

*THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI
SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

+WRIT APPEAL NO.1693 OF 2014

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% 26TH FEBRUARY, 2015

Church of South India Trust Association

.. Appellant

Vs.

\$ The Commissioner and Special Officer,
Greater Hyderabad Municipal Corporation
and others

.. Respondents

<Gist:

>Head Note:

! Counsel for Appellant :

^ Counsel for Respondents : Special Government
Pleader
attached to learned
Advocate
General for the State of
Telangana

? CASES REFERRED:

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT APPEAL NO.1693 of 2014

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JUDGMENT: (per Hon'ble The Chief Justice Sri Kalyan Jyoti Sengupta)

By order dated 10.02.2015, we observed that the acquisition of the property from the petitioner/appellant was not in accordance with the provisions of the Greater Hyderabad Municipal Corporation Act, 1955. We thought that damages and compensation for the property taken over by the Hyderabad Municipal Corporation is the appropriate relief to be granted and that with the mechanism of arbitration, the same could be resolved and as such, we granted time to the parties to have a consensus with regard to arbitration under the provisions of the Arbitration and Conciliation Act, 1996.

The learned Special Government Pleader attached to the Advocate General, appearing for the Hyderabad Municipal Corporation, submits on instructions that his client is not willing to go for arbitration. Under the circumstances, we have given up the idea of resolving the issue through the mechanism of arbitration.

This writ appeal has been filed against the judgment and order of the learned Single Judge dated 09th March, 2011. The writ petition was filed for issuance of a writ of mandamus directing that the valuation of the petitioner's land vide Annexure 4 is insufficient, illegal and void and consequently, to direct the respondents to pay the compensation @ Rs.40,000/- as fixed by the Sub-Registrar, Marredpally vide Annexure 15 with all the other incidental benefits as per Section 23 of the Land Acquisition Act for 4122.14 square yards of land acquired from the premises

No.10-3-165, 165/A situated on S.D. Road and from St. John's Church High School situated on S.P. Road, Secunderabad affected by the road widening from Hyderabad Public School to Tarnaka.

Above prayer was made on the grievance, sum and substance of which is that the above property was taken over by the first respondent without lawful agreement with petitioner as mentioned in Section 146 of the Greater Hyderabad Municipal Corporation Act, 1955 or resorting to lawful land acquisition proceeding under the Land Acquisition Act, 1894. As a matter of fact forcibly, for widening the road the property is taken over. As such, the appellant had no option but to accept just compensation for damages done as above, as the land cannot be returned now.

The learned Trial Judge, in the context of the aforesaid prayer, passed the impugned order refusing to grant the relief as prayed for. It was also recorded by the learned Trial Judge that the land of the petitioner was taken over by the Corporation on the basis of negotiations. An offer was made by the Corporation to pay compensation @ Rs.7,000/- per square yard. That, in turn, was accepted by the petitioner through their reply. It was also recorded that almost a consent award came to be passed and the compensation was paid.

As rightly contended by the learned counsel for the appellant, the observation and recording of the learned Trial Judge that on the basis of negotiations the land was taken is absolutely erroneous. According to us, the land can be acquired by the Municipal Corporation under the provisions of Section 146 of the Greater Hyderabad Municipal Corporation Act, 1955, which are set out hereunder:

"146. Acquisition of immovable property by agreement:-

(1) Whenever it is provided by this Act that the Commissioner may acquire, or whenever it is necessary or expedient for any purpose of this Act that the Commissioner shall acquire any immovable property, such property may be acquired by the Commissioner on behalf of the Corporation by agreement on such terms at such rates or prices not exceeding such maxima as shall be approved by the Standing Committee, either generally for any class of cases or specially in a particular case.

(2) And whenever, under any provision of this Act, the Commissioner is authorised to agree to pay the whole or any

portion of the expenses of acquiring any immovable property, he shall do so on such terms and at rates or prices not exceeding such maxima as shall be approved by the Standing Committee as aforesaid.

(3) Subject to the provisions of this Act, it shall be lawful for the Commissioner on behalf of Corporation to agree with the owner of any land or of any interest in land needed by the Corporation for the purposes of any Scheme under Chapter XIII or with the owner of any right which may have been created by legislative enactment over any street forming part of the land so needed, for the purchase of such land or of any interest in such land or for compensating the owner of any such right in respect of any deprivation thereof or interference therewith.

(4) No contract for the acquisition of any immovable property or of any interest therein or any right thereto or the payment of any compensation under sub-sections (1), (2) or (3) shall be valid, if the price or compensation to be paid for such property or interest or right exceeds rupees five thousand unless and until such contract has been approved by the Corporation.

(5) Every contract or other instrument relating to the acquisition of immovable property or any interest therein or any right thereto shall be executed by Commissioner, shall have the common seal of the Corporation affixed thereto in the presence of two officers nominated by the Commissioner and shall also have the signature of the said two members, in the manner provided in Section 125.

(6) No contract for the acquisition of immovable property or any interest therein or any right thereto not executed as provided in sub-section (4) shall be binding on the Corporation.

(7) The foregoing provisions of this section which apply to an original contract relating to the acquisition of immovable property, or any interest therein, or any right thereto, shall be deemed to apply also to any variation or discharge of such contract.”

The aforesaid section, as correctly pointed out by the learned counsel for the appellant, clearly contemplates that the acquisition of property should be by a written agreement. In this case, nothing has been produced showing that such an agreement was entered into. Therefore, we can safely conclude that the aforesaid land was not acquired in accordance with the procedure prescribed under Section 146 of the above Act.

In case of failure to acquire the land on an agreement, then the Commissioner is to take steps under Section 147 of the said Act, which provides as follows:

“147. Procedure when immovable property cannot be

acquired by agreement:- (1) Whenever the Commissioner is unable to acquire any immovable property under the last preceding section by agreement, the Government may, in their discretion, upon the application of the Commissioner, made with the approval of the Standing Committee and subject to the other provisions of this Act, order proceedings to be taken for acquiring the same on behalf of the Corporation in accordance with the provisions of the Land Acquisition Act, 1894 as amended from time to time as if such property were land needed for a public purpose within the meaning of the provisions of the said Act.

(2) The amount of compensation awarded and all other charges incurred in acquisition of any such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the Corporation.”

Undisputedly, the aforesaid course of action was also not taken. Therefore, the contention of the first respondent that the land has been acquired under either of the aforesaid provisions is totally incorrect. Hence, observation of the learned trial Judge of award being passed is factually unfounded. We hold that the land has been acquired without due process of law. The Commissioner, being the official of the statutory body, cannot act contrary to law. Any action of statutory authority unsupported by law can be termed to be highhanded and arbitrary.

Mere fact of acceptance of some amount by the appellant does not dispense with the statutory requirement nor validate the legally invalid transaction as there cannot be estoppel as against law. We could have directed the writ petitioner to return the entire amount received by it with interest had the land been returned. However, as the land cannot be returned at this stage, the only course left to the petitioner is to get damages and compensation for illegal acquisition of his land. The Writ Court is not competent to decide the quantum of compensation as the same requires evidence on factual issues. According to us, the Writ Court has no jurisdiction to undertake the same. The learned Trial Judge did not advert to the above controversy.

We therefore declare that the acquisition of the land by the Municipal Corporation is illegal and void and compensation and damages are required to be paid and the amount has to be quantified by

the civil Court. In that view of the matter, we set aside the judgment and order of the learned Trial Judge. We give liberty to the appellant to approach the civil Court for determination of damages and compensation in accordance with law since we have held that the Writ Court is not competent nor is having the jurisdiction to quantify the same. The appropriate Civil Court, if approached within a period of two months from the date of receipt of a copy of this order, will take note of the time during which the writ proceedings were pending. We make it clear that our judgment may not be construed to be decision on the title of the property, but on possession.

Thus, the appeal is disposed of with costs of Rs.5,000/- (Rupees five thousand only) to be paid by the Greater Hyderabad Municipal Corporation, which has acted in gross abuse of its statutory power, to the appellant. Pending miscellaneous petitions, if any, shall stand closed.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

Dt.26-02-2015

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Note: L.R. copies to be marked: Yes
B/o Svv

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT APPELLANT NO.1693 of 2014

(Judgment of the Division Bench delivered by Hon'ble
The Chief Justice Sri Kalyan Jyoti Sengupta)

Dt.26-02-2015