

HON'BLE SRI JUSTICE M.VENKATA RAMANA

WRIT PETITION No.20861 of 2020

ORDER

This Writ Petition is filed to issue a Writ of Mandamus or any other appropriate orders to declare the inaction of the respondents in initiating the land acquisition proceedings relating to lands belonging to the petitioners being illegal, arbitrary and in violation of Article 300-A of the Constitution of India and to issue a consequential direction in terms of Act 30 of 2013.

2. The petitioners are owning lands in Muthukuru Village of Atluru Mandal, Kadapa District which they claimed that they fall within submergence area of Somasila Project.

3. The 1st petitioner owns Ac.1-30 cents in S.No.15/2A, Ac.0-28 cents in S.No.16/1, Ac.0-11 cents in S.No.16/2A and Ac.0-38 cents in S.No.19/3B1A2. The 2nd petitioner owns Ac.2-48 cents in S.No.19/3B1B. The third petitioner owns Ac.1-68 cents in S.No.15/1 and Ac.0-70 cents in S.No.16/1A. The 4th petitioner owns Ac.1-50 cents in S.No.15/2B.

4. The contention of the petitioners is that their lands are affected by backwaters of Somasila Project since they got submerged at Full Reservoir Level and that, when they are inundated by water, they become unfit for cultivation. They also stated that in the year 2020 these lands were affected likewise.

5. Referring to the requisition of the 4th respondent to the 2nd respondent to acquire an extent of Ac.3-65 cents in S.No.15, Ac.0.94

cents in S.No.16/1 and Ac.1-51 cents in S.No.193A of Muthukuru Village, survey carried thereupon by Special Surveyor, SSP Unit-4, Rajampet and the joint survey proposed by the 4th respondent, it is the complaint of the petitioners that no action is taken so far to acquire the above lands and that all other lands were acquired. The petitioners have also claimed that they are small farmers and on account of the submergence of their lands as stated above, they are deprived of their livelihood. In these circumstances, the petitioners claimed that they invoked the jurisdiction of this Court under Article 226 of the Constitution of India for necessary relief.

6. On behalf of the respondents 2 and 3, a counter affidavit is filed resisting this claim of the petitioners. Their main contention is that the lands claimed by the petitioners are above Full Reservoir Level and since no requisition was received from the requisitioning department, action was not initiated to acquire the lands of the petitioners.

7. Referring to a detailed report of the Executive Engineer, S.P.Division No.IV, Atmakur, Nellore District dated 31.12.2019, it is the contention of these respondents that lands and structures in Chowtapalli village, H/o. Muthukur village and some other lands in different villages, when representations were received from the villagers, were verified with reference to FRL 330 feet contour by the Deputy Executive Engineer, S.P.Sub Division No.4, Kothuru and, that he submitted a report dated 27.12.2019 stating that none of these lands and structures come under submersion in backwaters of Somasila Project.

8. It is also stated by these respondents that in the above report when the villagers complained that the backwaters are submerging their

lands, when the level of the reservoir capacity was built upto 78 TMC, they were found above 330 feet contour lying from 331 feet to 336 feet and therefore, they would not be affected.

9. The petitioners disputed the contention of the respondents 2 and 3 stating that their lands were subjected to submergence in the year 2019 and when already requisition was issued by the 4th respondent on 20.02.2019 basing on the reports of the engineering department and when similarly placed lands were acquired under award No.--/2016-17/Rc.D.115/2013 dated 11.11.2016 including S.No.16/2, it is not open for the respondents 2 and 3 to contend otherwise. The petitioners have specifically alleged that the 4th respondent was influenced by those who are enemically disposed of towards them politically, leading to change in their stand.

10. Heard Sri D.Krishna Murthy, learned counsel for the petitioners and learned Assistant Government Pleader for Land Acquisition.

11. Now, the point for determination is "whether the lands of the petitioners are affected by backwaters of Somasila Project and if there is inaction of the respondents to initiate necessary proceedings for their acquisition?

POINT:

12. It is pertinent to state that in the history of Somasila Project, for the first time in the year 2019, full reservoir level was reached at 100.580 MTS impounding 78 TMC. The petitioners are not disputing this fact. The total estimated capacity of this reservoir is 77.98 with FRL at 330 feet or 100.580 MTS. It is a project constructed against river Pennar and

lying in Pennar basin. It has a water spread area at 212.285 Sq.Kms. at Full Reservoir Level. Construction of this reservoir started in the year 1978 and went on upto the year 1989 with an intention of stabilizing 4,05,500 acres of Pennar delta and to bring 1,79,000 acres of new ayacut under its command in Nellore district apart from serving about 3,00,000 acres in Nellore and Chittoor districts under Telugu Ganga Project while also meeting the requirements of Chennai city supplying 15 TMC of drinking water. 105 villages were identified to get submerged in the reservoir foreshore area at FRL and the land acquisition went on in a phased manner by the year 2007.

13. A proposal was given for acquiring certain extents in S.No.16/1, 15 and 19/3A of Muthukuru village, Atlur Mandal, Kadapa District by the Executing Engineer, S.P.Division No.IV, Atmakur, Nellore District by letter No.EE/SP Dn IV/DBAD3/LA/129^M dated 20.02.2019 for foreshore area submersion under Somasila Project. They were inspected on 04.12.2019 along with Engineering, Horticulture, Forest officers and Assistant Director of Horticulture, Rajampet, Kadapa District by his letter dated 24.12.2019 furnished value of horticultural trees.

14. The Deputy Executive Engineer, LA & R Sub Division, Badvel, requested the 3rd respondent by his letter No.DEE/LA&R Sub Division/Badvel/57^M, dated 04.12.2019 to keep the land acquisition process on hold for the time being, with reference to Ac.6-10 cents in Muthukuru Village for further report on due verification of all the lands in the peripheral areas of Somasila Project. The Executing Engineer, S.P.Division-IV, Atmakur, Nellore District forwarded a detailed report to the 2nd respondent in Letter No.EE/SP Dn.IV/ATKR/DB/JTO/L.A./7812M,

dated 31.12.2019 with reference to representation of the villagers of Boddecherla H/o. Brahmanapalli and Brahmanapalli of Gopavaram Mandal, Vemuluru, Chowatapalli, Bodisettipalli, Muthukuru, Kamasamudram villages of Atluru mandal complaining that their lands and buildings would be affected by backwaters of Somasila Project. In this report referring to the reports of Deputy Executive Engineer, Badvel and Kothuru, ultimately it is stated that these lands do not fall within the submergible limits and contours of the backwaters of this project.

15. Thus, the material on record placed by the respondents 2 and 3 reflected the ground situation.

16. However, referring to award in Rc.D.115/2013 dated 11.11.2016 of the Special Deputy Collector, Land Acquisition, Somasila Project, Unit-IV, Rajampet, a copy of which is produced by the petitioners along with reply affidavit, it is their contention that when surrounding lands in an extent of Ac.6-16 in S.Nos.16-2,17 etc., of Muthukuru village of Atluru Mandal were acquired, the reports relied on by the respondents 2 and 3 cannot be given credence to. They have also produced copies of the photographs which show inundation of the structures and agricultural fields in a sheet of water. These photographs also reflect that these lands are exploited for horticulture purpose.

17. The entire process of verification upon representations of the villagers at the foreshore area of Somasila backwaters was undertaken on account of the instructions of the Superintending Engineer, Somasila Project Circle, Nellore vide memo No.SE/SPC/NLR/TS/2720LK, dated 26.11.2019.

18. However, the ground situation is better known to the petitioners, who have lands in the village and the Revenue, Engineering and Survey officers working at the field level in this area. Therefore, in order to placate apprehensions of the petitioners that their lands were left out from the acquisition process, though they are affected on account of this project, it is desirable to have a re-look into the entire situation. The farmers who are dependant on lands usually would not come forward to forego their precious possession on account of the attachment they have. When their lands are abutting a reservoir, it is well-known that they command better irrigation facilities on account of copious availability of water.

19. Therefore, when they have complained that their lands and structures are submerged in the backwaters of Somasila Reservoir, it is better for the 1st respondent-Principal Secretary, Water Resources (Irrigation) Department, to get a survey conducted through the office of Chief Engineer, who is incharge of Somasila Project. Not only the cases of the petitioners but also similarly placed and affected farmers can be considered in this process. Initiation of this process is not in disregard of what was done already by the Engineers of SP Division-04, Atmakur and others. This suggested step is also a measure of confirmation of what was done already, to allay the apprehensions of these farmers.

20. Reversal of his decision by the Executive Engineer, S.P.Division No.4, Atmakur for acquisition of these lands, though seriously commented upon by the petitioners, when the ground realities remain otherwise, cannot as such be found fault with.

21. Therefore, in these circumstances of the case, it is desirable to direct the 1st respondent-Principal Secretary as stated above and accordingly, this writ petition has to be disposed of.

22. Therefore, this Writ Petition is disposed of with the following directions:

1. The 1st respondent-Principal Secretary, Water Resources (Irrigation) Department, Government of Andhra Pradesh shall get the lands in Muthukuru village of Atluru Mandal, Kadapa District and other areas of likely submergence in the backwaters of Somasila project including of the petitioners in S.Nos.15, 16/1 and 19/3A of the same village, verified and surveyed through the office of the Chief Engineer, Somasila Project, collect necessary data clearly identifying whether these lands are within the range of FRL (330 feet contour) and within the water spread area of 212.285 Sq.Kms.
2. If it is observed that these lands are within the submergible area under this project and if not acquired so far under land acquisition proceedings either under the Land Acquisition Act, 1894 or under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the Government shall direct initiation of such acquisition proceedings.
3. In the process of such verification, the material and reports already collected by the office of the Executive Engineer,

S.P. Division-4, Atmakur and of other engineering officers relating to this project including of survey, shall be considered.

4. This entire exercise should be completed within the period of six (06) months from the date of receipt of copy of this order.

5. No costs.

As a sequel, pending miscellaneous petitions, if any, stand closed.

Interim Orders, if any, stand vacated.

JUSTICE M.VENKATA RAMANA

Dt:30.04.2021

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WRIT PETITION No.20861 of 2020

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