

(1998) 09 AP CK 0006

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7708 of 1989 and Batch

J. Rajyalakshmi and Others

APPELLANT

Vs

Land Aquisition Officer, HUDA, Hyd.

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 18, 25, 30
Post Office Act, 1898 — Section 28, 29

Citation : (1998) 5 ALD 644 : (1998) 6 ALT 140 : (1999) 1 AnWR 322

Hon'ble Judges : P. Ramakrishnam Raju, J

Bench : Single Bench

Advocate : Mr. J. Prabhakar, for the Appellant; Government Pleader for LA, for the Respondent

Judgement

1. Petitioners in these writ petitions have purchased certain extents of land in Survey Nos. 28/AA and 28/2 of Jillellaguda village, Hyderabad East Taluq, Rangareddy district under registered sale deeds executed between 18-2-1980 and 4-8-1981. The Land Acquisition Officer, HUDA, acquired an extent of Ac.43-02 cents situated in villages Behramulguda, Jillelaguda and Kharmanghat including these lands and Kharmanghat under a draft notification published on 24-12-1983. Although petitioners are registered owners, no notices were served on them. They are in possession of the land having raised some constructions. However, the Land Acquisition Officer passed an award No. 10 of 86 dated 23-9-1986 without reference to the petitioners' possession and compensation has been deposited in Civil Court in OP No.122 of 1987. In fact, petitioners made representations before the respondent on 10-2-1989 after coming to know about the acquisition proceedings and have sought for a fresh enquiry. The Land Acquisition Officer has expressed his inability for the said course. Hence they filed these writ petitions.

2. In the counter-affidavit filed by the respondent Land Acquisition Officer, it is stated that at no point of time, either after publication of the draft notification

and draft declaration, or during 5-A enquiry conducted under the Land Acquisition Act, petitioners raised any claim or objection to the award proceedings, hi fact, a total extent of Ac.43-02 cents of land was notified in different reaches for purpose of formation of Inner Ring Road from Hyderabad - Vijayawada National Highway No.9 to join Old Kurnool Road near Santhoshnagar. An extent of Ac.5-10 guntas in Survey No.28/AA of Jillelaguda was acquired along with other land which stood in the name of one Balaveeraiah. Notices u/s 9(1); 9(3) and 10 of the Land Acquisition Act were issued to interested persons. At the name of the writ petitioners did not figure in the revenue records, nor they appeared during 5-A enquiry, before publication of draft declaration u/s 6 of the Act, there was no occasion to issue any notice to them. If they have any interest in the Land acquired, they ought to have appeared before the Land Acquisition Officer at the time of the award enquiry. Petitioners have not got their names registered by effecting necessary changes in the revenue records, nor did they file any documents before the Land Acquisition Officer showing their right-title-and interest. After considering all the claims received during the award enquiry, award No. 10 of 86 was passed on 23-9-1986. Compensation amount in respect of which no proper claims were received a reference was made to the civil Court u/s 30 of the Act and the amount was ordered to be deposited in Civil Court.

3. Section 9 contemplates notice to interested persons which reads as follows :

Notice to person interested :--The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of land, and that claims to compensation for all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurement made u/s 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons know or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and (registered u/s 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898))"

4. So, it is clear that Section 9 is intended to give notice about the intention to

acquire the land and provide an opportunity to all the interested persons in the land to put forth their claims.

5. Section 25 provides Rules as to claiming compensation before Collector or the Court u/s 11 of the Act. Section 11 deals with conducting enquiry into measurements, claims, value and passing of award by the Collector.

6. It is now fairly well settled that for want of notice u/s 9(3) on the interested persons, the award passed by the Collector cannot be quashed and if the interested persons come to know about the award, they can seek reference u/s 18 of the Act without any bar of limitation affecting their rights. Simply because notice to the interested persons is necessary, the award passed cannot be set aside on account of this defect. It is open to the affected party to seek reference. However, when it is not known or believed that some persons are interested in the land it cannot be postulated that the award is per se bad or illegal. Therefore, the Court while protecting the rights of the interested persons has to strike a balance without disturbing the award already passed by enabling the interested person to pursue his remedies, seeking reference before the Civil Court and if reference has already been disposed of to file an appeal before the appellate Court. Having regard to these principles, it has to be seen as to what would be the proper order to be passed in this case.

7. The learned Counsel for the petitioners has placed before me number of xerox copies of sale deeds executed by the erstwhile owner K. Balaveeraiah and others in favour of petitioners in respect of the land situated in Survey Nos.28/AA etc., of Jillelaguda village. As there is prima facie evidence that petitioners have purchased certain extents of land, I am of the view they are entitled to notice and opportunity to appear and adduce evidence. Accordingly, petitioners have represented to the respondent to refer the matter under Sections 18 and 30 of the Land Acquisition Act so that they can agitate their rights, but the respondent rejected the said claim on the ground that they are not parties the award proceedings. Inasmuch as OP No. 122 of 1987 is already registered and pending on the file of the Principal Subordinate Judge's Court, Ranga reddy, and if it is not disposed of, there shall be a direction to the respondent to refer the claims of the petitioners u/s 18 as well as u/s 30 of the Land Acquisition Act, so as to dispose of these claims also along with OP No. 122 of 1987. If it is already disposed of no relief can be granted in these writ petitions, but it is open to the petitioner to make appropriate applications appeals for impleadment or for other reliefs before the appropriate forum, if they are so advised.

8. The writ petitions are accordingly disposed of. No costs.

W.P.M.P.No.37815 of 1997:

Having regard to the circumstances, petitioner is impleaded as 7th Petitioner in Writ Petition No.7708 of 1997.