
(2011) 11 AP CK 0106

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13523 of 2011

Shaik Kareemunnisa Begum

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 15-11-2011

Acts Referred:

Land Acquisition Act, 1894 — Section 10, 11, 18, 30, 31

Citation : (2011) 11 AP CK 0106

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Ch. Madhu Babu, for the Appellant;

Judgement

C.V. Nagarjuna Reddy

1. Both these writ petitions raise common questions of law and therefore, they are being heard and disposed of together.

2. Certain lands were acquired for the purpose of establishment of respondent No. 5-thermal station. A consent award was passed on 31.12.2007 covering the extent of Acs.7.30 cents. Compensation in respect of Acs.5.90 cents was distributed to five persons, who are identified as land-owners. The compensation for the balance extent of Acs.1.40 cents was ordered to be deposited in civil Court, as no one came forward to claim the said amount. Accordingly, in pursuance of the said decision taken, compensation was deposited in the Court of the learned Principal Senior Civil Judge, Nellore on 07.01.2009 through D.D. No. 136260, dated 03.01.2009.

3. The plea of the petitioners in these writ petitions is that their names were not notified for acquisition even though they are the owners of the properties of Acs.1.00 in W.P. No. 13523 of 2011 and Ac.0.66 cents in W.P. No. 13563 of 2011, and that therefore, they were not aware of the award enquiry and consequently, they could not make claims before the Land Acquisition Officer. They felt aggrieved by the deposit of the compensation by the Land Acquisition Officer in

respect of Acs. 1.40 cents of land before the civil Court in purported exercise of power u/s 31(2) of the Land Acquisition Act, 1894 (for short "the Act").

4. In the counter affidavit filed by the Land Acquisition Officer, it is inter alia stated that as the petitioners have not attended the award enquiry in pursuance of the public notice issued under Sections 9(1) and 10 of the Act and no claims were presented by them at any stage during the land acquisition proceedings, the amount was deposited in the civil Court and the petitioners are entitled to approach the civil Court for appropriate relief.

5. The learned counsel for the petitioners submitted that on account of the fact that the names of the petitioners were not notified, they were" not aware of the acquisition proceeding"s disabling themselves from appearing in the award enquiry and making claims for payment of compensation and that even assuming that no person has made a claim that does not empower the Land Acquisition Officer to deposit the amount in civil Court. The learned counsel further submitted that nothing prevented the Land Acquisition Officer from depositing the amount in the revenue account or in a nationalised bank till such time as claims are received and payments are made to the original owners.

6. Opposing the above submissions of the learned counsel for the petitioners, the learned Government Pleader for Land Acquisition stated that since no claims were received in respect of the compensation fixed by the Land Acquisition Officer, he is entitled to deposit the amount of the compensation u/s 31(2) of the Act. In support of his submission, the learned Government Pleader placed reliance on the judgment of the Supreme Court in Hissar Improvment Trust Vs. Smt. Rukmani Devi and another, a Division Bench of this Court in K. Malla Reddy and others v. The Land Acquisition Officer, HUDA, Hyderabad and others 1993 ALT Supp. (1) 422 (DB), and that of a learned Single Judge of Madras High Court in Kandasamy v. The District Collector, Salem District W.P. No. 16351 of 2008.

7. u/s 11 of the Act, after completing the award enquiry, an award has to be passed; under sub-section (1) if there is no consent and under sub-section (2) thereof if there is consent from the land-owners. u/s 30 of the Act, when the amount of the compensation has been settled u/s 11 of the Act, if any dispute arises as to its apportionment or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court. A similar provision is made in Section 18 of the Act, under which, any person who is interested has not accepted the award may seek reference of dispute relating to measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

8. Under sub-section (1) of Section 31 of the Act, while making the award u/s 11 of the Act, the Collector shall tender payment of the compensation to the persons entitled to receive the compensation according to the award, and shall pay it to them unless prevented by one or more of the contingencies mentioned

in sub-section (2). Sub-section (2), which is relevant for the present purpose, envisages that if the persons interested do not consent to receive the compensation, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount in the Court to which a reference u/s 18 of the Act would be submitted.

9. A close analysis of sub-section (2) of Section 31 of the Act would show that the Land Acquisition Officer is required to deposit the amount of compensation only under the four contingencies mentioned therein, namely, that the parties do not consent to receive the compensation, where there is no person competent to alienate the land, where there is any dispute as to the title to receive the compensation or where there is a dispute relating to apportionment of it. The learned Government Pleader laid emphasis on the phrase "if there be no person competent to alienate the land" to drive home his submission that since no one had made a claim before the Land Acquisition Officer for receiving the compensation, the latter has treated the same as the contingency that there is no person competent to alienate.

10. I find no merit in this submission. In a given situation, the owner of the land may not make a claim for receiving compensation. Mere absence of such a claim cannot be brought under the contingency of there being no person competent to alienate the land. In order to bring a situation under the said contingency, the Land Acquisition Officer has to go through the revenue record and come to the specific conclusion that there is no person, who is competent to alienate the land. As noted above, if the land-owner for various reasons does not come forward to make a claim, it cannot be construed that he is not competent to alienate the land. If the legislative intent were to enable the Land Acquisition Officer to deposit the amount of compensation in the civil Court wherever no claims were made, such a provision would have been made in sub-section (2) of Section 31 of the Act. In my opinion, the parliament has advisedly not included such a contingency of absence of claims in sub-section (2) because the object behind making a deposit in civil Court is to decide any or all of the disputes covered by the provisions of Section 18 of the Act. Absence of claim before the Land Acquisition Officer in the award enquiry is not a dispute envisaged u/s 18. Therefore, it would be wholly an exercise in futility if compensation for which no claims is received is deposited before the civil Court. There will be nothing left to the civil Court to decide in the absence of any dispute as to the entitlement to receive the compensation by any person.

11. I have carefully gone through the judgments on which reliance is placed by the learned Government Pleader. In Hissar Improvement Trust (supra), the Supreme Court has held that Section 31 of the Act requires that the Collector should tender payment of the compensation awarded by him to the persons interested and that if for any reasons mentioned therein, the compensation has not been paid, the Collector should deposit the amount of compensation in the

Court to which reference could be made u/s 18 of the Act. The question whether a contingency of the nature which has arisen in the present case has not fallen for the consideration of the Supreme Court. Therefore, this judgment is of no help to the respondents.

12. In *Kandasamy (supra)*, the land-owner has refused to receive the award. The Land Acquisition Officer instead of depositing the amount in the civil deposit, has deposited in revenue account. A learned Single Judge of the Madras High Court found fault with the said action and held that though the award was passed, as the petitioner therein refused to receive the amount, the District Collector should have made deposit in the Court as provided by Section 31(2) of the Act, instead of depositing in the revenue account. As observed by the learned Judge in paragraph-4 of the judgement, that was a case where the landlord refused to receive the compensation and accordingly it fell under one of the contingencies u/s 31(2) of the Act.

13. The judgment of the Division Bench of this Court in *K. Malla Reddy (supra)* is also of no help to the respondents because neither the facts were discussed nor any ratio was laid therein.

14. For all the above-mentioned reasons, this Court is of the opinion that the Land Acquisition Officer has committed an illegality in depositing the amount in the civil Court in the absence of any of the contingencies arising u/s 31(2) of the Act. Accordingly, the award to that extent is set aside. The Land Acquisition Officer (respondent No. 3) is directed to make an appropriate application before the civil Court in which the deposit is made for return of the reference along with the deposit. The petitioners are permitted to make claims before respondent No. 3. On examination of the claims, respondent No. 3 shall pass appropriate order, and if he finds that the petitioners are the true owners of the property, compensation shall be paid to them. Conversely, if he finds that they are not entitled to receive compensation, he shall thereafter refer the dispute to the civil court u/s 30 of the Act and make deposit of the compensation amount u/s 31(2) of the Act. He shall complete this exercise within a period of three months from the date of receipt of a copy of this order.

15. The writ petitions are accordingly allowed to the extent indicated above.

16. As a sequel to disposal of the writ petitions, interim orders, if any granted, shall stand vacated and the interlocutory applications, if any pending, shall stand disposed of as infructuous.