

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH**

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WRIT PETITION No.6195 of 2013

BETWEEN

M/s. U. Pattabhiramaiah and another.

... PETITIONERS

AND

The State of A.P., Rep. by its Principal Secretary, Revenue
(Land Acquisition) Department, Secretariat, Hyderabad and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 31.12.2015

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be
marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | No |

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ORDER:

The present writ petition is seventh writ petition in the series of writ petitions filed by the petitioners from time to time commencing with WP.No.512 of 2007; WP.No.2198 of 2012; WP.No.5832 of 2012; WP.No.9306 of 2012; WP.No.28592 of 2012 and WA.No.852 of 2011.

2. All the aforesaid writ petitions and writ appeal relate to acquisition of the land of the petitioners in pursuance of the notification issued under Section 4(1) of the Land Acquisition Act (for short 'the Act') dated 14.12.2005 for the purpose of Outer Ring Road (ORR) Project. The land of the petitioners, in question, is admeasuring Ac.8.00 guntas under Sy.No.567 of Ghatkesar Village and Mandal, Ranga Reddy District. Petitioners are stated to have constructed three blocks of six godowns each admeasuring 15,000 square feet for Food Corporation of India as per their specifications in the year 1978. Petitioners also constructed guard rooms, outhouses in the above land and they are stated to have recently renovated and at present, they are leased to A.P. State Civil Supplies Corporation and A.P. State Beverages Corporation Limited. Aggrieved by the notification issued under Section 4(1) of the Act dated 14.12.2005, petitioners filed objections and on the ground that the objections are not being considered and subsequently, Section 6 declaration being published on 18.12.2006, they approached this Court by WP.No.512 of 2007, which was dismissed on 27.09.2011. Aggrieved thereby, petitioners preferred an appeal WA.No.852 of 2011, however, there is no interim order subsisting. It is also stated that subsequently an award was also passed on 03.12.2011 and notice under Section 12(2) was given to the petitioners on 07.01.2012. Questioning the said award, petitioners filed WP.No.2198 of 2012, which was disposed of on 30.01.2012 upholding the award. The operative portion of the order is as follows:

"In the instant case, the petitioners obtained stay from this Court on 05.01.2007 and the writ petition was dismissed on 27.09.2011. It may be true that the stay was only as regards dispossession. However, once the respondents are prohibited from dispossessing the petitioners, the question of their proceeding with the passing of award does not arise.

If the period during which the stay was operating is excluded, the award is passed within the stipulated time. No exception can be taken to the award, much less, the entire proceedings.

Learned counsel for the petitioners submits that there exists a small temple in the acquired land and that it will take sometime for the petitioners to relocate it after performing necessary rituals. When the Government and its agencies are expressing total helplessness in shifting certain places of worship even when they are in the middle of the roads, the offer made by the petitioners can be readily accepted. The petitioners are granted four weeks time to relocate the existing temple.

Another contention advanced by the learned counsel for the petitioners is that in the event of the design of the junction at Ghatkesar being changed, the godown constructed by the petitioners may be spared. It shall be open to the petitioners to make a representation in this regard. In case design is changed and the godowns are not affected, the petitioners shall be entitled to retain the ownership and possession of the same and the same shall stand excluded from the purview of acquisition."

3. Petitioners, thereafter, filed another WP.No.5853 of 2012 alleging that though the representations of the petitioners, in pursuance of the order in WP.No.2198 of 2012 (extracted above, are pending, the respondents are proceeding to demolish the godowns. That writ petition was disposed of on 06.03.2012 with the following directions:

"The award, no doubt, was passed in respect of the land and thereby, the land vested in respondent No.3. However, if there is any possibility to change the alignment, it should not be difficult for him to consider it and in such an event, the land which is found not necessary for them, can be excluded from acquisition. The representation which the petitioners made in view of the observation made by this Court in W.P.No.2198 of 2012 is pending. That would become infructuous if the godowns are demolished even while it is under consideration.

Hence, the writ petition is disposed of, directing that respondent Nos.2 and 3 shall not demolish the structures over the land acquired from the petitioners till the representation made by them for change of alignment is considered and orders are passed thereon. There shall be no order as to costs."

4. Petitioners state that they made a representation dated 25.02.2012 to the Principal Secretary, Municipal Administration stating that out of two trumpets, one trumpet is overlapping the godowns on the northern side and hence, the well of the trumpet, if shifted by

40 meters adjacent to the western side, which is vacant acquired land, the godowns will be saved or alternatively by re-orienting the trumpets by 90 degrees the godowns can be saved. Petitioners relied upon the modification effected to Ghatkesar junction on eastern side where the structures and land of M/s. Dano Vaccines and Biologicals (P) Limited were saved except for Ac.0.13 guntas for widening of road.

Petitioners also relied upon another instance of M/s. Sandvik Smith Asia at Patancheru Junction, which was also similarly accommodated to avoid affecting existing industrial structure and requested to adopt Patancheru junction interchange. Instance at Shamirpet junction is also relied upon where the design is stated to have been changed thrice. Petitioners submit that earlier they gave three different proposals and another five alternate proposals in order to save the godowns without affecting the basic design of the junction. The said proposals are stated to have been examined by the same consultants as that of the second respondent and are stated to have been declared as viable and feasible, as per the design criteria adopted for interchange, however, they are stated to have involved additional cost of Rs.50 Lakhs.

5. While the representations of the petitioners were continued to be rejected from time to time, they approached this Court and as per the directions herein, the matter was remitted back for reconsideration, as per various orders, details of which are avoided herein for the sake of brevity. Suffice it to state that the present proposal of the petitioner, which is rejected under the impugned proceedings of the second respondent, was reconsidered as per the interim directions of this Court in WP.No.2198 of 2012 dated 30.01.2012 and WP.No.9306 of 2012 dated 03.04.2012.

Several representations of the petitioners dated 18.01.2012, 25.02.2012, 09.03.2012, 14.03.2012, 17.03.2012 and 21.03.2012 were, therefore, under consideration under the impugned order and it is stated that all those representations have been duly considered including alternate design and particularly proposal No.4 given by the petitioners, have been rejected under the impugned proceedings of the second respondent. The same having been questioned in this writ petition, this Court directed status quo existing with regard to demolition of structures to be maintained by order dated 07.02.2014, which is continuing to operate.

6. Mr. K.G. Krishna Murthy, learned senior counsel for the petitioners, has highlighted the ground of discrimination, alleged by the petitioners, by stating that similar proposals to save valuable properties at Shamirpet, Patancheru, Eastern side of Ghatkesar, Dundigal, Narsingi having been considered by the respondents, there is no reason why the proposal of the petitioners are given a different treatment so as to save the godowns by effecting marginal modification to the proposed interchange. Learned senior counsel also submitted on the basis of the representations of the petitioners, already filed, that additional cost of about Rs.50 Lakhs or more, which is likely to be incurred for affecting changes, as per the report of DPR Consultants, is also offered to be borne by the petitioners and submits that there cannot be any reason for not considering the proposal of the petitioners so as to advance the ORR project as well to save the properties of the petitioners. Learned senior counsel placed a lot of stress on the report of the DPR Consultants accepting proposal No.4 of the petitioners. Learned senior counsel submits that the accommodation shown at various other places viz. Patancheru, Shamirpet, Dundigal, Narsingi were also cases of similar acquisition of 2005 and proposals were considered in 2007 to save the properties.

7. Learned senior counsel relied upon relevant pages of the paper book in support of each of the junctions, referred to above and also pointed out the technical consultants reports including that of JNTU, Hyderabad and submits that the impugned rejection is clearly arbitrary. Learned senior counsel also submits that Article 14 of the Constitution of India is clearly violated and there is no objective consideration of the proposals of the petitioners, particularly, after the opinion of the DPR Consultants finding proposal No.4 feasible.

Learned senior counsel also states that to obviate any further objection in accepting the proposal No.4, petitioners have already offered to bear the additional cost likely to be incurred and also does not seek any access on the National Highway so far as his godowns are concerned and submits that there no reasons why the proposal of the petitioners are rejected under the impugned proceedings.

Learned senior counsel placed strong reliance upon the decisions of the Supreme Court in **RADHY SHYAM v. STATE OF U.P.**^[1]; **ONKAR LAL BAJAJ v. UNION OF INDIA**^[2]; **GOVERNMENT OF ANDHRA PRADESH, SCHOOL EDUCATION DEPT. v. K. HANMI REDDY**^[3] and **BLUEPARK SEAFOODS (P) LTD. v. DISTRICT COLLECTOR**^[4].

8. Per contra, Mr. E. Madan Mohan Rao, learned counsel appearing for the second respondent has relied the counter affidavit and additional counter affidavit of the second respondent, which is, briefly, referred to hereunder.

9. Counter affidavit states that ORR Project work commenced on 26.05.2010 and schedule for completion was within 30 months i.e. by 30.11.2012. However, the vehicle underpass (VUP) work in the Ghatkesar junction is affected/delayed due to petitioners.

It is submitted that originally the DPR consultants proposed partial clover leaf interchange. The Government, subsequently, gave approval on 06.03.2009 and the design was modified to double trumpet interchange and that even in

the earlier design, a partial clover leaf interchange would have affected the structures of the petitioners and the modified double trumpet interchange plan within the land notified for acquisition without involving any additional land acquisition keeping in view the advantages of the interchange design and for effective utilization of interchange land for accommodating wayside amenities and track related facilities within the notified land. It is asserted that there is no change in the alignment of ORR in the land of the petitioners except for the change in the design from partial clover leaf to double trumpet interchange. It is also denied that the proposal of the petitioners was approved by DPR consultants and it is stated that as per DPR Consultants, all alternative designs require compromise in different aspects.

10. To the extent of proposal No.4, it is stated that the proposal would involve shifting the loop to the West side by utilizing the available land between the service road and the loop by supporting ramp from the loop. It was, further, observed that ramp length would be considerably increased by 125 meters along with an additional re-wall quantity by about 240 sq. meters. The implication of this proposal will be approximately Rs.50 lakhs and the access to the petitioners' godown to National Highway was not advisable keeping in view the safety consideration on high capacity interchange area. It is also stated that separate ramp from loop is not allowed in any of the interchanges on the ORR. It is also stated that the offer of the petitioners not to seek access from the national highway and instead connect the godowns by providing access roads from south west quadrant is also technically not feasible for reasons 1 to 3 mentioned in para 10 of the counter. It is also stated that the land of the petitioners' to the extent of Ac.8.16 guntas is already acquired and compensation is paid and the entire Ac.16.18 guntas was already acquired for notification in the same survey number in 2005 itself.

11. It is also stated that with reference to various representations of the petitioners addressed to the Principal Secretary with request to change the

design of interchange was rejected by the Government and was communicated to the petitioners as early as on 15.05.2012.

The allegation of the petitioners with regard to saving of structures of M/s. Dano Vaccines is also stated to be incorrect as their structures were never affected within the right of way planned for interchange development. While the counter affidavit denies the technical feasibility of the proposal of the petitioners, it is stated that the Government has once again considered the request of the petitioners to include the godowns and structures vide memo of the Government dated 11.01.2013.

12. To the extent of allegation of the petitioners regarding Patancheru, Shamirpet, Narsingi junctions, the counter affidavit states that the design interchange at Shamirpet is changed thrice is not correct and originally rotary design is modified to double trumpet interchange. It is stated that Narsingi interchange is a T junction where link road to Gachibowli is meeting ORR from Shamshabad to Patancheru and only solution is single trumpet interchange.

Hence, the allegation of the petitioners in that respect is also denied. The counter affidavit also states that after passing of the award dated 03.12.2011, the possession of the affected land is taken over and handed over to the executing agency on 19.12.2011 and further delay in completion of the project would lead to cost escalation as it is already delayed and as extended its notified completion date.

To the extent of allegation made regarding M/s. Sandvik Smith Asia, it is stated that their request to provide access to the service road and not to the national highway was considered without any change of design and the same was feasible at Patancheru junction, as the radius and length of the loop ramps was large.

13. The counter affidavit discusses the demerits of different proposals of the petitioners. Mr. E. Madan Mohan Rao, learned counsel, elaborated the counter affidavit, referred to above and has

placed reliance upon a decision of the Supreme Court in

JAL MAHAL RESORTS PRIVATE LIMITED v. K.P. SHARMA^[5]. Learned counsel submits that as many as nine proposals of the petitioners were considered even by the DPR Consultants and their report is not entirely in favour of the petitioners, but erroneously understood by the petitioners as it is in their favour. Lastly, learned counsel would submit that the challenge to the acquisition by the petitioners having been negatived, the award having been passed and the possession taken long back, petitioners cannot insist by repeated proposals to seek modification of the design of interchange.

14. Keeping in view the rival contentions, therefore, the issue that requires determination is as to whether the impugned rejection of the proposal of the petitioners is arbitrary and discriminatory, as alleged.

15. Before considering the aforesaid issue, the essential facts noted above clearly show that the land of the petitioners was notified for acquisition as early as in 2005 and after the acquisition notification was upheld by this Court in WP.No.512 of 2007 dated 27.09.2011, the award was also passed on 03.12.2011 and possession of the land was taken on 19.12.2011 and was handed over to the executing agency. No doubt, the petitioners preferred WA.No.852 of 2011 against the order in WP.No.512 of 2007 but there is no interim order passed therein. In law, therefore, the subject land vests absolutely with the State Government and even assuming that the design of interchange is modified to the exclusion of affected godowns of the petitioners, it is beyond the purview of law for the Government to resile from the acquisition as Section 48 of the Act will not be available any more so as to withdraw the acquisition of the petitioners affected godowns. Since the acquisition of the said property cannot be withdrawn, in law, I am unable to see any purpose being served by consideration of the numerous representations of the petitioners from time to time for modification of the design of interchange.

16. Secondly, the alignment or the design of the interchange having been approved by experts, such as, DPR Consultants and approved by the Government, is presumed to have been approved keeping in view all the parameters including the minimum extent of land being affected, as is set out in the counter affidavit of the second respondent i.e. original single trumpet design is changed and approved by the Government to double trumpet design. Hence, the said design, as approved, keeping in view the technical parameters, to my mind, cannot be modified in the manner sought for by the petitioners, particularly, as the land affected having already been acquired.

In this background, the issue posed is required to be examined.

17. Learned senior counsel for the petitioners placed strong reliance upon the decision of the Supreme Court in **RADHY SHYAM's** case

(1 supra), para 86 thereof is relied upon, which is extracted hereunder:

“86. We also find merit in the appellants' plea that the acquisition of their land is vitiated due to violation of the doctrine of equality enshrined in [Article 14](#) of the Constitution. A reading of the survey report shows that the committee constituted by the State Government had recommended release of land measuring 18.9725 hectares. Many parcels of land were released from acquisition because the land owners had already raised constructions and were using the same as dwelling units. A large chunk of land measuring 4.3840 hectares was not acquired apparently because the same belong to an ex-member of the legislative assembly. The appellants had also raised constructions on their land and were using the same for residential and agricultural purposes. Why their land was not left out from acquisition has not been explained in the counter affidavit filed by the respondents. The High Court should have treated this as sufficient for recording a finding that the respondents had adopted the policy of pick and choose in acquiring some parcels of land and this amounted to violation of [Article 14](#) of the Constitution. Indeed it has not been pleaded by the respondents that the appellants cannot invoke the doctrine of equality because the other parcels of land were illegally left out from acquisition.”

18. The aforesaid was, however, a case where the policy of pick and choose was disapproved by the Supreme Court. Applying such criteria major chunk of land was excluded from acquisition but same criteria was not

applied to petitioners land also falling in the same category and liable for exclusion on the same parameters. In that context, the Supreme Court invoked the doctrine of equality. I am unable to see any relevance of that case to the facts of the present case.

19. Counter affidavit of the second respondent, referred to above, denied the allegation of discrimination so far as Patancheru, Narsingi, Shamirpet junctions are concerned and stated that in each of those other junctions, the factual situation was entirely different from the present junction on hand at Ghatkesar. Even the allegation of the petitioner to the extent of Eastern side junction at Ghatkesar was demonstrated as incorrect in the counter affidavit. I see no reason to reject the said averments in the counter affidavit as the second respondent has sufficiently explained the distinguishing features of the other junctions' vis-à-vis the junction, in question.

20. Learned senior counsel relied upon another decision of the Supreme Court in **ONKAR LAL BAJAJ's** case (2 supra). The said case related cancellation of allotment in respect of retail outlet for marketing of petroleum products where the Supreme Court interfered on finding that the exercise of power was arbitrary and without application of mind, as all categories of allotment were put into category of tainted allotment. In that context, while explaining the concept of Article 14 of the Constitution of India, the Supreme Court held in para 27 as follows:

"27. Article 14 guarantees to everyone equality before law. Unequals cannot be clubbed. The proposition is well settled and does not require reference to any precedent though many decisions were cited. Likewise, an arbitrary exercise of executive power deserves to be quashed is a proposition which again does not require support of any precedent. It is equally well settled that an order passed without application of mind deserves to be annulled being an arbitrary exercise of power. At the same time, we have no difficulty in accepting the proposition urged on behalf of the Government that if two views are possible and the Government takes one of it, it would not be amenable to judicial review on the ground that other view, according to the Court, is a better view."

I do not think that the said decision also has any bearing so far as the facts of the present case are concerned, as the principle therein is not attracted in the facts of the present case.

21. Learned senior counsel also relied upon a decision of this Court in **K. HANMI REDDY's** case (3 supra), which was a case where the proposal for regularization of teachers for grant-in-aid post in the Education Department was the issue for consideration. I am unable to see any relevance of that case for the purpose of decision in the present case and reliance placed on part of para 100 of the decision, as extracted below, is clearly out of context:

“100. ... When a Court, after hearing both the parties, passes an order on the merits of the case and gives a direction to consider the case, the word ‘consider’ would not and should not be understood to give an authority to the officials to pass an order on the same points raised in the writ petition as if an appellate authority. The word ‘consider’ means, for all practical purposes, to implement the orders in its letter and spirit.”

Learned senior counsel would, therefore, contend that when this Court directed the second respondent to consider the proposal of the petitioners, the same could not have been rejected. I find the said proposition totally unacceptable, as a direction to consider can never mean a direction to consider favourably alone.

22. A Division Bench judgment of this Court, to which I am a party, in **BLUEPARK SEAFOODS (P) LTD.'s** case (4 supra) is also relied upon by the learned senior counsel for the petitioners. However, that case also dealt with a different fact situation and interpreting Section 3(C)(1) of the National Highways Act, it was held that under Section 3(C) of the National Highways Act, that a limited right to object the proposed national highway is permissible but that does not give right to object to acquisition as such. Though petitioners, in the present case, may be justified in making every possible attempt to save his godowns from acquisition, in my view, unless the

petitioners succeed in the writ appeal, referred to above, the entire exercise for modification of the design of the interchange would be futile.

23. At this stage, it is also necessary to refer to the decision relied upon by the learned counsel for the second respondent in **JAL MAHAL RESORTS PRIVATE LIMITED's** case (5 supra). In that case, the Supreme Court considered the scope of judicial review with regard to policy decisions or policy matters, especially, those based on the opinion of experts. Para 140 thereof is relevant, which is extracted hereunder:

“140. At this juncture, we take note of two overriding considerations which combined, narrow the scope of review. The first is that of deference to the views of administrative experts and the other we take assistance from the words of Chief Justice Neely who expressed as follows:

“I have very few illusions about my own limitations as a judge and from those limitations I generalise to the inherent limitations of all appellate courts reviewing rare cases.”

The learned Chief Justice further observed as follows:

“I am not an accountant, electrical engineer, financier, banker, stock broker, or systems management analyst.

It is the height of folly to expect judges intelligently to review a 5000 page record addressing the intricacies of public utility operation.

It is not the function of a judge to act as a super board, or with the zeal of a pedantic schoolmaster substituting its judgment for that of the administrator. The result is a theory of review that limits the extent to which the discretion of the expert may be scrutinized by the non-expert judge. It was suggested that the alternative for the court is to desist itself from interference on technical matters, where all the advantages of expertise lie with the agencies. If the court were to review fully the decision of an expert body such as State Board of Medical Examiners, ‘it would find itself wandering amid the maze of therapeutics or boggling at the mysteries of the pharmacopoeia’.”

24. Keeping in view the various factual aspects, as discussed above and the legal position obtained, I am unable to persuade myself to accept the contentions of the learned senior counsel for the petitioners that the impugned rejection of the proposal of the petitioners by the second

respondent was in any manner arbitrary or discriminatory and on the contrary, the impugned proceedings itself shows the application of mind where relevant parameters are taken into consideration in arriving at the decision. Hence, no interference with the impugned proceedings is called for.

The issue is answered accordingly.

The writ petition is accordingly dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

December 31, 2015
DSK

[\[1\]](#) (2011) 5 SCC 553

[\[2\]](#) (2003) 2 SCC 673

[\[3\]](#) 2015 (4) ALT 318

[\[4\]](#) 2011 (4) ALD 494 (DB)

[\[5\]](#) (2014) 8 SCC 804