

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Writ Petition Nos.38658/12 & 33720/11

Dated 01st July, 2015

W.P.No.38658 of 2012

Between:

M.V.Viswanath

...Petitioner

And

The State of A.P., rep.by its Chief Engineer,
Irrigation Department, Jala Soudha Building,
1st Floor, Yerramanjil, Hyderabad and others

...Respondents

WP.No.33720 of 2011

Between:

D.Raghunath and 8 others

...Petitioners

And

The State of A.P., rep.by its Chief Engineer,
Irrigation Department, Jala Soudha Building,
1st Floor, Yerramanjil, Hyderabad and others

...Respondents

**Counsel for the petitioners: Sri R.V.Nagabhushana
Rao**

**Counsel for the respondents: AGP for Irrigation &
CAD (AP)**

The Court made the following:

Common Order:

These two Writ Petitions have been filed with the common grievance, namely, that the respondents are proposing to change the alignment of Madakasira Branch Canal, Phase-II, Package-55.

I have heard Sri R.V.Nagabhushana Rao, learned counsel for the petitioners, and the learned Assistant Government Pleader for Irrigation & CAD (AP) representing the respondents.

The petitioners are agriculturists and residents of Kirikera Village, Hindupur Mandal, Anantapur District. They own lands in various survey numbers of the said Village. They have averred that they are solely dependant upon agriculture. An irrigation project, by name, AVR Handri Neeva Sujala Sravanthi, was floated by the respondents. Under this scheme, a Canal, by name, Madakasira Branch Canal, was envisaged. The said Canal passes through Kirikera Village from KM 90.750 to KM 93.400. The Canal alignment was fixed and respondent No.6 has sent

a requisition on 28.12.2010 for acquisition of the lands for excavation of Madakasira Branch Canal. Acquisition proposals were, accordingly, initiated. Survey was conducted and sub-division records were prepared by the Revenue Department. At this stage, change of alignment of Canal between KM 90.000 to KM 93.000 was mooted by the office of respondent No.3. In pursuance thereof, the respondents have proposed to acquire the petitioners' lands by changing the original alignment. Feeling aggrieved by this action, the petitioners filed these Writ Petitions.

In their affidavit, the petitioners averred that the change of alignment is done apparently to favour certain real estate businessmen and that they have set up certain farmers from whom real estate businessmen have purchased the lands and made a representation to the Hon'ble Minister for Revenue, who, in turn, instructed the Chief Engineer to change the alignment. In support of this plea, the petitioners referred to and relied upon the letter addressed by the Executive Engineer to the Special Deputy Collector, Land Acquisition, and the reply addressed by the latter to the former

and pleaded that the entire action of the respondents in seeking to change the alignment is *mala fide*.

By order, dated 17.12.2012, this Court has granted stay of all further proceedings in respect of package No.55 (Phase-II) of the project. This order is in force till date.

Respondent No.5- Superintending Engineer has filed a counter-affidavit wherein he has sought to justify the change of alignment. He has averred that when the land acquisition process was commenced for excavation of the canal as per the original alignment, the land losers and public representatives have strongly objected to the alignment though they have not raised any such objection at time of fixing the original alignment; that the original alignment is very near to the industrial area and also to Sri Ramireddy drinking water supply scheme over head tank; that due to strong objections made to the original alignment, the EPC agency has stopped the work; and submitted its alternative alignment; that after working out the alternative alignment, the EPC agency has submitted revised hydraulic particulars

and alignment from Km.90.000 to Km.93.000 without changing the basic project parameters; and that the revised alignment proposal was recommended by the Superintending Engineer *vide* his letter, dated 12-08-2011.

It is further stated that the Chief Engineer along with the Superintending Engineer and the concerned Field staff has inspected the site on 17-08-2011; that they have found the proposed alignment as feasible and technically viable; that the canal bed level, full supply level, top bund level and discharges are not changing with reference to the original approved Hydraulic particulars; that due to consideration of the alternative alignment, there will be huge savings in land compensation, Railway crossings & State High Way Crossings cost; that if the approval for this alternative alignment is considered, the length of the canal will be marginally increased by 50 meters and additional four numbers of drops will come under the EPC agency's purview; and that the extent of land needed to be acquired is reduced from 69 acres to 47 acres.

The learned Assistant Government Pleader

has placed before the Court, the relevant file.

A perusal of the record shows that a representation was made to the then Minister for Revenue in the name of 15 persons wherein they have represented that they own lands through which the canal was sought to be excavated as per the original alignment; that except those lands, they do not own any other lands and that if their lands are acquired for excavation of canal, they will suffer irreparable loss. They have, therefore, requested the Minister to change the alignment and save the poor agriculturists. On the said representation, the Minister for Revenue has made the following endorsement:

“ENC (IRRIGATION –HNSS)

Please consider the request

Sd/-

M (REVENUE)

N.Raghuveera Reddy

Minister for Revenue, Relief,
Rehabilitation & Urban Land Ceiling
Govt. of Andhra Pradesh,
Secretariat, Hyderabad.”

It is this letter, which, evidently, ignited proposals for change of alignment. As noted from the contents of the counter-affidavit, two days after the Revenue Minister had made his endorsement, the team of Engineers lead by the Chief Engineer

(along with Superintending Engineer) Telugu Ganga Project, Srikalahasti, inspected the site and started the process of revised alignment.

The learned Counsel for the petitioners has argued that nowhere in the counter-affidavit, the respondents have pleaded that any report was obtained from technical experts to the effect that the original alignment is not technically feasible.

The learned Counsel for the petitioners has filed letter, dated 27-08-2011, addressed by the Executive Engineer to the Special Deputy Collector, Land Acquisition, AVR HNSS-II, Anantapur, wherein it is clearly stated that the villagers of Kirikera, Devarapalli and Kotipi have approached the Hon'ble Revenue Minister with a representation to change the canal alignment; that the Minister was pleased to instruct the Chief Engineer to consider the said representation and that based on that the Chief Engineer, Telugu Ganga Project, Srikalahasti, has instructed the Executive Engineer, Penukonda, to look into the feasibility of the alternative arrangement.

The Special Deputy Collector, Land Acquisition, HNSS-II, Anantapur, has formally

replied on 05-11-2011 to the above-mentioned letter, dated 27-08-2011, of the Executive Engineer. He has categorically stated in the said letter as under:

“The Special Surveyors and Deputy Inspector of Survey & Land records who were deputed specially to complete survey and sub-division work, from HNSS Unit, Puttur of Chittoor District, have attended survey work for a period of 3 months and prepared sub division record and submitted to this office duly pre-scrutinized by the Deputy Inspector of Survey & Land records on 16-07-2011. I along with Special Deputy Tahsildar, Special Surveyors, Deputy Inspector of Survey & Land records and Special Revenue Inspectors of this office have visited the said villages and inspected the fields as per alignment on ground.

In the reference 3rd, 4th and 5th cited, in order to submit Draft Notification & Draft Declaration proposals to the Special Collector, Telugu Ganga Project, Nellore, it is requested to submit revised requisitions of **KARIKERA, KOTIPI Reach-II & DEVARAPALLI villages of Hindupur Mandal measuring an L.A. extent of 69.03 acres, 23.50 acres & 17.52 acres respectively (Total extent 110.05 acres)** as there are difference of extents in between requisitioned extent and sub division record extents.

It is further informed that, during the review meeting held on 02.10.2011 at HNSS Circle office, Anantapur, the Hon'ble Revenue Minister & Hon'ble Primary Education Minister have instructed the requisition authorities to send revised requisitions of above said villages and also instructed me to expedite the Land Acquisition process.

It is further informed that, the Special Collector, Telugu Ganga Project, Nellore, during the review meeting held at Podupu Guest House, Anantapur has also requested the requisition authorities to send revised requisitions for the above said villages to expedite Land Acquisition process.

It is further informed that, in the reference 6th cited you have asked to keep the Land Acquisition process in abeyance as change of alignment is proposed in the above villages and revised land plan schedules will be sent at an early date.

In this connection I am to inform you that the Land Acquisition process has come up to the stage of notifications and at this stage, i.e. after completion of survey works and submission of sub division records by the Special Surveyors and Deputy Inspector of Survey & Land records after a duration of 3 months of work, it is not desirable to change the alignment.”

This letter unequivocally supports the plea of

the petitioners that the only reason for change of alignment is the intervention of the then Minister for Revenue and all other reasons mentioned by the respondents are intended only to lend justification to the decision taken by them to realign the canal on the instructions of the Minister.

The main reason that has been put forth in the counter-affidavit is that the land losers under the original alignment have raised serious objections at the time of land acquisition. Though it is stated in the counter-affidavit that the original alignment is passing near industrial area and also Sriram Reddy drinking water supply scheme overhead tank, it is not even whispered that it is not technically feasible to excavate the canal in those areas. The fact that the proposed canal passes near industrial area can be no ground to change the alignment. Similarly, unless an expert has given his opinion that excavation of canal near Sriram Reddy drinking water supply scheme overhead tank affects the safety of the overhead tank, there can be no justification for changing the alignment. As noted above, no opinion from any expert has been obtained by the respondents.

Therefore, I find merit in the submission of the learned Counsel for the petitioners that the respondents have tried to invent grounds to justify the change in alignment which was undertaken, evidently, on the endorsement made by the Revenue Minister on the representations made by some of the persons, through whose lands original alignment was fixed. In other words, with a view to avoid acquisition of lands of the representationists, the respondents have worked backwards by inventing reasons to justify the change of alignment.

On a careful consideration of the entire material on record, this Court has no hesitation to hold that the change of alignment is actuated by extraneous reasons and that the same is undertaken at the behest of the persons, whose lands were proposed to be acquired in pursuance of the original alignment. The respondents, being the State and its instrumentalities, cannot be permitted to act to the detriment of some persons in order to save others' properties. The original alignment having been fixed in the year 2008, there can be no justification to change the same

merely with a view to save a few land owners to the detriment of others such as the petitioners. The action of the respondents, thus, suffers from not only invidious discrimination but also patent illegality and arbitrariness.

In the light of the above discussion, the Writ Petitions are allowed with costs of Rs.10,000/- in each Writ Petition. The respondents are directed to proceed with the excavation of canal as per the original alignment.

As a sequel to disposal of the Writ Petitions, miscellaneous petitions, pending if any, stand disposed of.

(C.V.Nagarjuna Reddy, J)

Dt: 01st July, 2015
VGB/Lur