

(2017) 08 AP CK 0001

In the Andhra Pradesh High Court

Case No : 29363 of 2017 in of and Writ Petition No 8699 of 2016

Pairala Rayamallu and others

APPELLANT

Vs

State of Telangana and others

RESPONDENT

Date of Decision : 01-08-2017

Acts Referred:

Land Acquisition Act, 1894, Section 6, Section 30, Section 18, Section 17(4), Section 4(1), Section 5-A, <a href=56

Citation : (2017) 08 AP CK 0001

Hon'ble Judges : Dr. B. Siva Sankara Rao

Bench : SINGLE BENCH

Advocate : M.V. Hanumantha Rao, P.V. Narayana Rao, J. Sreenivasa Rao

Final Decision : Dismissed

Judgement

1. The 6 writ petitioners sought the relief, more particularly, of mandamus declaring the order of 3rd respondent-RDO, Mancherial (among the 4 respondents including the State represented by Principal Secretary (R & LA), District Collector, Adilabad and unofficial 4th respondent R. Ramesh Babu) vide proceedings No. A/924/2010 dated 26.02.2016 to pay compensation to the 4th respondent in respect of S.No.180 of Ac. 615 guntas as illegal and to set aside the same and to direct the RDO (R.3) to consider the claim of the petitioners, who are the pattedars of the said land of S. No. 180 to an extent of Ac. 6.38 situated at Singapur Village, Mancherial Mandal, Adilabad District.

2. The averments in the supporting affidavit of the 4th petitioner are that they are in continuous possession and enjoyment of the land in question that originally belongs to their ancestors Pairala Rajaiah and his 2 brothers Papaiah and Pochaiah and the kasrapahani of 1954-55 also reflects their names as inamdars and the petitioners since ancestors are in continuous possession and enjoyment and the Government issued Section 4(1) of Land Acquisition Act,

1894 publication in the District Gazette dated 05.12.2012 and later after Section 6 declaration passed award on 29.12.2014 and the petitioners are the original owners with possession and enjoyment, the 4th respondent Ramesh Babu is shown wrongly as pattadar in the revenue records and they are trying to release the compensation in collusion with R.4 and they submitted their objection on 04.02.2015 not to release the compensation to respondent No.4 since the petitioners are the original owners and thereby to refer the dispute under Section 76 of the Act No.30/2013, it was not referred and the 3rd respondent-RDO asked them to appear for enquiry on 26.03.2015 and they with documentary evidence attended and submitted to support their claim of ownership and entitlement of compensation, it was adjourned to some other date saying the RDO was on leave and they received another notice for appearance on 18.04.2015 and they attended, however the matter was not called and they were expecting further notice and went to the Office of RDO on 24.04.2015, however, it was informed that on 18.04.2015 in their absence the objections of them disposed of and even asked for a copy of the objections rejection order it was not furnished and they earlier filed W.P.No.13201 of 2015, whereby this Court by order dated 04.11.2015 disposed of directing the RDO to fix early date for hearing after notice to the petitioners and respondent No.4 and pass appropriate orders by giving liberty to the petitioners to submit the objections and pursuant to the notice dated 13.01.2016 they appeared on 23.01.2016 before respondent No.3 and on that day no hearing taken place and they were asked to appear on next day and the impugned order on 26.02.2016 passed by R.3 curiously without hearing and enquiry, hence to set aside the proceedings dated 26.02.2016 by ordering payment of compensation to the petitioners and not to release the compensation to 4th respondent.

3. Pending the Writ Petition, respondent No.4 filed implead petition vide W.P. M.P. No. 29363 of 2017 for impleading Singareni Collieries Company Limited (SCCL) as 5th respondent saying the land acquired of Ac. 817.15 guntas of Singapur Village including the land in question referred supra were on the requisition of the Singareni Collieries Company Limited being a necessary party. Accordingly, the implead petition is ordered and Singareni Collieries Company is impleaded as 5th respondent and represented by J. Srinivas Rao learned standing counsel.

4. The counter affidavit filed by respondent Nos. 1 to 3 reads that as per the requisition of the General Manager of SCCL for acquisition of Ac.817.15 guntas for SRP-2 & 2A lands into open cast mine and raising of plantation and to develop greenery pursuant to which survey was conducted and draft notification issued for an area of Ac.505.12 guntas and as per the draft notification under Section 4(1) of the Act issued on 05.12.2012 also published in local newspapers by invoking urgency Clause under Section 17(4) of the Act dispensed with Section 5-A enquiry with approval of the competent authority and later Section 6 declaration was also published on even date vide Gazette notification dated 06.12.2012 and also published in 2 newspapers on 05.01.2013. In respect of the land of Ac.6.20 guntas in S.No.180 covered by the writ petition impugned

concerned, R.4- Ramesh Babu is notified as pattadar and occupant and the award passed under Act No.30/2013 therefrom and also pronounce on 31.12.2014 being the owner and pattadar in fixing compensation for entitlement in his favour. It is after passing of the award on 31.12.2014, the petitioners came forward with objection petition on 04.02.2015 stating P.Papaiah was the original pattadar and after his demise they are cultivating jointly and not to pay compensation to R.4-Ramesh Babu and R.4 also filed petition on 07.02.2015 stating he purchased land way back in 2007 through registered document and his name is mutated and pattadar passbook and title deed granted to him and also pahanies reflected his possession and enjoyment and on considering the representations and the rival representations, RDO, Mancherial fixed the date to participate in the enquiry on 26.03.2015 and R.4 produced title deeds in respect of the land and petitioners failed to produce on that date or even subsequent date fixed on 18.04.2015 having absent. Later W.P.No.13201 of 2015 filed by them and there was a direction on 04.11.2015 to fix a date of hearing to the petitioners and R.4 and to decide the same within four weeks therefrom and pursuant to the directions, notice issued to both parties on 12.01.2016 and again postponed to 25.01.2016 and heard the counsel for the petitioners and for R.4 and petitioners through their counsel did not produce any documents and R.4 again produced the registered sale deed No.493/2007 dated 22.01.2007 showing purchased from Pairala Mallaiah S/o Papaiah of Ac.6.15 guntas in S.No.180 and same was implemented by mutation in revenue records and pattadar passbook No.488679 issued on 04.10.2008 to R.4 being the owner and the contention of no enquiry conducted thereby is not correct. The petitioners further contention of only one branch out of 3 sold the land to R.4 concerned, the records produced by the awardee verified and the award also discussed the same showing the extent of Ac.6.33 guntas in S.No.180 reflects from the pahani right from 1993-94 only in the name of Mallaiah till 2006-07 and therefrom in the name of R.4-Ramesh Babu as vendee of till 2011-12 to the date of Section 4(1) notification and thereby sought for dismissal of the writ petition.

5. Undisputedly, the petitioners approached respondent No.3 by filing written objections on 04.02.2015 for the first time including from the writ petition averments referred supra. The award in question was passed on 29.12.2014 itself in favour of R.4 for the land of S.No.180 in question. Thus before passing of the award, they did not participate in any enquiry pursuant to Section 4 notification and Section 6 declaration or to the award enquiry. The law is fairly settled that once award passed the LAO became functus officio. Leave about there is no limitation but for to claim within a reasonable time for reference under Section 30 of the Act as laid down in P.K. Sreekantan v. P. Sreekumaran Nair, 2006 (13) SCC 574, even to make such a request a 3rd party to the post award and after reference to Civil Court, when not party to the reference even cannot ask for impleadment as laid down in Ram Prakash Agarwal And Another v. Gopi Krishan (Dead through LRs), 2013 11 SCC 296 for remedy is to workout what is otherwise available under law to file a civil suit. Apart from the fact the

award once passed LAO has no jurisdiction to alter the award but for any clerical or arithmetical mistake within the meaning of Section 13-A of the Act 1894 for the LAO becomes functus officio and said principle is covered by the statutory provision and for that matter even the civil reference Court has no jurisdiction, but for to correct clerical or arithmetical mistake with reference to Section 13-A of the Act and Section 152 CPC and said principle of the Apex Court in Union of India v. Smt. Pratap Kaur (Dead through LRs), 1995 (3) SCC 263, is very clear also with reference to the distinction between Section 13-A, 18 and 30 of the Act.

6. This Court in Revappa v. Government of Andhra Pradesh and Others, 2012 (2) ALD 700 also observed on the scope of Section 13-A and 18 of the Act of any person interested is referable to persons participated in the pre award and award enquiry and not those who did not participate and even LAO cannot middle with the award at the request of any party by virtue of the bar under Section 13-A of the Act. The latest expression of this Court dated 24.07.2017 in W.P. Nos. 35981, 39983 and 40002 of 2015 also reiterated the same.

7. Having regard to the above, the petitioners remedy if at all is only to approach the civil court by filing a suit for declaration of title and claim in the event of proving entitlement to whole or any part of the land and recover compensation from R.4 and not otherwise and the earlier filing of writ petition and any disposal to consider the representation on merits, no way creates statutory right once there is a bar by virtue of the above settled law.

8. Accordingly and in the result, the writ petition is dismissed as remedy of the petitioners is to file a civil suit for declaration of title and recovery in the event of entitlement for any extent of the property, the proportionate compensation with interest etc., from respondent No.4 and not otherwise.

9. Consequently, miscellaneous petitions, if any shall stand closed. No costs.