

K. Vijayakumar Vs. Special Deputy Collector (La) Mch and ors.

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Court : Andhra Pradesh

Decided On : Sep-03-2002

Reported in : 2002(6)ALD225

Judge : L. Narasimha Reddy, J.

Acts : Land Acquisition Act - Sections 4(1), 18 and 30

Appeal No. : W.P. No. 7328 of 2002

Appellant : K. Vijayakumar

Respondent : Special Deputy Collector (La) Mch and ors.

Advocate for Def. : Ganta Rama Rao, SC and ;G.P.

Advocate for Pet/Ap. : R.V. Subba Rao, Adv.

Judgement :

ORDER

L. Narasimha Reddy, J.

1. The petitioner is the owner of the premises bearing No. 3-4-686/3, situated at Narayanguda, Hyderabad. He purchased the same under a registered sale deed dated 28-6-1991 from one Abdul Kareem. The Municipal Corporation of Hyderabad proposed to widen the road from Narayanguda crossroads to Bagh

Lingampally cross roads. The property of the petitioner to an extent of 10.76 sq.yards was affected by the road widening.

2. The respondents issued Notification under Section 4(1) of the Land Acquisition Act, proposing to acquire the affected area. However, the door number of the property was described as 3-4-686/1 instead of 3-4-686/3. The petitioner and his neighbour filed W.P.No.12247/99 challenging the land acquisition proceedings. The writ petition was disposed of with certain directions. Thereafter the possession of the petitioner was taken.

3. On 10-6-1999, the petitioner got issued a notice to the respondents pointing out the discrepancies as to the municipal number of the property. Even in W.P.No.12247/99, this aspect was pointed out. It is stated that during the course of award enquiry also the petitioner has brought to the notice of the respondents the discrepancy as to description of the property and in support of his contention he has also filed a copy of the sale deed. Despite the same, an award was passed fixing the payment at the property at Rs.66,337/-, without correcting the house number. On the ground that there was discrepancy as to the description of the property, the 1st respondent referred the matter to the Civil Court under Section 30 of the Land Acquisition Act (for short 'the Act') and the same was taken up as OP.43/99.

4. The petitioner has made representations dated 23-1-2002 and 20-3-2002 requesting the 1st respondent to issue necessary notification rectifying the mistake. Since no action has been taken thereon, this writ petition is filed for a direction to the respondents to issue fresh notification under Section 4(1) indicating the correct Municipal number and also award a compensation of Rs.5,00,000/- as damages for illegal demolition of the property. It is further stated that the petitioner has also filed OP.No.16/2000 on the file of the Chief Judge, City Civil Courts, Hyderabad, where OP.No.43/99 is also pending; for enhancement of the compensation.

5. The 1st respondent filed counter affidavit admitting the discrepancy as to the description of the property. He admitted that it was only on account of mistake that the property came to be described wrongly. Ultimately, it is stated that now that the

proceedings are pending before the Civil Court, it shall be open to the petitioner to work out his remedies.

6. Heard the learned counsel for the petitioner and the learned Standing counsel for the respondents.

7. The property acquired by the respondents from the petitioner was in the premises bearing No. 3-4-686/3. However, in the Notification under Section 4(1), it was shown as 3-4-686/1. This was pointed out by the petitioner in the writ petition filed by him in W.P.No.12247/99 as well as in the subsequent notices and representations. The 1st respondent did not care to take any steps even after that.

8. The only ground on which the 1st respondent referred the matter to the Civil Court under Section 30 of the Act was that there was discrepancy in the description of the property as shown in the Notification under section 4(1), on one hand, and the sale deed under which the petitioner purchased the property, on the other. Para 5 of the counter affidavit reads as under:

'I further submit that the identification of property was made correctly by giving correct boundaries and only a mistake crept in the 4(1) notification and Gazette notification was with regard to Municipal number. After publication of the Gazette notification, this respondent has become functus officio and the matter was seized of by the Civil Court. While referring the matter to civil Court, this respondent has already deposited the entire compensation in concerned Court and the petitioner is at liberty to establish his right, titles and possession and withdraw the amount already deposited in the civil Court.'

9. The question of referring the matter under Section 30 of the Act would have arisen if only there were any rival claims for the same property or if the petitioner was not able to establish his title. From a reading of the counter affidavit, it is evident that the respondents never entertained any doubt as to the ownership of the property nor did they claim that any 3rd person has come forward making a claim to the property. Under these circumstances, the action of the 1st respondent in referring the matter to the Civil Court was nothing but callous, and exhibits its indifference to the various representations made by the petitioner as well as the

pleadings in the writ petition. One could have understood if it were a case where the discrepancy as to the description of the property was not brought to the notice of the 1st respondent at all. In such case, he would have been left with no alternative, except to refer the matter to the Civil Court. There cannot be any justification in refusing to take appropriate steps to rectify the mistake or in recognising the right of the petitioner to receive the compensation. The illegal and indifferent act of the 1st respondent in referring the matter to the Civil Court, though there did not exist any dispute as to the entitlement of the petitioner to receive the compensation, has denied the petitioner his right to be paid the compensation. The fact that the compensation is deposited into the Court is no solace. For no fault of him, the petitioner is subjected to unnecessary litigation and till today he did not receive any compensation whatsoever, though his building was demolished and part of it used for road, in 1999 itself.

10. The Act itself provides for payment of interest at a particular date till the date of payment of compensation. The fact that the 1st respondent deposited the compensation in the Court cannot be a ground to deprive the petitioner to receive the benefits under the Act. The petitioner is made to establish his title in a case where nobody disputed that. As regards identity also, the 1st respondent himself has admitted that the land acquired was of the petitioner. Therefore, the petitioner is entitled to be paid the compensation with all attendant benefits.

11. Inasmuch as the 1st respondent has admitted the title of the petitioner as well as the identity of the property, it shall file a memo to that effect into the Court of the Chief Judge, City Civil Courts, Hyderabad, where OPNo.43/99 is pending. On filing of such memo, the Court shall pass appropriate orders enabling the petitioner to withdraw the compensation deposited to the credit of the said OP. Since it is held that the petitioner is entitled to be paid the compensation together with the benefits under the Act, the same shall be worked out by the 1st respondent up to the date of disposal of the OP. The difference between the amount so calculated and the amount deposited in the Court shall also be paid by the 1st respondent to the petitioner within one month from the date of disposal of the OP. Such payment shall be without prejudice to the right of the petitioner to proceed with OP.No.16/2000, which is filed under Section 18 of the Act.

12. The writ petition is allowed to the extent indicated above. No costs.

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