
(2014) 06 AP CK 0137
In the Andhra Pradesh High Court
Case No : Writ Petition No. 7004 of 2014

C. Mallesh Rao

APPELLANT

Vs

The Special Dy. Collector/Land Acquisition Officer

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 18

Citation : (2015) 1 ALD 127 : (2015) 4 ALT 163

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : D. Goverdhanachary, Advocate for the Appellant

Final Decision : Allowed

Judgement

P. Naveen Rao, J.—Proceedings under the Land Acquisition Act, 1894 (for short, the Act), were initiated and land to an extent of Ac. 825.39 guntas, situated in Gollapalli Kalan Village, Shamshabad Mandal, Ranga Reddy District, was acquired for establishing an International Airport at Shamshabad Mandal. Land to an extent of Ac. 4.00 owned by the petitioner, in Survey No. 44/A/1 to an extent of Ac. 0.27 guntas and in Survey No. 45 (Part) to an extent of Ac. 3.13 guntas, was also acquired. While determining the compensation, the lands which are under acquisition were categorized into A, B and C. For the lands which are categorized as A, compensation determined was Rs. 4,00,000/- per acre. The land of the petitioner is also classified as Category A land, but compensation determined was Rs. 80,000/-. The petitioner disputed the compensation determined. The dispute was referred to civil Court u/s 18 of the Act and L.A.O.P. No. 480 of 2003 was allowed by order, dated 11.08.2011, enhancing the compensation to Rs. 4,00,000/-. Aggrieved by this, the State preferred appeal to this Court in L.A.A.S. No. 404 of 2012. By judgment, dated 10.09.2013, the appeal was partly allowed. The compensation amount determined in L.A.O.P. No. 480 of 2003 is upheld, but the order is modified with reference to the solatium and the

petitioner is denied solatium. The State preferred SLP to Supreme Court, but so far no orders are passed in the S.L.P.

2. The petitioner filed E.P. No. 34 of 2013 alleging non-compliance of the order of enhancement of compensation. So far, E.P. No. 34 of 2013 is not disposed of. Even though an order of attachment was passed on 07.08.2013, the compensation amount could not be recovered by the petitioner. In those compelling circumstances, this writ petition is instituted.

3. Learned counsel for the petitioner submits that in an illegal and arbitrary manner, far less compensation was determined to the lands of the petitioner as compared to all other farmers whose lands are classified as A category. He was paid only Rs. 80,000/- and the difference of amount is yet to be paid. The land acquisition proceedings are concluded in the year 2003 and even after 11 years, the applicant is unable to enjoy the fruits of his success in the land acquisition proceedings and unable to receive the due compensation to which he is entitled on account of loss of huge extent of his land, as the value of which is at a very high price as compared to even the compensation determined in L.A.O.P. No. 480 of 2003.

4. Learned Assistant Government Pleader raised objection about maintainability of the writ petition. The learned Assistant Government Pleader submitted that the petitioner has an effective remedy by way of execution proceedings and the petitioner having initiated execution proceedings, cannot simultaneously prosecute the writ remedy and, therefore, the writ petition is not maintainable. He has also submitted that the Government filed SLP on 06.01.2014. The SLP is assigned Diary No. 800 of 2014 and since so far the SLP is not decided, the payment of compensation at this stage would result in unnecessary and avoidable proceedings to recover the amounts in the event of the respondents succeeding before the Supreme Court.

5. Mere pendency of appeal before the Supreme Court, that too at the Diary number stage cannot be a bar for seeking enforcement of an award passed in favour of the petitioner, which award is affirmed with modifications by this Court. Thus, the petitioner is entitled to receive compensation as determined in L.A.O.P. No. 480 of 2003 as modified by this Court in L.A.A.S. No. 404 of 2012 and non-payment of compensation as determined only on the ground that an appeal is filed and the same is pending is erroneous. This amounts to harassment and arbitrary and discriminatory exercise of power by the concerned authority. More so, as contended by the learned counsel for the petitioner, for the same category of lands, the compensation determined was Rs. 4,00,000/- and was paid immediately, whereas without any justification, the petitioner is denied of the same forcing him to initiate legal proceedings.

6. Learned counsel for the petitioner placed reliance on a decision reported in Bhimidipati Annapoorna Bhavani Vs. Land Acquisition Officer, Yeluru Reservoir Project, Peddapuram, East Godavari District, A.P.

7. The issue of maintainability of writ petition for seeking payment of compensation already determined is no more res integra. Learned Single Judge of this Court in B. Govinda Reddy and Ors. Vs. Revenue Divisional Officer-Cum-Land Acquisition Officer, Kurnool has held the settled law that existence of alternative and effective remedy does not operate as a bar in whatsoever manner and effect the jurisdiction of this Court in the matter of exercising its power under Article 226 of the Constitution of India. The Court held that the decree holders/claimants under the Land Acquisition Act, 1894, have to avail the normal remedy available under the Act and the Code of Civil Procedure, 1908, for getting the decrees executed. This Court would interfere in appropriate cases and issue directions, particularly in cases where the proceedings are pending for very long time. This Court has also interfered and issued necessary directions in exercise of its power under Article 226 of the Constitution of India in cases where it comes to the conclusion that the action on the part of the Government and its Departments could be categorized as unfair and oppressive by their refusal to deposit the compensation amount even after a long period, as such long delays would practically amount depriving the land owners of their legitimate right to receive the compensation.

8. Full Bench of this Court in Vemula Prabhakar and Others Vs. The Land Acquisition Officer and R.D.O., Peddapalli, Karimnagar and Another held that no writ would be issued to the State directing it to make payment of the amount of compensation. Subsequently, the issue was referred to a Larger Bench of five Judges. On detailed consideration of the legal position and various decisions rendered by this Court, the Larger Bench declared that the view expressed by the Full Bench in Vemula Prabhakar and Others Vs. Land Acquisition Officer and Revenue Divisional Officer, Peddapalli, Karimnagar Dist. and Another, is contrary to law laid down by the Supreme Court in Whirlpool Corpn. Vs. Registrar of Trade Marks and the Full Bench fell in grave error in observing that the writ petition would not lie at all under Article 226 of the Constitution of India in view of the availability of alternative remedy of filing execution petition. The Larger Bench has approved the decision of the learned Single Judge of this Court in B. Govinda Reddy and Others Vs. Revenue Divisional Officer-cum-Land Acquisition Officer and Another . The Larger Bench held that the person must first resort to the alternate efficacious remedy of taking out execution and when despite taking out execution proceedings, if there is any delay caused on the part of authorities, resort can be had to filing of a writ petition in this Court and, this Court, while exercising its discretionary jurisdiction, in appropriate cases, may issue directions for immediate deposit of the amount of compensation by the State Government or the authorities on whose behalf the land has been acquired.

9. In this case, the land acquisition proceedings were concluded in the year 2003 and majority of the farmers whose lands were acquired were paid compensation immediately. Though the land of the petitioner was also classified as Category A, he was denied the compensation determined for the Category A lands i.e., Rs. 4,00,000/-, but was only paid Rs. 80,000/-. Immediately, the petitioner raised an

objection of wrong determination of compensation. The L.A.O.P. registered in the year 2003 was disposed of in the year 2011 enhancing the compensation to Rs. 4,00,000/- and other benefits were also granted. The compensation enhanced is upheld by this Court in the L.A.A.S., but modified the award to the extent of solatium. Thus, the petitioner is made to wait to receive the compensation to which he is rightfully entitled from the year 2003 i.e., more than 11 years. The value of money depreciates as wait progress. The buying capacity of a rupee diminishes from period to period. Thus, the value of Rs. 4,00,000/- in the year 2003 would have been far better as compared to the value of the same amount in 2014. The petitioner was deprived of his right to hold the land by resorting to compulsory acquisition proceedings and, therefore, the petitioner had no other option but to surrender his land for a meager compensation determined. The petitioner is made to wait from the year 2003 till 2014 for enhancement of compensation and payment of compensation enhanced. No justification is shown as to why the enhanced amount of compensation is not deposited in the civil Court except for saying that SLP is pending before the Supreme Court. Thus, without any justification, the petitioner is made to wait for a long time to receive compensation and the said action of respondent amounts to oppressive and arbitrary exercise of power. In this case, even after attachment notice was passed by the execution Court, the petitioner could not get the amount of compensation determined. Hence, the petitioner had no other efficacious remedy except to invoke the extraordinary jurisdiction of this Court.

10. The case on hand falls within the four corners of the principle laid down by the learned Single Judge of this Court in B. Govinda Reddy and Others Vs. Revenue Divisional Officer-cum-Land Acquisition Officer and Another , as affirmed by the Larger Bench of this Court in Bhimidipati Annapoorna Bhavanis Case 2005 (3) ALD 233 (LB) (Supra) and the writ petition is maintainable. The petitioner is entitled to seek mandamus against respondents to pay compensation amount due to him.

11. Accordingly, the Writ Petition is allowed. The respondents are directed to forthwith deposit the amount of compensation determined in L.A.O.P. No. 480 of 2003 as modified in L.A.A.S. No. 404 of 2012 at any rate within a period of eight (8) weeks from the date of receipt of a copy of this order. However, it is made clear that payment of such amount shall be subject to the outcome of SLP bearing Diary No. 800 of 2014. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.