

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

WRIT PETITION NO.3934 of 2014

Between:

Smt Pendyala Parijatha and others.

...Petitioners.

AND

1. Government of Andhra Pradesh and others.

...Respondents

JUDGMENT PRONOUNCED ON: 05.07.2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

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

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH

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%Dated 05.07.2024

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...Respondents

! Counsel for Petitioners: Smt A. Satya Sri

^ Counsel for Respondents : Smt D. Madhavi, SC of HMDA

< GIST :

> HEAD NOTE :

? Cases referred :

¹ 1999 SCC OnLine P & H 138

² 2022 SCC OnLine SC 1008

THE HONOURABLE SRI JUSTICE K.SARATH**W.P.No.3934 of 2014**

This writ petition is filed seeking to declare the action of the respondents in not providing approach road to the land of the petitioners to an extent of Ac:0-9 gts, Ac.0-04½ gts and Ac.0.04½ gts respectively in Sy.No.349 situated at Pedda Amberpet Village, Hayathnagar Mandal, Ranga Reddy District as arbitrary and illegal and alternatively direct the respondents to acquire the said land and pay the compensation.

2. Heard Ms. A. Satya Sri, learned counsel for the petitioners, Smt. D. Madhavi, learned Standing Counsel for the respondents-HMDA for the respondents.

3. Learned Counsel for the petitioners submits that the petitioners are absolute owners and possessors of different extents of lands in Sy.No.349 situated at Pedda Amberpet Junction and Village, Hayathnagar Mandal, Ranga Reddy District. Pursuant to the notification issued in the year, 2005, the lands of the petitioners were acquired for

construction of Outer Ring Road and as per the compensation package laid down in G.O.Ms.No.14 Infrastructure and Investment (IID-2) Department dated 18.12.2006, consent awards were passed in Lok Adalath awarding compensation of Rs.22,72,000/- per acre and compensation was paid to them by way of cheques.

4. Learned Counsel for the petitioners further submits that while acquiring the lands of the petitioners, the respondents had left over small portion of lands from acquisition and total left over land is Ac.0.18 gts belongs to the petitioners. At the time of construction of ORR, big mud heaps were laid in the left over acquisition lands of the petitioners. As the left over land was not identifiable with the boundaries due to mud heaps, the petitioners gave a representation dated 23.04.2012 to the respondent No.2 to remove the mud heap and demarcate the left over land from acquisition and thereafter, the land was surveyed and demarcated and put up the boundaries, but there is no approach road to the said land. The respondents laid fencing all along the acquired land to the outer ring road

and in view of that, there is no way to enter into the lands of the petitioners. The land acquired for ORR project is situated on northern and eastern side of the left over land and there is a river stream on southern side of the left over land of the petitioners and on western side, there are patta lands of private persons and there is no approach road to their lands and there is no scope to get approach road except from the land acquired for ORR project to the land of the petitioners. She submits that the petitioners are not in a position to enter into their lands to make use of the said land as there is no approach road, due to which it is fell vacant, thereby they sustained huge loss.

5. Learned Counsel for the petitioners further submits that as per Sub-clause (3) of Section 23 of the Land Acquisition Act, 1894, the case of the petitioners has to be considered for determining the compensation as the damage is caused to them for not using the left over land from acquisition and as such, a direction can be given to the respondents to acquire the left lover land of the petitioners to an extent of Ac.0.9 gts, Ac.0.04 ½ gts and

Ac.0.04½ gts respectively, in Sy.No.349 situated at Pedda Amberpet Village, Hayathnagar Mandal, Ranga Reddy District and to direct the respondents to pay compensation to them and requested to allow the writ petition.

6. Learned Standing Counsel for the respondent-HMDA based on the counter averments submits that consent awards were passed through Lok Adalat and compensation was paid to the petitioners for an extent of Ac.2.22 gts in Sy.No.349. She further submits that in para Nos.6 and 7 of G.O.Ms.No.470 Municipal Administration and Urban Development Department dated 09.07.2008, all properties abutting the ORR will mandatory have an open buffer (minimum buildings set back) of 15 mts from the Row outer edge and access will not be allowed onto the service roads of the ORR directly. As per the approved master plan, grid roads are provided for access to the ORR service roads and the access to ORR service roads cannot be provided other than grid roads. As per the directions of said G.O., access cannot be given to the petitioner's land. She further submits that there is no requirement of

additional land for ORR at Pedda Amberpet Junction location and as such acquisition of the left over land of the petitioners cannot be considered and requested to dismiss the writ petition.

7. Having heard the submissions of both sides and perusal of the record, this Court is of the considered view that the main dispute is with regard to non-acquisition of the left over lands from acquisition as there is no approach road to the said lands of the petitioners after acquisition of their lands. The contention of the petitioners is that in view of the acquisition of most of their lands for the purpose of Outer Ring Road project, the left over small portion of lands i.e, Ac.0.09 gts, Ac.0.04 ½ gts and Ac.0.04 ½ gts respectively, are not using as there is no approach road and the petitioners are not in a position to enter into their lands.

8. The contention of the petitioners is that the lands acquired for ORR project are situated on northern and eastern side of the left over land of the petitioners, on southern side, there is a river stream and on western side,

patta lands of private persons are situated and there is no approach road to left over lands. The said contention is not disputed by the respondents in their counter and nowhere it is mentioned that the petitioners can reach the subject properties. Moreover, the respondents are contended that as per G.O.Ms.No.470 Municipal Administration and Urban Development Department dated 09.07.2008, access cannot be given to the petitioners' lands. It clearly shows that there is no way to reach the lands by the petitioners after acquisition of their other lands by the respondents.

9. The contention of the petitioners is that as per Sub-clause (3) of Section 23 of the Land Acquisition Act, 1894, the petitioners are entitled to get the land acquisition compensation for the left over land from acquisition. Section 23 of the Land Acquisition Act, 1894 reads as under;

“23. Matters to be considered in determining compensation

In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration

firstly , the market value of the land at the date of the publication of the [notification under section 4, sub-section (1)] *[Substituted by Act 38 of 1923, Section 7, for " declaration relating thereto under section 6" .]*

Secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collectors taking possession thereof;

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of severing such land from his other land.

Fourthly , the damage (if any) sustained by the person interested, at the time of the Collectors taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

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As per the above third and fourth sub-clauses, due to severance of land in view of acquisition of other lands, the party can entitle for land acquisition compensation.

10. In the case of **Smt Bindu Garg vs. State of Haryana**¹, the Punjab and Haryana High Court held as under;

“Despite above findings the learned counsel appearing for the claimants argued that the compensation payable by way of damages on account of severance of the un-acquired land belonging to the claimant, Brij Mohan was entitled to get at least 50 per cent of the awarded value in relation to the un-acquired land. For this purpose, he has placed reliance upon the cases of Punjab State through Land Acquisition Collector, Punjab Colonization Department, Chandigarh v. Gurbachan Singh., 1988 (2) PLR 695; State of Punjab through Collector Mukerian Hydrel Channel Project, Talwara v. Amar Nath, 1988 LACC 310; *State of Punjab v. Mohan Lal*, 1997 (3). All instant Judgments 564: 1997 (3) RRR 693 (P & H) and

¹ 1999 SCC OnLine P & H 138

Smt. Narinder Kaur v. The State of Punjab and Ors., 1980 PLR 473. In the above judgments this Court had taken the consistent view that where the acquired land had rendered the un-acquired land completely inaccessible and a total loss, the measure of damages by severance, undoubtedly be the diminution in the value of the acquired land and the owner is entitled to at least 50% of the market rate of the un-acquired land on account of damages. The total land acquired belonging to this claimant was 54 bighas, out of which 39 bighas was acquired leaving 14.17 bighas as un-acquired which has been rendered inaccessible. Furthermore, Jaipal RW5 in his cross-examination has clearly admitted that the land of Brij Mohan had access on two sides, but after acquisition the land became inaccessible. Furthermore, Jaipal R.W.5 in his cross-examination has clearly admitted that the land of Brij Mohan had access on two sides, but after acquisition the land became inaccessible.”

11. Similarly, the Hon’ble Supreme Court in **Union of India vs. Ramchandra and others**² held in para Nos.23, 25 and 27 as under;

“23. A reading of the above said judgment shows that there was an option with the appropriate Government to acquire the entire land without publication of any fresh notification if the appropriate Government was of the opinion that the claim of compensation on account of severing of the land is unreasonable or excessive. The Union has not exercised such option. Therefore, the compensation has to be determined keeping in view of the fact that the land is continued to be owned by the Company but its effective use stands diminished to large extent.

25. In respect of the land situated on the eastern side, the first impression is that the land is severed but if the plan produced by the company is examined, there is land of other land owners as well. Therefore, it is not the entire land which has become unapproachable or land locked. Because of the railway line, may be the company has to take a detour to approach such land but not that the substantial portion of the land cannot be used for any of the ancillary works of the company. On account of the fact that the Company can approach the land on the eastern side by taking a detour, the Company will incur an additional cost, therefore, the Company is entitled to such additional cost.

² 2022 SCC OnLine SC 1008

27. We find that in respect to the land on the eastern side, after leaving land up to the extent of 30 meters from the center of railway track, the Company shall be entitled to Rs. 9.5 per square feet, i.e., 50% of the compensation acquired for the railway track.

12. The above Judgments are squarely apply to the instant case as in the instant case also, the petitioners have no approach road to reach their un-acquired land and the respondents are not disputing the contentions of the petitioners with regard to severance. In view of the same, the respondents have to pay compensation to the petitioners for severance of un-acquired land as the petitioners have sustained loss of facilities in communication and access to the other lands as defined under Section 23 (3) and (4) of the Land Acquisition Act, 1894.

13. In view of the above findings, the Writ Petition is allowed by directing the respondents to pay 50% of the land acquisition compensation by calculating the value as per the award proceedings dated 18.07.2008, 11.09.2008 and 07.08.2008 respectively, for the left over lands from acquisition of the petitioners to an extent of Ac.0.9 gts,

Ac.0.04½ gts and Ac.0.04½ gts respectively, in Sy.No.349 situated at Pedda Amberpet Village, Hayathnagar Mandal, Ranga Reddy District, with interest as per Section 34 of the Land Acquisition Act, 1894, within four (4) months from the date of receipt of a copy of this order. No order as to costs.

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

JUSTICE K.SARATH

Date:05.07.2024

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