

P.Laxmi Devi and Oth Vs. the State of Andhra Pradesh,represented

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Court : Andhra Pradesh

Decided On : Jun-03-2013

Judge : C.V.Nagarjuna Reddy

Appellant : P.Laxmi Devi and Oth

Respondent : The State of Andhra Pradesh,represented

Judgement :

THE HON'BLE Sr.JUSTICE C.V.NAGARJUNA REDDY WRIT PETITION No.11156 OF2012and batch Dated:03-06-2013 P.Laxmi Devi and others.Petitioners The State of Andhra Pradesh,Represented by its Principal Secretary (Revenue).Secretariat, Hyd.,and others ..Respondents Counsel for PetitioneRs.Mr.B.Chandrasen Reddy Counsel for respondents 1 & 2:Assistant Government Pleader for Revenue Counsel for respondent No.3 : Assistant Government Pleader for Land Acquisition Counsel for respondents 4 & 5 : Government Pleader for Roads and Buildings Counsel for respondent No.6 : Mr.K.V.Subba Reddy Counsel for respondent No.7 : Mr.S.Niranjan Reddy HEAD NOTE: ?.CITATIONS: WRIT PETITION No.11156 OF 2012 AND CONTEMPT CASE No.765 Of 2012

Common Order:

The writ petition was originally filed for a mandamus to set aside notification No.G2/25049/2011, dated 30.01.2012, issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') by respondent No.2 in respect of 3957

sq.

yards of land in Sy.No.491 of Aliyabad Village, Shamirpet Mandal, Ranga Reddy District.

Subsequent to the filing of the writ petition, the petitioners filed W.P.M.P.No.4797 of 2013 seeking amendment of the prayer in the writ petition to declare the action of the respondents in taking possession of 5815 sq.

yards of land in the said survey number out of an extent of Acs.5.23 guntas and handing over the same to respondent Nos.6 and 7, as illegal.

The petitioners have also filed Contempt Case No.765 of 2012 alleging wilful disobedience of order dated 23.04.2012 in W.P.M.P.No.14082 of 2012 in W.P.No.11156 of 2012.

I have heard Mr.B.Chandrasen Reddy, learned counsel for the petitioners, learned Government Pleader for Roads and Buildings appearing for respondent Nos.4 and 5, learned Assistant Government Pleader appearing for respondent Nos.1 to 3, Mr.K.V.Subba Reddy, learned counsel appearing for respondent No.6 and Mr.S.Niranjan Reddy, learned counsel appearing for respondent No.7.

The petitioners claim to be the owners of Acs.5.23 guntas of land in the abovementioned survey number.

It is their pleaded case that without issuing any notification under the provisions of the Act, the official respondents allegedly handed over an extent of 5815 sq.

yards of land out of the abovementioned extent of Acs.5.23 guntas to respondent Nos.6 and 7 for construction of over bridge on the State Highway of Hyderabad-Karimnagar-Ramagundam (Rajiv Rahadari) and that when the said fact has come to the knowledge of petitioner No.3 on 05.11.2011, the petitioners got issued a legal notice to the official respondents and that thereafter the official respondents have issued notification under Section 4(1) of the Act on 04.02.2012 notifying an extent of 3957 sq.

yards of land even though they have taken possession of 5815 sq.

yards of land.

The petitioners thereafter filed the present writ petition questioning the said proceedings.

The petitioners further pleaded that had the notification been issued before starting construction over their land and an enquiry been held, they would have satisfied the official respondents and that there was no need for construction of over bridge.

This Court by order dated 23.04.2012, while referring to the instructions reported by the learned Assistant Government Pleader that no possession of the site was delivered to respondent Nos.6 and 7, granted interim direction to the said respondents to stop further construction over an extent of 5815 sq.

yards of land.

The petitioners filed Contempt Case alleging that despite the said interim order, respondent Nos.6 and 7 continued to carry on construction work.

As regards the writ petition, as noted hereinbefore, the petitioners filed an application for amendment in order to question taking over possession of an extent of 5815 sq.

yards.

Respondent Nos.3 and 4 filed separate counter affidavits.

In the counter affidavit filed by respondent No.3 - the Special Grade Deputy Collector and Revenue Divisional Officer, Ranga Reddy East Division, Malakunta, Goshamahall, Hyderabad, it is inter alia averred that the Nodel Officer, Andhra Pradesh Road Development Corporation, Karimnagar, submitted a requisition for acquisition of land in various extents of land for the purpose of 4-laning of Rajiv Rahadari, that the District Collector, Ranga Reddy District has directed to submit proposal for acquisition of the said land; that accordingly the said notification under Section 4(1) of the Act was submitted to the Collector, Ranga Reddy District, on 01.02.2012 that the Collector, Ranga Reddy District, approved the draft notification on 30.01.2012 and that the same was published in the Gazette on 31.01.2012.

The counter affidavit also gave various dates of publication through different modes as prescribed in the Act.

It is further averred in the counter affidavit that after publication of draft notification under Section 4(1).notices under Section 5(A) of the Act in Form 3 were issued on 01.02.2012 inviting objections from the persons interested by fixing the date of enquiry as 07.03.2012 at 11.00 A.M.in the office of respondent No.3, that in response to the said notice, all the writ petitioners except petitioner No.2 filed a petition stating that they are the pattadars and possessors of the land and requested to publish their names in the Draft Declaration.

It is further averred that after considering the objections filed by all the land owners.the District Collector passed an order on 18.09.2012 under Section 5(A) of the Act rejecting all the objections and that the draft declaration approved by the District Collector on 12.10.2012 was published in the newspapers on 10.11.2012, in the Gazette on 13.12.2012 and in the locality on 21.12.2012.

It is further averred in the counter affidavit that as per the requisition given by the Roads and Buildings Department, an extent of 5341 sq.

yards of land, comprising 3957 sq.

yards and 1384 sq.

yards was notified in the name of Smt.P.Leelavathi - petitioner No.2 and one Charan, S/o.Nageshwar Rao respectively.

Learned counsel for the petitioners submitted that the very initiation of acquisition proceedings is wholly misconceived and that even before the initiation of such acquisition proceedings, possession was taken which itself is illegal.

He has further submitted that had an opportunity been given to the petitioners before commencement of construction work, they would have convinced the respondents to drop further acquisition proceedings.

Learned counsel further submitted that as a result of construction of the foot over bridge, access to the balance lands of the petitioners is denied, as a result of

which, they have suffered serious pecuniary loss.

With regard to the initiation of the acquisition proceedings, the petitioners have not disputed the fact that except petitioner No.2, all other petitioners have sent their representations to the notice issued under Section 5-A of the Act.

They have also not disputed the fact of passing of the order by the District Collector on 18.09.2012 overruling the objections to the acquisition of land.

This order has not been questioned by the petitioners in the present writ petition.

Unless the said order is questioned, the petitioners are not entitled to raise the plea regarding the validity of the acquisition proceedings.

The validity of notification under Section 4(1) of the Act issued prior to the passing of the order under Section 5-A (2) of the Act and subsequent declaration made under Section 6 depends upon the legality or otherwise of the order passed under Section 5-A (2). As this order has not been questioned, the plea of the petitioners as to the validity of the acquisition proceedings cannot be entertained.

As admittedly the petitioners failed to question this order, no relief for invalidation of the acquisition proceedings can be granted.

Coming to the issue raised by the learned counsel for the petitioners relating to the extent of 5815 sq.

yards, a perusal of the impugned notification would show that only an extent of 3957 sq.

yards was notified in the name of petitioner No.2.

However, as noted hereinbefore, respondent No.3 in the counter affidavit has specifically stated that another extent of 1384 sq.

yards of land was notified in the name of one Charan, S/o.Nageshwar Rao and if these two extents are added, the total extent of land will come to 5341 sq.

yards.

In the counter affidavit, respondent No.3 has also referred to an objection filed by one V.

Narender Reddy during enquiry held under Section 5-A of the Act, wherein it is stated that O.S.No.437 of 2006 is pending in the Court of Additional Senior Civil Judge, Ranga Reddy District and A.S.No.796 of 2010 is pending in this Court with regard to Sy.No.491.

It, thus, appears that due to the rival claims a part of 5315 sq.

yards was notified in the name of Charan, S/o.Nageshwar Rao.

However, this is a matter for adjudication in the award enquiry.

The petitioners are entitled to put forth their plea supported by the relevant material to show that they are the lawful owners of the entire extent of 5315 sq.

yards.

Respondent No.3 shall thereafter decide this dispute.

However, another serious question raised by the petitioners has to be considered, namely, the unauthorised taking over of possession.

In the counter affidavit filed by respondent No.3, he has specifically denied the allegation of the petitioners regarding taking possession of the land.

In paragraph No.3, it is stated that none of respondent Nos.1 to 3 has handed over the possession of land to respondent Nos.6 and 7.

Respondent No.3 has further emphasised in his counter affidavit that the land acquisition proceedings have not yet been concluded and that as such he has not taken possession of the land.

He has further averred that none of respondent Nos.1 to 3 has knowledge of taking possession and laying of pillars by respondent Nos.6 and 7.

Respondent Nos.6 and 7 have filed counter affidavits, wherein they have asserted that the possession was orally handed over by the official respondents.

The possession of private land can be handed over under the provisions of the Act only after following the procedure.

This is not a case where enquiry under Section 5-A of the Act was dispensed with and advance possession of the land has been taken.

Though respondent No.3 denied handing over of physical possession, it is incomprehensible that respondent Nos.6 and 7 would have commenced execution of the work on the disputed land without the knowledge of the official respondents.

From the fact that respondent Nos.6 and 7 were not prevented from executing the work it can be presumed that the official respondents unauthorizedly handed over possession and allowed respondent Nos.6 and 7 to execute the work till this Court granted stay.

Such an act cannot be recognised in law.

Unless the award proceedings were concluded and procedure under the Act for handing over the physical possession is followed by respondent Nos.1 to 3, respondent Nos.6 and 7 cannot proceed with the further work to the extent of 5815 sq.

yards.

As rightly submitted by the learned counsel for the petitioners, the petitioners were unlawfully deprived of possession till the proceedings under the Act were concluded.

Therefore, respondents Nos.3 to 5 are saddled with costs of Rs.25,000/-.

The writ petition is accordingly disposed of with the direction that respondent No.3 shall complete the award enquiry and pass appropriate orders within a period of three months from the date of receipt of this order.

Till conclusion of the acquisition proceedings, respondent Nos.6 and 7 shall not proceed with further construction activity over the land admeasuring 5315 sq. yards.

As regards the Contempt Case, it is the pleaded case of the petitioners that even after the interim order was passed on 23.04.2012, respondent Nos.6 and 7 have proceeded with the construction.

In support of this plea, the petitioners have filed photographs dated 14.05.2012 showing that pillars have been raised to a height of about ten feet.

On behalf of respondent Nos.6 and 7, who are respondent Nos.1 and 2 in the Contempt Case, separate counter affidavits have been filed.

In the counter affidavit filed by respondent No.1 in the Contempt Case, the allegation that further construction was carried on even after granting of the interim order, has been specifically denied.

With regard to the photographs filed by the petitioners, it has been stated in paragraph No.5 that they do not pertain to the work carried out over the petitioners' land.

It is further stated that in the petitioners' land, respondent Nos.1 and 2 have to construct retaining walls and pipes of abutment and that as such the question of construction of pillars does not arise.

Even though a reply affidavit has been filed denying these averments, no specific evidence has been adduced by the petitioners to prove that the respondents have raised pillars over their land.

The contempt proceedings being quasi criminal in nature, I am not inclined to accept the plea of the petitioners that respondent Nos.6 and 7 have proceeded with the construction even after granting the interim order without there being specific evidence in this regard and in the face of the specific assertion by respondent No.6 that the land over which the pillars have been constructed as shown in the photographs filed by the petitioners does not belong to the

petitioners. In this view of the matter, the Contempt Case is dismissed.

As a sequel, WPMPs.

pending, if any, in the Writ Petition and the Contempt Case shall stand disposed of as infructuous.

_____ C.V.NAGARJUNA REDDY, J.

date:03.06.2013

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