

(2008) 09 AP CK 0047

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 9191 and 12108 of 2008

B. Lakshmi Suseela

APPELLANT

Vs

Special Collector (Land Acquisition) and Another

RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 30, 31, 31(2)

Citation : (2008) 6 ALD 238

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : B. Adinarayana Rao and R.N. Hemendranath Reddy, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—These two writ petitions are filed assailing Award Nos. 13 and 14 of 2008, passed on 25.3.2008 and 19.3.2008 respectively, by the Land Acquisition Officer, Indira Sagar Project, Right Main Canal, Unit-II, Eluru, West Godavari District, the first respondent in both the writ petitions.

2. The petitioner in W.P. No. 9191 of 2008 is said to be the owner of an extent of Ac. 1.50 cents of land in Survey No. 169/ 2A of Polasanipalli Village, Bhimadole Mandal, West Godavari District. The petitioners in W.P. No. 12108 of 2008 are the owners of Acs. 11.23 cents of land in Survey No. 198/2 of Pangidigudem Village, Dwaraka Tirumala Mandal, West Godavari District. The said lands were acquired, vide notifications, dated 3.11.2007 issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") and declarations u/s 6 of the Act, dated 24.2.2008 and 12.3.2008.

3. After conducting enquiry, the first respondent passed the Awards, referred to above. He determined the compensation payable under Award Nos. 13 and 14 of 2008 at Rs. 17,03,889/- and Rs. 48,87,515/- respectively. He directed that the amounts be deposited in the Court of the Additional District Judge, Eluru, u/s

31(2) of the Act. The basis for this direction was that the second respondent held an agreement of sale, dated 8.5.2004, in respect of the acquired lands, and he filed O.S. No. 39 of 2006 in the Court of the II Additional District Judge, Eluru, for the relief of specific performance.

4. The petitioners contend that the course of action adopted by the first respondent is totally impermissible in law. According to them, reference, if at all, was to have been u/s 30 of the Act, in the event of there being any rival claim, and there was no basis for the first respondent in directing deposit of the amount in a different Court.

5. The second respondent filed a counter-affidavit, opposing the claims in the writ petitions. He states that the actual claim for the compensation was made by him alone, before the first respondent and that the petitioners did not dispute the agreement of sale. He contends that in addition to issuing a direction in the Awards, the first respondent addressed a letter, dated 30.5.2008, to the learned Additional District Judge, Eluru, mentioning the context in which the deposit is being made. The circumstances under which O.S. No. 39 of 2006 was filed, are also stated.

6. Sri B. Adinarayana Rao, and Sri R.N. Hemendranath Reddy, learned Counsel for the petitioners, submit that the Act is a self-contained code and the circumstances under which, the Land Acquisition Officer, can make reference to civil Court, are provided for u/s 18 or 30 of the Act, and that the steps taken by the first respondent are contrary to the same. They contend that the necessity to deposit the compensation would have arisen, if only a reference was made u/s 18 or 30 of the Act and there was no basis for the first respondent in directing deposit of the amounts, covered by the Awards in question.

7. The learned Government Pleader for Land Acquisition, and Sri M.P. Chandra Mouli, the learned Counsel for the second respondent, submit that the claim of the second respondent was taken into account by the first respondent and with a view to leave the parties to seek adjudication of their respective rights, the amount was sent to the Court where the suit was filed. They contend that no illegality can be said to have been crept into the Awards.

8. The publication of notifications u/s 4(1), declarations u/s 6 of the Act and passing of Awards in respect of the lands of the petitioners, took place in very quick succession. On his part, the first respondent proceeded with the award enquiry and arrived at a conclusion as to the market value of the lands and other benefits. To that extent, the petitioners do not find fault with the exercise undertaken by the first respondent. In fact, if they are not satisfied with the Awards, they have to work out their remedies under the relevant provisions of law.

9. After determining the amount of compensation payable to the owners of the land, the first respondent made the following observation:

the amount has to be remitted in the Court in favour of Additional District Judge, Eluru u/s 31(2) of the Land Acquisition Act.

The basis for such a direction was not at all mentioned.

10. In case the owner of the land is not satisfied with the amount awarded by the Land Acquisition Officer, he can seek reference to a civil Court and such a reference is to be made u/s 18 of the Act. The other method of reference is the one u/s 30 of the Act. Reference under this provision is to be made, in the event of the Land Acquisition Officer noticing any dispute as to the entitlement or apportionment of the compensation.

11. Section 31 of the Act deals with the payment or deposit of compensation. It reads as under:

Payment of Compensation or deposit of same in Court:-(1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(A.P. State amendment is omitted since it is not relevant for the purpose of this case).

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted.

12. A perusal of this provision discloses that the necessity for making the deposit of the compensation in a Court would arise, if only, the persons interested as mentioned in the award do not agree to receive it, when tendered. The section is very clear to the effect that the deposit, if at all, is to be in the Court to which a reference u/s 18 of the Act would be made.

13. It is not in dispute that in the State of Andhra Pradesh, the Courts to which reference can be made u/s 18 or 30, are the Courts of Senior Civil Judge. It is rather curious, if not strange, that the first respondent has evolved a procedure of his own and directed deposit in clear contravention of the specific provisions of the Act. The cryptic direction contained in the Awards could have been ignored, by giving benefit of lack of clear understanding of the provisions, to the first respondent. However, he has denied to himself that benefit, by addressing letter, dated 30.5.2008. He had mentioned several facts, which do not fall within the scope of the provisions of the Act and had chosen to advance the claims of the second respondent. The letter, dated 30.5.2008, cannot at all, be traced to any provisions of the Act. The first respondent appears to have deliberately chosen to deviate from the prescribed procedure, sacrificing the interests of the petitioners.

14. Making of even, a reference u/s 30 of the Act is not a matter of course. Before making such a reference, the Land Acquisition Officer is supposed to take into account, the rival claims and only thereafter, make a reference to the Court, duly indicating the nature of claims. Unless necessary factual basis is indicated, the very reference becomes untenable, apart from making it impossible for the Court to answer it. No such basis was indicated in the Awards under question. When it was not even pointed out that there is any title dispute, the question of making deposit of the amount in a Court, that too, not the one to which, reference can be made, is totally illegal.

15. For the foregoing reasons, the writ petitions are allowed and the impugned Awards are set aside to the extent they directed remission of the amount in the Court of the Additional District Judge, Eluru.

16. The Land Acquisition Officer is directed to issue revised Awards in accordance with law, without touching the quantum of compensation. It is observed that recurrence of any such instances in the hands of the first respondent would be taken, serious note of. There shall be no order as to costs.