

(2014) 07 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3481 of 2014

Elite Hair Studio (Pvt.) Ltd.

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 18, 23, 3(b), 5A

Citation : (2014) 6 ALD 145 : (2014) 5 ALT 306 : (2014) ALT(Rev) 375

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : K.S. Gopalakrishnan, Advocate for the Appellant; S. Nanda, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

P. Naveen Rao, J.—Property bearing House No. 8-2-293/82/A/228, T.S. No. 2/6, Ward No. 9, Jubilee Hills, Hyderabad was acquired for the purpose of widening the road. Award was passed on 27.12.2013 determining the compensation of Rs. 1,26,88,716/- which includes Rs. 10,56,512/- towards structure value.

2. Petitioner is tenant of the subject property. Petitioner assails the award and proceedings initiated prior to passing of the award. According to the petitioner, lease agreement was entered on 15.8.2009 for a period of five years and the same is still in existence. In terms of the lease agreement, petitioner has carried extensive repairs and developed the property to suit his business and in the process has incurred huge expenditure. On account of the acquisition of the property, petitioner was thrown out of the premises and was dislocated from the premises even before he could recoup the amounts spent by him, causing huge business and financial loss to him.

3. Learned counsel for petitioner contends that petitioner was not put on notice before commencement of proceedings for acquisition and there was no opportunity afforded to him. However, when the land lord of the petitioner issued

notice dated 27.9.2013 directing him to vacate the premises, he came to know about the acquisition of property. Having come to know of the land acquisition proceedings, petitioner filed objections on 18.10.2013 but his objections were not considered in the order passed u/s 5A of the Land Acquisition Act (Repealed) (for short the Act), nor in the award, therefore award passed by the competent authority is illegal and liable to be set aside. He further submits that petitioner has no grievance regarding the land acquisition proceedings and his grievance is only to the extent of payment of compensation on account of dispossession and damage caused to the property even before lease period expired and also loss caused to his business. He further submits that petitioner is entitled to higher compensation and refers to provision contained in Section 23 of the Act, which provide determination of compensation even in case of a tenant based on the loss caused to the property and to the business.

4. Learned counsel representing landlord/respondents 4 and 5 submits that tenancy of petitioner has come to an end even before the award was passed. As tenant was not paying rents, tenant was put on notice demanding payment of rent and informing him that in case of non payment of the rental amount, the lease stands terminated and since tenant did not pay the rent, in spite of demand made, it is deemed that lease is already stood terminated. She further submits that petitioner is not entitled to any compensation as it was already determined by the Land Acquisition Officer.

5. Learned counsel for petitioner and learned counsel for respondents 4 and 5 submit that O.S. No. 165 of 2014 on the file of the XV Additional Chief Judge, City Civil Court, Hyderabad is pending regarding the issue concerning the tenancy. In view of pendency of O.S. No. 165 of 2014, the question whether the tenancy was terminated even before the award is passed and incidental questions relating thereto are to be adjudicated in the suit and the same cannot be gone into in this writ petition.

6. In accordance with the scheme of the Act, a tenant of a premises under acquisition is also a person interested and is entitled to be given an opportunity of hearing. Tenant in the property can raise an objection regarding determination of compensation and as and when such an application is made the competent Court is mandated to consider.

7. Similar issue has come up for consideration in Mohammed Azgher Hussain and Another Vs. State of Andhra Pradesh.

On review of the precedents on the subject, this Court held as under:

27. On an analysis of principles laid down by the Supreme Court and High Courts and the combined reading of the provisions in Sections 3(b), 5A(3), 9(3) and 10 of the Land Acquisition Act, it is safe to assume that a tenant of premises under acquisition is also a person interested and is entitled to be heard. The right of hearing and extent of objections that he can raise may not be same as comparable to the owner of the property. Such right is independent of the right

of owner. Acquisition not only affects the owner of the land, but also the tenant. The impact on the tenant on such acquisition can vary. For example, the tenant takes the property on long lease and with the consent of the owner invests huge money to develop the property to suit his business or avocation with the hope that the property would be in his possession for a longer period as agreed upon. However, in view of initiation of the acquisition proceedings, the tenant is going to be adversely affected.

8. Court noticed that petitioners were given notices u/s 5A of the Act, but their objections were not considered/reflected while passing final orders and by the time writ petition came up for disposal, award was not passed. In the facts of that case Court directed to hold Section 5A enquiry afresh. In the case on hand, as represented by the learned counsel for the petitioner and learned counsel for respondents, award was passed, possession was taken. Thus relegating to the stage of Section 5A enquiry is futile. Moreover, there is a serious dispute on continuation of tenancy by the time award was passed. Thus, subject to issue of tenancy being resolved in O.S. No. 165 of 2014 on the file of the XV Additional Chief Judge, City Civil Court, Hyderabad, petitioner can file an application u/s 18 seeking compensation for the loss caused to his business premises and his business.

9. Section 18 of the Act enables a person interested to file application seeking enhancement of compensation determined. On consideration of such application, if matter is referred to civil Court for adjudication in accordance with provision contained in Section 23 of the Act, it is competent for civil Court to consider various aspects mentioned therein while adjudicating the claim of a tenant for enhancement of compensation. Such an application in no manner prejudices the claim of owner of the property as independently a tenant can prosecute claim for enhancement. The owner of the property is also entitled to seek enhancement of compensation.

10. Thus, it is open for the petitioner to canvass enhancement of the amount of compensation on structural value including loss caused to him on investment made and loss on business. Similarly, it is also open for the owner of the property to file appropriate application for enhancement of the compensation. On the compensation determined by the Land Acquisition Officer towards damage to structure, a tenant is entitled to claim share in the compensation. However, as the issue of tenancy is pending in O.S. No. 165 of 2014, the same can be gone into only after the dispute is adjudicated in said suit. Thus in the peculiar facts of this case, while granting liberty to tenant and owner of the property to claim for enhancement of compensation, it is ordered that from out of the amount of Rs. 10,56,512/- compensation determined towards structural value, an amount of Rs. 4,00,000/-(Rupees four lakhs only) shall be kept in a fixed deposit by the Land Acquisition Officer and the said amount shall be disbursed after the decision by the competent civil Court in O.S. No. 165 of 2014.

11. Writ petition is disposed of granting liberty to the petitioner to file an

application within two weeks from the date of receipt of copy of this order u/s 18 of the Act for enhancement of the compensation. Entitlement of petitioner to claim share in the compensation already determined on the structural value and enhanced compensation shall abide the result of O.S. No. 165 of 2014. The balance amount of compensation determined towards structural value i.e., Rs. 6,56,512/- and compensation determined on land shall be disbursed to the landlord/respondents 4 and 5 within a period of two weeks from the date of receipt of copy of this order.

Accordingly, the writ petition is disposed of. No costs. Sequel to the same, miscellaneous petitions, if any stand dismissed.