

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION No.14917 of 2014

Between:

Kakati Karshak Industries Private Ltd.,

...Petitioner

AND

1. The State of Telangana, rep. by its Principal Secretary, Revenue Department and two others

...Respondents

ORDER PRONOUNCED ON: 18.07.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

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

JUSTICE K.SARATH

+WRIT PETITION NO.14917 of 2014

%Dated 18.07.2024

Kakati Karshak Industries Private Ltd.,

...Petitioner

AND

\$ The State of Telangana, rep. by its Principal Secretary, Revenue Department, Hyderabad and two others

...Respondents

! Counsel for Petitioner : Sri T.L.Krishna Prasad

^ Counsel for Respondents : Govt. Pleader for Land Acquisition

< GIST :

> HEAD NOTE :

? Cases referred :

1. (2015) 3 SCC 695
2. 2024 SCC ONLINE 968

THE HON'BLE SRI JUSTICE K.SARATH

WRIT PETITION No.14917 of 2014

ORDER:

This Writ Petition is filed seeking a direction to the respondents to pay the compensation in respect of the lands of the petitioner-company to an extent of Ac.2.00 of land including Guva trees, a bore well, a room and fencing, covered by Sy.Nos.837/7, 837/8A, situated at Pamulaparthu Village of Wargal Mandal of Medak District, which was acquired by the respondents.

2. Heard the learned Counsel for the petitioner-company and the learned Government Pleader for Land Acquisition appearing for the respondents.

3. The learned Counsel for the petitioner submits that the petitioner-company is the owner and possessor of land to an extent of Ac.43.00 Guntas in Sy.No.837/7 and 837/A situated at Pamulaparthu Village, Wargal Mandal

of Medak District having purchased the same through various registered sale deeds from the patta holders. After purchasing the same the name of the petitioner-company was mutated in the revenue records and pattadar pass books were also issued in the name of the petitioner-company to the said extents of lands in Katha bearing No.136, vide Pass Book No.664936.

4. The learned Counsel for the petitioner further submitted that the respondent authorities have proposed to lay pipe line for Abdul Kalam Sujala Sravanthi (GDWSS-PH-I) Project, through 2 acres of land of the petitioner-company, which was covered with Guava trees, a room, gate, fencing, bore well of 6 ½” without issuing any notice to the petitioner. Then, the petitioner-company made representation to the respondent No.2 on 05.05.2012 requested to pay the compensation for the land to be acquired by the respondent authorities. Thereafter also the petitioner filed several representations

to the respondent authorities, but the respondents without answering the same, laid the pipe line through the subject lands of the petitioner without paying any compensation and also without following the procedure laid down under the Land Acquisition Act, 1894.

5. The learned Counsel for the petitioner-company further submits that the petitioner-company was yielding Rs.2,00,000/- per annum from 220 Guava trees, besides well grown bamboo plantation in the border with fence, a bore well, room and well secured gate in the acquired land. The petitioner-company is entitled to receive compensation for the acquired land including compensation for guava trees, bore well, structures, etc.

6. The learned Counsel for the petitioner further submitted that the Vendor of the petitioner-company was in possession of the subject land from 1954-55 and the respondents having knowledge about the petitioner was in possession at the time of acquisition and the petitioner

was also issued with Pattadar Pass books and pahanies and they were paying taxes for the subject land for all the years and petitioner-company has perfected its title through adverse possession and the respondents are estopped from claiming that the subject land is a Government land and requested to allow the writ petition directing the respondents to pay the compensation for the acquired lands and also compensation for trees, structures, etc.

7. The learned Government Pleader for Land Acquisition basing on the counter would submit that the land in question i.e. Sy.No.837 is purely Government land, classified as Poramboke land, which was unauthorizedly purchased by the petitioner-company. As per the report of the Tahsildar, Wargal, Dated 10.07.2012 survey No.837 is divided into two types i.e. Sy.No.837/A and 837/AA, to an extent of 105.04 guntas Government land and Sy.No.837/1 to 837/10 to an extent of Ac.127.00 guntas

as patta land and as per the Setwar record the land in question is a Government land, as such the report of the Tahsildar is not correct. As the land in question is situated in Sy.No.837 situated at Pamualparthi Village is Government land and the claim of the petitioner company is not genuine and the subsequent changes in Revenue records after in Khasara Pahani for the year 1954-55 and subsequent pahanies are not sustainable and there are no merits in the writ petition and requested to dismiss the writ petition as devoid of merits.

8. After hearing both sides and on perusing the record, this court is of the considered view that the respondent authorities are not disputing the registered documents filed by the petitioner-company in respect of the subject land and also mutation in the revenue record in favour of the petitioner-company. Once the respondents have knowledge about the possession of the petitioner-company in respect of the subject land, which was acquired by the

respondent authorities, the petitioner-company is entitled to receive land acquisition compensation. The respondent authorities, without cancelling the pattadar pass books and without correcting the revenue records, cannot claim that the subject land is Government land. Moreover, the respondents have knowledge that the petitioner-company is in possession of the subject land which was purchased by them between from 1979 to 1985. The respondents without issuing any notice to the petitioner-company, the respondents cannot acquire the subject land.

9. If the contention of the respondents is taken into account that the petitioner-company is encroacher, even then, the respondents have to issue notice to the petitioner before acquiring the land. Without cancelling the pattadar pass books and title deeds issued in favour of the petitioner-company, merely basing on the Sethwar for the year 1954-55, the respondents cannot deny the

compensation to the petitioner under the Land Acquisition Act.

10. In the case of **Collector Vs. Narsing Rao**¹ the Hon'ble Supreme Court held that:

“13. Khasara Pahani” is the basic record-of rights prepared by the Board of Revenue Andhra Pradesh in the year 1954-55. It was gazette under Regulation 4 of the A.P (Telangana Area) Record of Rights in Land Registration, 1358 F. As per Regulation 13 any entry in the said record-of rights shall be presumed to be true until the contrary is proved. The said regulation was in vogue till it was repealed by A.P.Rights in land and Pattadar Pass Books Act, 1971, which came into force on 15.08.1978...”.

11. In the instant case also the petitioner-company purchased the land through registered sale deeds between 1979 and 1985 and the competent authority also mutated the name of the petitioner in the revenue records and they were also issued Pattadar Pass Books and Title deeds in favour of the petitioner-company under the Andhra Pradesh Rights in Land and Pattadar Pass Books Act, 1971. Even as per the report of the Tahsildar, dated

¹ (2015) 3 SCC 695

10.07.2012 the land of the petitioner is patta land. Therefore, the respondents cannot claim that the entire land in Sy.No.837 is Government land. In view of the same, the action of the respondents in denying the compensation to the petitioner-company in respect of the acquired land including trees and structures is illegal and arbitrary and the petitioners are entitled to receive compensation as per the Land Acquisition Act.

12. The Hon'ble Supreme Court in ***Kolkatta Municipal Corporation Vs. Bimal Kumar Shah and others***² framed seven principles for acquisition of lands and the relevant paras of the said Judgment are as follows:

" 30. Following are the seven principles.

301. *The Right to notice* : (i) A prior notice informing the bearer of the right that the State intends to deprive them of the right to property is a right in itself; a linear extension of the right to know embedded in Article 19(1)(a). The Constitution does not contemplate acquisition by ambush. The notice to acquire must be clear, cogent and meaningful. Some of the statutes reflect this right.

(ii) Section 4 of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3A of the National

² 2024 SCC ONLINE 968

Highways Act, 1956 are examples of such statutory incorporation of the right to notice before initiation of the land acquisition proceedings.

(iii) In a large number of decisions, our constitutional courts have independently recognised the right to notice before any process of acquisition is commenced.

30.2 The Right to be heard: (i) Following the right to a meaningful and effective prior notice of acquisition, is the right of the property-bearer to communicate his objections and concerns to the authority acquiring the property. This right to be heard against the proposed acquisition must be meaningful and not a sham.

(ii) Section 5A of the Land Acquisition Act, 1894, Section 3(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 15 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Section 3C of the National Highways Act, 1956, are some statutory embodiments of this right.

(iii) Judicial opinions recognizing the importance of this right are far too many to reproduce. Suffice to say that the enquiry in which a land holder would raise his objection is not a mere formality.

30.3 The Right to a reasoned decision: (i) That the authorities have heard and considered the objections is evidenced only through a reasoned order. It is incumbent upon the authority to take an informed decision and communicate the same to the objector.

(ii) Section 6 of the Land Acquisition Act, 1894, Section 3(2) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3D of the National Highways Act, 1956, are the statutory incorporations of this principle.

(iii) Highlighting the importance of the declaration of the decision to acquire, the Courts have held that the declaration is mandatory, failing which, the acquisition proceedings will cease to have effect.

30.4 The Duty to acquire only for public purpose: (i) That the acquisition must be for a public purpose is inherent and an important fetter on the discretion of the authorities to acquire. This requirement, which conditions the purpose of acquisition must stand to reason with the larger constitutional goals of a welfare state and distributive justice.

(ii) Sections 4 and 6 of the Land Acquisition Act, 1894, Sections 3 (1) and 7(1) of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 2(1), 11(1), 15(1)(b) and 19(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Section 3A(1) of the National Highways Act, 1956 depict the statutory incorporation of the public purpose requirement of compulsory acquisition.

(iii) The decision of compulsory acquisition of land is subject to judicial review and the Court will examine and determine whether the acquisition is

related to public purpose. If the court arrives at a conclusion that that there is no public purpose involved in the acquisition, the entire process can be set-aside. This Court has time and again reiterated the importance of the underlying objective of acquisition of land by the State to be for a public purpose.

30.5. The Right of restitution or fair compensation: (i) A person's right to hold and enjoy property is an integral part to the constitutional right under Article 300A. Deprivation or extinguishment of that right is permissible only upon restitution, be it in the form of monetary compensation, rehabilitation or other similar means. Compensation has always been considered to be an integral part of the process of acquisition.

(ii) Section 11 of the Land Acquisition Act, 1894, Sections 8 and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Section 23 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3G and 3H of the National Highways Act, 1956 are the statutory incorporations of the right to reconstitute a person whose land has been compulsorily acquired.

(iii) Our courts have not only considered that compensation is necessary, but have also held that a fair and reasonable compensation is the *sine qua non* for any acquisition process.

30.6 The Right to an efficient and expeditious process: (i) The acquisition process is traumatic for more than one reason. The administrative delays in identifying the land, conducting the enquiry and evaluating the objections, leading to a final declaration, consume time and energy. Further, passing of the award, payment of compensation and taking over the possession are equally time consuming. It is necessary for the administration to be efficient in concluding the process and within a reasonable time. This obligation must necessarily form part of Article 300A.

(ii) Sections 5A(1), 6, 11A, and 34 of the Land Acquisition Act, 1894, Sections 6(1A) and 9 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 4(2), 7(4), 7(5), 11(5), 14, 15 (1), 16(1), 19(2), 25, 38(1), 60(4), 64 and 80 of the Right to Fair

30.7 The Right of conclusion:(i) Upon conclusion of process of acquisition and payment of compensation, the State takes *possession* of the property in normal circumstances. The culmination of an acquisition process is not in the payment of compensation, but also in taking over the actual physical possession of the land. If possession is not taken, acquisition is not complete. With the taking over of actual possession after the normal procedures of acquisition, the private holdings divested and the right, title and interest in the property, along with possession is vested in the State. Without final vesting, the State's, or its beneficiary's right, title and interest in the property is in conclusive and causes lot of difficulties. The obligation to conclude and complete the process of acquisition is also part of Article 300A.

(ii) Section 16 of the Land Acquisition Act, 1894, Sections 4 and 5 of the Requisitioning and Acquisition of Immovable Property Act, 1952, Sections 37 and

38 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, and Sections 3D and 3E of the National Highways Act, 1956, statutorily recognize this right of the acquirer.

iii) This step of taking over of possession has been a matter of great judicial scrutiny and this Court has endeavoured to construe the relevant provisions in away which ensures non-arbitrariness in this action of the acquirer. For that matter, after taking over possession, the process of land acquisition concludes with the vesting of the land with the concerned authority. The culmination of an acquisition process by vesting has been a matter of great importance. On this aspect, the courts have given a large number of decisions as to the time, method and manner by which vesting takes place.

13. The para Nos. 30.1 and 30.2 of the above Judgment are squarely apply to the instant case as the respondents without issuing any notice and without hearing the petitioners acquired the lands of the petitioner-company.

14. In view of the above finding, this writ Petition is allowed, directing the respondent authorities to initiate land acquisition proceedings in respect of the subject land, including structures, plants and trees, etc., and pay compensation to the petitioner-company, within four (4) months from the date of receipt copy of this order. No order as to costs.

15. Miscellaneous applications pending, if any, in this Writ Petition shall also stand closed.

JUSTICE K.SARATH

Date: 18.07.2024

Note:

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