
(2016) 07 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 15159, 15161, 15162, 15166, 15167, 15169, 15170, 15174, 15175, 15177, 15180, 15182, 15183, 15185, 15187, 15188, 15192, 15195, 15200, 15203, 15204, 15205, 15211, 15213, 15217, 15218, 15219, 15222, 15224, 15227, 15233, 15236, 15237, 15238

Indarapu Pochaiah

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 04-07-2016

Acts Referred:

Citation : (2016) 6 AndhLD 1

Hon'ble Judges : Sri A. Rajasheker Reddy, J.

Bench : Single Bench

Advocate : R.K. Suri, Advocate, for the Petitioner in all the WPs; Government Pleader for the Land Acquisition (TG), for the Respondent in all the WPs

Final Decision : Disposed Off

Judgement

Sri A. Rajasheker Reddy, J.—In this batch of writ petitions, various extents of house sites along with structures situated in Sy.No.741, Manthani Village and Mandal, Karimnagar District, belonging to the petitioners have been acquired by the respondents and Awards dated 24.06.2010 in proceedings No.B/885/2006 have been passed by the 2nd respondent - Land Acquisition Officer-cum-Revenue Divisional Officer, TSGENCO, Manthani, Karimnagar District, fixing the compensation at Rs.1,85,714/- per acre on the basis of random determination of market value. While determining the market value, the 2nd respondent did not consider the prevailing market value of the property in the vicinity, which includes open land and the structures thereon. The petitioners received the compensation amount under protest. The grievance of the petitioners is that the 2nd respondent did not issue valid notice as required under Section 12(2) of the Land Acquisition Act, 1894 (for brevity "the Act") and the basis for determination of compensation is not intimated to them. It is also their grievance that the 2nd respondent did not grant any interest on the compensation amount and also on

solatium. The 2nd respondent also did not consider the material and construction costs attached to the property, besides not considering the charges relating to the transportation of the material. The petitioners allege that as per the prevailing market value in the vicinity, the subject land is fetching Rs.500/- per square yard and Rs.50,000/- per gunta and Rs.6,00,000/- per acre. Aggrieved by the action of the respondents, the petitioners filed objections on 08.07.2010 before the 2nd respondent requesting to refer the matter to the Civil Court under Section 18 of the Act for determination of just compensation as per the market value. As there was no response, the petitioners have filed another representation dated 16.07.2011 and the same is also pending. The grievance of the petitioners is that they are all illiterates and could not pursue the remedies available under law. Hence, the petitioners have filed the present writ petitions.

2. A counter affidavit is filed on behalf of respondent No.2, admitting the fact of acquisition of the lands of the petitioners and passing of Awards dated 24.06.2010 fixing the compensation at Rs.1,85,714/- per acre, by considering the land value and structures value, separately, besides fixing 12% additional value on land and structures from the date of the Notification till the date of Award i.e., from 22.06.2008 to 21.06.2010 and also the fact of the petitioners receiving the compensation without protest. It is also stated that prior to disbursement of compensation, notices under Section 12(2) of the Act were issued to all the interested persons, whose lands were sought to be acquired and since the Award was passed within two years from the date of Notification, the payment of interest on the amount of compensation as well as on solatium does not arise. It is further stated that the compensation was paid as per the estimated value after considering the material cost and construction charges and that the transportation charges will not come under land acquisition process and it comes under the R & R package. It is further stated that the petitioners have not filed any application under Section 18 of the Act for referring the matters to the Civil Court for enhancement of compensation and, as such, the question of referring the matters to the Civil Court does not arise and hence sought for dismissal of the writ petitions.

3. A common reply affidavit is filed by the petitioners reiterating the contents in the writ affidavit and also stating that the petitioners received the amount of compensation under protest vide consolidated voucher in Lr.No.B/885/2006-2, dated 08.09.2010 pursuant to the Award dated 24.06.2010. It is also stated that a further representation dated 01.02.2016 was made under proper acknowledgement of the respondents in view of misplacement of the original record pertaining to the individual applications dated 08.07.2010 and 16.07.2011 of the petitioners and hence sought to allow the writ petitions.

4. Sri R.K. Suri, learned counsel for the petitioners, would submit that receiving the amount of compensation under protest itself is sufficient for referring the matters to the Civil Court under Section 18 of the Act for enhancement of compensation. He would further submit that a perusal of the certified copy of

consolidated voucher dated 08.09.2010, which is filed along with the reply affidavit, would show that the petitioners received the compensation amount under protest. He further submits that the applications filed by the petitioners seeking reference under Section 18 of the Act for enhancement of compensation were received by the respondents under proper acknowledgement, therefore, it cannot be said that the petitioners have not filed applications seeking reference under Section 18 of the Act.

5. In support of the said contentions, learned counsel for the petitioners relied upon various judgments rendered by the Apex Court in *The Special Tahsildar, Land Acquisition v. Kamalagangi Reddy And Others*, AIR 1990 AP 124, C.S. Ramachandra Rao v. Land Acquisition Officer, Visakhapatnam And Another, AIR 1980 AP 115; *Ambya Kalya Mhatre v. State of Maharashtra*, (2011) 9 SCC 325; *Sardar Amarjit Singh Kalra v. Pramod Gupta*, (2003) 3 SCC 272 And *Sail v. Sutni Sangam*, (2009) 16 SCC 1.

6. On the other hand, the learned Government Pleader for Land Acquisition opposed the relief sought by the petitioners on the ground that the petitioners have not filed any application seeking reference under Section 18 of the Act for enhancement of compensation and, as such, the matter cannot be referred to the Civil Court for enhancement of compensation merely basing on the protest expressed at the time of receiving compensation. In support of the said contention, she relied upon judgments of the Apex Court in *Land Acquisition Officer v. Shivabai*, (1997) 9 SCC 710 and *The District Collector v. P. Nagabhushana Rao And Others Etc.*, AIR 2004 AP 1.

7. In view of the rival contentions, the issue that requires to be considered in these writ petitions is whether the petitioners filed applications for referring the matters to the Civil Court under Section 18 of the Land Acquisition Act, 1894?

8. The fact that the petitioners received the amount of compensation under protest is not disputed and along with the reply affidavit, the petitioners have also filed certified copy of consolidated common voucher in L.R.No.B/82/2006-2, dated 08.09.2010, pursuant to the Award dated 24.06.2010. The petitioners also filed copies of applications dated 08.07.2010, on which the official seal of the office of the 2nd respondent along with date is affixed. Though the respondents state that they have not received applications under Section 18 of the Act, there is no averment in the counter that the official seal of the office of the 2nd respondent on the applications filed by the petitioners is fabricated or forged. Though the respondents state that the notices under Section 12(2) of the Act were issued to all the interested persons, no proof regarding the same is filed.

9. When once the petitioners received the amount of compensation under protest, it cannot be said that they are not diligent enough to file applications under Section 18 of the Act. In view of the same, I hold that petitioners made applications under Section 18 of the Act within time.

10. Further-more, the decisions relied upon by the learned Government Pleader

also supports the case of the petitioners, which go to show that the application under Section 18 of the Act, coupled with the protest expressed while receiving the amount of compensation, is a condition precedent for referring the matter to the Civil Court under Section 18 of the Act.

11. In the present cases, in order to prove that the petitioners filed applications under Section 18 of the Act, the official seal of the office of the 2nd respondent is found on the same. Section 18 of the Act also does not provide any prescribed proforma for filing application and the decisions relied upon by both sides show that if the claimants are not satisfied with the quantum of compensation and other aspects of the Award, they can make an application under Section 18 of the Act. In the present cases, the petitioners filed applications under Section 18 of the Act within time, which also bears the official seal of the office of the 2nd respondent, coupled with the fact of the petitioners receiving the amount of compensation under protest. Therefore, the respondents ought to have considered the request of the petitioners to refer the matters to the Civil Court for enhancement of compensation.

12. In view of the same, the respondents are directed to refer the matters to the Civil Court under Section 18 of the Act for enhancement of compensation as requested by the petitioners and if the respondents are not having the applications filed by the petitioners under Section 18 of the Act, it is open for the petitioners to file a copy of such applications before the 2nd respondent within a period of four weeks from the date of receipt of this order and on receiving a copy of such applications, the 2nd respondent shall take necessary action for referring the matter to the Civil Court under Section 18 of the Act for enhancement of compensation within a period of eight weeks thereafter.

13. Subject to the above directions, these writ petitions are disposed of. No order as to costs.

14. As a sequel, miscellaneous petitions pending, if any, in these writ petitions shall stand closed.