Velgipur Village of Ellanthakunta Mandal. **During the physical verification of the lands, the Special Collector, L.A., SRSP, Hyderabad has found that these lands are coming under acquisition of underground tunnel in the limits of Velgipur Village of Ellanthakunta Mandal, Karimnagar District including the lands in Sy.Nos.184, 186 and well as per the requisition as the surface lands including subject lands in the present Writ petition are not effecting physically and the said surface lands are fit for cultivation. In this regard, the Special Deputy Collector, issued letter to the Executive Engineer, Division No.4 of IFFC, Circle-I, Rekurthy, Kothapally on 23.01.2013 seeking proposals for deletion of lands.**

¹ (2020) 8 SCC 129

Accordingly in response to the said letter the Executive Engineer Division No.4 of IFFC, Circle-I, Rekurthy, Kothapally, 2013 has submitted deletion proposals vide his Lr.No.EE/Divn-4/IFFC/TS/T3/17 2-76/M, Dated 8-12- duly showing the Survey Number wise particulars.”

4. Section 48 of the Act, 1894 enables the Government to withdraw from the acquisition of any land of which possession has not been taken, but there is no such provision to withdraw when possession was taken. It is settled law that under Section 48 of the Act 1894, the question of withdrawal from the acquisition proposal does not arise in respect of land of which possession has already been taken by the respondents. Such a withdrawal of proposal for acquisition is only permissible in respect of the lands of which possession has not been taken by the respondents. As rightly contended by the learned counsel for the petitioner in the judgment **Indore Development Authority v. Manoharlal** (1 supra), a Constitutional Bench of the Hon’ble Apex Court held as under:-

“Under Section 48 of the 1894 Act, withdrawal of the land acquisition proceedings was permissible only if the possession has not been taken under Section 16 or 17(1). Section 48 is extracted hereunder:

“48. Completion of acquisition not compulsory, but compensation to be awarded when not completed - (1) Except in the case provided for in Section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

(3) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.”

In case possession has been taken, there cannot be any withdrawal from the land acquisition proceedings under the 1894 Act.”

In the light of the law laid down by the Hon'ble Apex Court holding that in case possession has been taken, there cannot be any withdrawal from the land acquisition proposals under the Act, 1894.

5. The stand of the respondents is that there is no necessity to acquire the subject land and their further action in not taking up the further proceedings by passing award under the Act, 1894 for payment of compensation is bound to be declared as illegal and highly arbitrary and violative of Articles 14, 21 and 300A of the Constitution of India. Further, the respondents having dispossessed the petitioner from his patta land as early as in the year 2012, failed to pay compensation till date nor communicated anything to the petitioner, about their intention not to acquire etc. Such an action on the part of respondents is nothing but an atrocity on the petitioner and such an action on the part of the State is liable to be condemned with iron hand. If this Court remains as silent spectator to such acts of lawlessness, this Court would be failing in its duty to discharge the obligation cast on it under the Constitution of India. As the

Act, 1894 is already repealed w.e.f. 01.01.2014, the respondents are bound to initiate acquisition of the subject land, which is already taken over by the respondents under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("the Act, 2013" for brevity).

6. Accordingly, the Writ Petition is allowed with costs directing the respondents to initiate proceedings for acquisition of the subject land admeasuring Ac.0.32 gts in Survey No.184 and Ac.0.18 gts in Survey No.186 of Velgipoor Village, Ellanthakunta Mandal, Karimnagar District, together with a well existing in Survey No.184 and pass an award under Section 23 of the Act, 2013 and pay compensation to the petitioner. The entire exercise, as directed above, shall be completed within a period of six (6) months from the date of receipt of a copy of this order.

The costs are quantified at Rs.50,000/- (Rupees fifty thousand only) payable to the petitioner within a period of one (1) month from the date of receipt of a copy of this order. Miscellaneous applications, if any, pending shall stand closed.

(MUMMINENI SUDHEER KUMAR, J)

30th December 2022

Note: LR Copy be marked
B/O RRB