

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 32896 of 2012

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the notification dated 12.07.2012 issued under Section 3A(1) of the National Highways Act, 1956 (for short "the Act"), as arbitrary, illegal and without jurisdiction and consequently to set-aside the same insofar as lands which are subject matter of the Writ Petition.

The 1st petitioner herein claims to be the absolute owner and possessor of land admeasuring Ac.3.16 cents in D.Nos.15-D, 15-E and 14-A/A of Boyapalem village hamlet of Vankalapadu village, Yedlapadu Mandal, Guntur District, having purchased the same under registered sale deed Nos.432/1984 dt:23.02.1984, 4093/1984 dt:18.08.1994 and 19/1993 dt:06.01.1993.

The 2nd petitioner herein claims to be the absolute owner and possessor of land admeasuring Ac.0.90 cents situated in D.No.14-B of Boyapalem village hamlet of Vankalapadu village, Yedlapadu Mandal, Guntur District having purchased the same under a registered sale deed No.605/2002 dated 21.03.2002. Similarly, the 3rd petitioner herein claims to be the absolute owner and

possessor of land admeasuring Ac.1.70 cents situated in D.No.310/1 and Ac.1.00 in 309/3 of Nadimpalem village, Prathipadu Mandal, Guntur District, which is the ancestral property of its partners. All the three petitioners are said to have established an advanced and modern stone crushers by spending crores of rupees.

The 4th petitioner herein is the absolute owner and possessor of the land admeasuring Ac.2.57 cents situated in D.No.309/5A and 310/3A of Nadimpalem village, Prathipadu Mandal, Guntur District, having purchased the same under a registered sale deed Nos.3656/1998 dt:23.10.1998, 48/1999 dt:23.01.1998 and 462/1999 dt:05.05.1999, wherein he has established a petrol bunk besides constructing two houses by spending huge money.

The 1st respondent herein published a Notification dated 15.12.2009 in the Gazette under Section 3A(1) of the Act to acquire lands situated on either side of the National Highway No.5 from Chilakaluripet to Vijayawada in Guntur District for the purpose of widening the existing four-lane road to six-lane road. and consequently acquired 1295 sq. mtrs belonging to the 1st petitioner; 739 sq. mtrs belonging to the 2nd petitioner, 1457 sq. mtrs belonging to the 3rd petitioner and 2429 sq. mtrs belonging to the 4th petitioner. Thereafter, a six lane road

along with service roads were laid. As the quantum of compensation was meager, the petitioners filed their objections before respondents 3 and 4 i.e., Land Acquisition Officers seeking enhancement of the compensation. When the respondent/authorities tried to take possession of the properties acquired, the petitioners along with others filed W.P. No.9665 of 2011 before this Hon'ble Court, which was disposed of on 21.09.2011 permitting the petitioners to get the valuation of the improvements and developments done and a report to that effect was to be submitted to the 2nd respondent within 4 weeks from that date. Till such time, the respondents were directed not to dispossess the petitioners. The petitioners got assessed the improvements and developments by an approved valuer and submitted the same before the 2nd respondent. Thereafter the respondent took possession of the land.

While things stood thus, the 1st respondent published a Gazette notification dated 12.07.2012 under Section 3A(1) of the National Highways Act 1956 in Andhra Jyothi Daily and Hindu on 25.08.2012, intending to acquire the lands situated on either side of National Highway No.5 running from Chilakaluripet to Vijayawada in Guntur District for public purpose and accordingly called for objections if any. It is said that under the impugned notification, an extent of 6272 sq. mtrs belonging to the 1st

petitioner; 2428 sq. mtrs belonging to the 2nd petitioner; 2572 sq. mtrs belonging to the 3rd petitioner; and 2429 sq. mtrs belonging to the 4th petitioner was proposed for acquisition. Challenging the said notification, the present Writ Petition is filed.

While issuing notice before admission, this Court directed the respondents not to dispossess the petitioners from the lands owned by them for a period of six weeks, which was extended till next date of hearing. Pending the said proceedings, the 7th respondent herein got impleaded vide order dated 30.11.2012 in W.P.M.P. No.46465 of 2012.

The learned counsel for the petitioners mainly urged that the acquisition of land for the purpose of widening the road from 4 lane to 6 lane is nothing but a colourable exercise of power to benefit some. It is his case that no public purpose is involved in acquisition of land as the lands were already acquired in the year 2009 for expanding the road from 4 lane to 6 lane. He further submits that notification issued under Section 3A(1) is silent as to the purpose for which the acquisition is made and the reason given in the notification is different from the reasons given in the counter for acquiring land. Relying upon the judgments in **C.Padmavathi v. District Collector, Chittoor District, Chittoor and others**^[1], Om

**Prakash Sharma and others v. M.P.Audyogik Kendra
Vikas Nigam and others^[2] and D.Ramdevi and others
v. District Collector, East Godavari District, Eluru and
others^[3]**, the learned counsel for the petitioners submits
that the entire process has to be quashed.

On the other hand, the learned counsel appearing for the respondents would submit that the Writ Petition itself cannot be entertained in view of the fact that Award has already been passed. He further submits that the notifications issued under Section 3A(1) of the Act clearly spells out the purpose for which the lands were acquired and therefore, it cannot be said that the notification issued and published in the news paper is quite vague and bald. He further submits that the allegation of colourable exercise of power for acquiring the land is baseless and no iota of material is placed to prove the same.

A reading of the notification published in the news papers by the 1st respondent shows that Government of India, by utilizing the powers conferred on it under Sub Section 1 of Section 3A of the National Highways Act, 1956, as per S.O.1569(E) intends to acquire the lands specified in the said notification for the public purpose of extending National Highway No.5 from 4 lanes to 6 lanes in Guntur District between Chilakaluripet and Vijayawada Section. The notification also states that if there is any

objection for using the said land for the said purpose, the persons interested in the said lands shall lodge their objections within 21 days from the date of publication in the official gazette. It is further stated that the interested persons can inspect the particulars of the land specified in the notification with plans at the office of the said competent authority. The notification gives list of lands which are sought to be acquired.

The Act i.e., National Highways Act, 1956 is a complete Code in itself. Section 3A to 3J of the Act deals with acquisition of land for carrying out the building, maintenance, management or operation of a national highway or a part thereof. The power of acquisition is initiated under Section 3A of the Act. As per Section 3A(1) of the Act, if the Central Government is satisfied that for a public purpose any land is required for the afore mentioned purpose, it may by notification in the official gazette, declare its intention to acquire such land.

Section 3A(2) mandates a brief description of the land in the said notification. Section 3C(1) provides for a person interested in the land notified under sub-section (1) of Section 3A, object to such acquisition within 21 days from the date of publication of the notification. Section 3C(2) requires that the competent authority shall after giving the objector an opportunity of hearing, and after making further enquiry if any, as he thinks fit, may either allow or disallow the objection. Similarly Section 3D of the

Act deals with declaration of acquisition, Section 3E of the Act refers to power taking possession, Section 3F of the Act deals with right to enter into the land where land has vested with the Central Government, Section 3G of the Act explains determination of amount payable as compensation, Section 3H of the Act refers to deposit and payment of amount, Section 3-i of the Act deals with competent authority to have certain powers of civil court and Section 3J of the Act states that the Land Acquisition Act 1 of 1894 shall not apply to acquisition made under this Act. From the above, it is clear that the Act prescribes a complete procedure for acquisition of land for the buildings, maintenance, management and operation of highways.

Pursuant to a notification dated 05.08.2012 issued under Section 3(A) of the Act, objections were filed and the same were heard on 29.09.2012 and disposed of on 02.05.2013. Then a notificaito under Section 3(D) of the Act was published in the Gazette on 11.07.2013 and a notification under Section 3(G) on 21.10.2013. The award enquiry was conducted by R-4 and R-5 and the award came to be passed on 11.08.2014 byR-4 and on 07.08.2014 by R-3 in respect of the lands. While passing orders under Section 3(c)(2), the Land Acquisition authority categorically stated that land proposed for acquisition is for construction of facilities like approaches to underpasses for turning movement of vehicles,

entry/exits ramps, bus bay etc., to ensure safety of road users, which is for a public purpose.

A perusal of the notification published in news papers, which is subject matter of challenge in the present Writ Petition, show that for public purpose the land was acquired so as to widen the road from 4 lanes to 6 lanes. At the same time, the notification also states that the particulars of land specified in the notification along with plans are kept for inspection at the office of the competent authority. It is true that even in the year 2009, land was acquired for widening the road from 4 lane to 6 lane and even now, the notification published in news paper states that the land is acquired for the public purpose of extending the National Highway No.5 from 4 lane to 6 lane. If the petitioners had any doubt with regard to descriptions of land notified for acquisition or if it was used for any other purpose they could have approached the office of competent authority and inspect the records for solving the same. They did not choose to do so. It is not their case that description of land, plans and other details were not kept for inspection in the office of the competent authority, though stated so in the notification. An Identical situation namely as to whether the petitioners have remedy to challenge the notification without inspecting the records and raise objections before the competent authority came up for consideration before this Court in

Dano Vaccines & Biological (P) Ltd., Hyderabad and another v. Government of India and another^[4] and also in a unreported judgment of a Division Bench of this Court in **Government of India v. M.Ramesh Babu in W.A.No.504 of 2007 in W.P. No.378 of 2007 dated 19.09.2007.**

Referring to the judgment of the Apex Court in **Barangore Jute Factory's case, a Division Bench of this Court in M.Ramesh Babu's case** observed that if the notification makes is clear that the plans and other details of the land covered by the notification were available in the office of the competent authority for inspection by interested persons, it was for those who thought that there was ambiguity in the particulars incorporated in the notification, to approach the competent authority and inspect the land plans and other details and thereafter file their objections. In the said case, the land owners did not choose to adopt the said course, which is similar to the case on hand.

The next ground urged by the counsel is that there is no necessity to acquire the land again for widening of road from 4 lane to 6 lane in view of the earlier acquisition in the year 2009-2010 for the same purpose. It is not in dispute that the earlier notification was for widen/extending the existing National Highway from 4

lane to 6 lane.

But it is to be noted that though the paper publication in Telugu news paper which is filed along with the Writ Petition refers only to acquisition of land for widening the National Highway No.5, the Gazette notification dated 12.07.2012 issued by the Ministry of Road Transport and Highways reads as under :

“S.O.1568(E)- In exercise of the powers conferred by sub-section (1) of Section 3A of the National Highways Act, 1956 (48 of 1956) (hereinafter referred to as the said act), the Central Government, after being satisfied that for the public purpose the land. The brief description of which is given in schedule below, is required for building (widening/six-laning etc..) maintenance management and operation of National Highway No.5 on the stretch of land from Km.356.400 to Km.357.300 (Chilakaluripet-Vijayawada Section) in the District Prakasam in the State of Andhra Pradesh, hereby declares its intention to acquire such land;

Any person interested in the said land may, within twenty-one days from the date of publication of this notification in the official Gazette, object to the use of such land from the aforesaid purpose under sub-section (1) of Section 3C of the said Act;”

Similar such gazette notification came to be published in respect of each piece of land. Therefore, the above notification clearly spells out the public purpose for which the land is sought to be acquired viz., for building (widening/six-laning etc..) maintenance management and operation of National Highway No.5.

Even from the counter, it is clear that the present acquisition is proposed at specified locations, required for construction of facilities like approaches to underpasses, for turning movement of vehicles, entry/exis ramps,

improvement of junctions with service roads and side roads, toll plaza etc. as provisioned in the Concession Agreement. It is specifically stated in the counter that the land which was acquired previously was in continuous stretch and the land now proposed to be acquired is at the locations specified in the agreement for construction of the above facilities.

Further, the affidavit filed by 7th respondent shows that without filing objections before the competent authority and Revenue Divisional Officer under Section 3(c)(1) of the Act within the time prescribed, the petitioners approached this Court by filing the Writ Petition. Hence, the plea of the petitioners that the land which is now sought to be acquired, for providing certain facilities to general public viz., underpasses for turning movement of vehicles, entry/exit ramps, improvement of junctions with service roads and side roads and also toll plazas etc., cannot be said to be contrary to the notification issued. It should also be noted that the land which is sought to be acquired is in pockets and not a single stretch of land. Therefore, the argument of the learned counsel for the petitioners that there was a colourable exercise of power to benefit certain private parties and that no public purpose is involved, cannot be accepted.

Dealing with the aspect of public purpose, a Bench of this Court in **Konduru Padmavathi v. District**

Collector, Nellore District and others^[5] at para 7 held as under :

“7. IT appears to us that the concept of 'public purpose ' connotes public welfare. With onward march of the concept of socio economic welfare of the people, notions as to the scope of general interest of the community are fast changing and expanding. The emphasis is unmistakably shifted from the individual to the community. Therefore, we find that the concept of 'public interest ' and 'public purpose ' is not static and varies with time and needs of the society. 'Public purpose ' does not always mean for benefit of the public at large. If public derives an advantage out of it, it would be treated as for public utility. The development of housing, establishment of industrial estates comes within the purview of 'public purpose '. Whether a public purpose existed or not was a justiciable matter. Prima facie, it is true that the Government is the best judge as to whether public purpose is served by requisitioning the land in question. But, at the same time, Courts have expressed that Government is not the sole judge and Courts have jurisdiction and authority to determine the matter whenever a question is raised whether a requisition order is for a 'public purpose ' or not. The Courts, however, adopted a very liberal attitude on the question of public purpose and was rare indeed for a Court to hold that an acquisition of land was not for a public purpose.

Similarly in **Sooraram Pratap Reddy and others v. District Collector, Ranga Reddy District and others**^[6] the Apex Court held as under :

“119. In our judgment, in deciding whether acquisition is for 'public purpose' or not, prima facie, Government is the best judge. Normally, in such matters, a writ Court will not interfere by substituting its judgment for the judgment of the Government.”

Dealing with the aspect of Eminent Domain, the Apex Court in **Coffee Board, Karnataka, Bangalore v. Commissioner of Commercial Tax, Karnataka, Bangalore**^[7], observed as under :

“It is in this connection appropriate to refer to the question of

compulsory acquisition and this naturally leads to the problem of exercising eminent domain by the State. It is trite knowledge that eminent domain is an essential attribute, of sovereignty of every State and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner's consent upon making just compensation. Nichols on Eminent Domain (1950 Edition) a classic authority on the subject, defines 'eminent domain' as 'the power of the sovereign to take property for public use without the owner's consent'."

After analyzing the judgments on the subject, the Apex Court held that it is primarily for the State to decide whether there exists any public purpose or not. Undoubtedly, the decision of the State is not beyond judicial scrutiny. In appropriate cases, where such power is exercised mala fide or for collateral purposes or the purported action is de hors the Act, irrational or otherwise unreasonable or the so-called purpose is 'no public purpose' at all and fraud on statute is apparent, a writ-court can undoubtedly interfere. But except in such cases, the declaration of the Government is not subject to judicial review.

Situation on hand does not fall under any of the categories referred to above. As the notification itself is under Section 3A(1) of the Act, the only consideration would be whether the land which was acquired for public purpose by the Central Government is required for building of maintenance, management or operation of national highway or part thereof. It is to be noted that as per the averments in the counter and the contents of the

Gazette notification the said acquisition is to provide safety to the public but definitely not to favour the contractor as averred.

Hence, the power exercised for acquisition of land cannot be said to be malafide or for collateral purpose or that no public purpose is involved. During the course of the argument it has been brought to the notice of the Court that Award has already been passed in the month of August 2014 itself and possession could not be taken in view of the interim order of this Hon'ble Court. For the reasons referred to above, this Court is of the view that there are no merits in the Writ Petition and the same is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending if any, in this Writ Petition, shall stand cancelled.

C. PRAVEEN KUMAR, J

Date: 09.12.2015

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[\[1\]](#) 2011(6) ALD 24

[\[2\]](#) (2005)10 SCC 306

[\[3\]](#) AIR 2009 A.P. 15

[\[4\]](#) 2012(2) ALD 387(DB)

[\[5\]](#) 2012(5) ALT 606

[\[6\]](#) (2008)9 SCC 552,

[\[7\]](#) SCC 1988 (3) 263