

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU**WRIT PETITION No.19156 of 2021****ORDER:**

This Writ Petition is filed questioning the inaction of the respondents in not paying the compensation for the acquisition of land measuring Ac.1-36 cents situated in Sy.Nos.720/1 and 721 in Prathipadu Revenue village, Guntur District.

This court has heard Sri Gudapati Venkateswara Rao, learned counsel for the petitioner, Sri P.Durga Prasad, learned standing counsel for respondents 1 to 3 and the learned Government Pleader for revenue for respondents 4 to 6.

Learned counsel for the petitioner points out that the petitioner is a private trust running a "Dharmasatram" / Choultry in the subject land and village. It is the owner of the land situated in Sy.Nos.720/1 and 721 in Prathipadu Revenue village, Guntur District. It is the case of the petitioner that the 2nd respondent Corporation has taken over the said land and established a bus station therein but has not paid them any compensation whatsoever. Learned counsel for the petitioner argues that once the land has been taken over and the bus stand has been constructed for the benefit of the public the respondents are bound to pay the compensation to the owners. Learned counsel for the petitioner submits that there is no dispute about the essential facts and that as the land was highhandedly taken over by the respondents for construction of a bus stand, they are bound to pay the compensation. While

repelling the submissions made by the learned counsel for the respondents on the grounds of delay etc., it is argued that if there is a blatant violation of the rights of the petitioner, the delay should not be a ground to throw out the case. Learned counsel for the petitioner relied upon the following five judgments, which are filed along with a memo to argue that the petitioner's rights cannot be denied solely on the ground of delay.

- 1) *N. Ananda Reddy v State of Andhra Pradesh*¹**
- 2) *Vidya Devi v State of Himachal Pradesh and Others*²**
- 3) *The Secretary to Government of A.P., I & CAD, Department, Hyderabad and Others v Lavudi Lakya and others*³**
- 4) *E.P. Vinaya Sagar v Land Acquisition Officer-cum-Revenue Divisional Officer, Kamareddy, Nizamabad and Others*⁴**
- 5) *Gourishetti Narayana v special Deputy Collector (LA & R & R) Sripadasagar (Yellampally) Project, Mancheria, Adilabad and Others*⁵**

For respondents 2 and 3-the State Road Corporation, the learned standing counsel Sri Durga Prasad argues that the land was “voluntarily” given by the trustees to the State Road Transport Corporation in 1988 and was not forcibly or highhandedly taken over. The bus stand was constructed in the year 1989. It is asserted that from that date till the Writ

¹ 2021 SCC OnLine AP 2679

² (2020) 2 SCC 569

³ W.A.No.548 of 2004 of High Court of A.P.,

⁴ 2008 SCC OnLine AP 56

⁵ 2014 SCC OnLine AP 1416

petition is filed the petitioners never approached the respondents or any authorities for compensation. Apart from that it is reiterated that the land was actually “donated” for the construction of a bus station. The bus station was constructed under the ‘Telugu Grameena Kranthi Padham’ and is being used since 1989. Since the land is donated at free of cost the question of payment of compensation does not arise as per him. Learned counsel for the petitioner also relies upon the documents, which are annexed to the writ petition, to state that the land was donated by the trust. He relies upon the letter dated 07.07.1988 by which the Junior Engineer has taken over possession of the property. He also points out that in a letter addressed by the local MLA it is clearly asserted that the land is given free of cost 13 years ago. Lastly, learned counsel relies upon a letter addressed by two of the trustees, to the then Chief Minister, wherein it is mentioned that the land was given for construction of a bus station, on the condition that the State Road Corporation would reconstruct the old dilapidated choultry, which is standing there. Basing on these documents, learned counsel argues that the trustees have voluntarily donated the land. It is also submitted that the issues urged in this case including forcible occupation as urged by the petitioners are matters of evidence. There are very seriously disputed questions of fact which cannot be decided in a writ petition, as per him.

For the 6th respondent the learned Government Pleader for Revenue also argues on similar lines. It is reiterated that the site was donated for the bus stand at Prathipadu. The local enquiries made by the respondents clearly show that this land was in fact donated. An issue is raised about the locus of the present petitioner and deponent of the affidavit who filed the present writ petition. The issue of delay is also highlighted by the learned Government Pleader.

COURT:

Sri G. Venkateswara Rao, learned counsel for the petitioner contends that the land was occupied and taken over without permission and without payment of compensation. He lays emphasis on the case law that he has cited and in particular the leading judgment of **Vidya Devi case (2 supra)**. He also argues that other judgments cited by him are squarely applicable to the facts and circumstances of the case and that only on the ground of delay the petitioners case cannot be thrown away. He also laid stress on Article 300-A of the Constitution of India, to argue that the right of property is a basic human right and that a person cannot be deprived of his property except by due process of law. Hence, he prays for an order. While this argument looks appealing, a closure examination of the facts in this case make it clear that the present case is clearly distinguishable. The case law cited by the learned counsel for the petitioner would not apply to the facts in this case for the simple reason that there is a

fundamental issue about the land i.e., whether this land is donated or occupied. In the information furnished to the petitioner on 15.10.2015 itself it is mentioned by the RTC authorities under the RTI Act that the property was taken over in 1987 and it is “gift land”. In the counter affidavit filed by the 2nd and 3rd respondents it is asserted that the land was voluntarily donated. No rejoinder is filed to this counter affidavit. The enclosure to the counter namely the letter dated 07.07.1988 addressed by the Junior Engineer, APSRTC, Guntur, states that the land is “donated” by the Trust. It is stated that the Trust members also agreed to register the land after the finalization of certain issues. It is ultimately mentioned that the Junior Engineer has taken the land on five rupees stamp paper from the Trust members and that the registration of the land is pending. The letter addressed by the local MLA in September, 2000 also states that the land is given “freely for the RTC bus stand”. Lastly, in the letter addressed by the Trustees, it is also stated that the land was given voluntarily for the Bus stand and in return the dilapidated choultry would be constructed by the RTC authorities. The request in the penultimate paragraph is for the construction of the choultry. These facts, in the opinion of this Court, make a fundamental difference in the applicability of the case law to the present case. While the delay itself cannot be a ground to throw out the claim of the petitioner, it is clear that if the land was voluntarily donated the petitioner would not be entitled to

compensation. Even if the RTC did not reconstruct the choultry can the petitioner claim compensation? Was the land “forcefully taken over” is another issue. Although there is no “gift deed” *per se* some contemporaneous evidence is produced. The property is being used openly and is assessed to tax in the name of the RTC. The petitioner’s inaction for decades is also clearly visible. Thus, there are very seriously disputed questions of fact. They require evidence to be decided. The same cannot be done in the proceedings under Article 226 of the Constitution of India. The judgments cited by the 2nd respondent viz., ***Narender v Secretary, Municipal Administration, Secretariat Buildings Hyderabad and Others***⁶ is also similar to the facts of this case. In that case also learned single Judge held that where there is seriously disputed question of facts writ is not a proper remedy.

The Writ Petition is, therefore, dismissed leaving it open to the petitioner to pursue the remedies available to him. In such a case both parties can raise all the pleas available to them. There shall be no order as to costs.

Consequently, the Miscellaneous Applications pending, if any, shall also stand dismissed.

D.V.S.S.SOMAYAJULU, J

Date:23.03.2022
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⁶ 2003 (5) ALD 448