

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT APPEAL Nos. 492 and 496 of 2016

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COMMON JUDGMENT: *(Per VRS,J)*

These writ appeals arise out of two orders passed by the learned single Judge, one allowing a writ petition filed by the respondents

1 to 8 herein and another dismissing a review application filed by the Greater Hyderabad Municipal Corporation.

2. Heard the learned Advocate General for the State of Telangana appearing for the appellants, and Smt. P. Bhavana Rao, learned counsel appearing for the respondents 1 to 8.

3. On the ground that by a notification published under Section 4(1) of the Land Acquisition Act, 1894 dated 22.07.2013, their lands were sought to be acquired by the Government of Andhra Pradesh for the purpose of widening of a 60 meters road from Erragadda to Kukatpally and that despite the passing of an award on 28.12.2013, the compensation fixed by the Land Acquisition Officer had not been paid, the respondents 1

to 8 filed a writ petition in

W.P.No.25103 of 2014 on the file of this Court. It appears that when the writ petition came up for orders as to admission, the learned Assistant Government Pleader submitted before the learned single Judge that a notice in Form-10 was issued on 28.12.2013 seeking the handing over of possession from the awardees and that since possession was not handed over, the amount of compensation could not be paid. The learned Assistant Government Pleader also submitted before the learned single Judge that the compensation awarded by the Land Acquisition Officer was ready for disbursement.

4. On the basis of the said statement made by the learned Assistant Government Pleader, the learned single Judge disposed of the writ petition filed by the respondents 1 to 8, by an order dated 19.09.2014, directing them to approach the Special Deputy Collector, Land Acquisition, who is the 2nd appellant in these appeals, on 20.09.2014 and receive the cheques drawn in their favour.

5. After the disposal of the writ petition as aforesaid, the Assistant City Planner of the Greater Hyderabad Municipal Corporation, who is the 1st appellant in these

appeals, filed an application for review in Rev.W.P.M.P.No.40870 of 2014. The main grounds, on which the Greater Hyderabad Municipal Corporation sought a review of the judgment of the learned single Judge, were that the land in question, which originally belonged to the respondents 1 to 8, had already been leased out, by a registered Lease Deed dated 19.10.2005, to a Company, by name, Chandana Brothers Textiles and Jewellers Private Limited; that the lease was for a period of 30 years; that the lessee made an application for development of the land into a huge shopping mall; that building plan permission was granted somewhere in May/June, 2007; that by an order, dated 12.04.2007, the conversion of the land from residential use to commercial use was also granted in favour of the lessee upon certain terms and conditions; that even the Deputy Commissioner of the Greater Hyderabad Municipal Corporation imposed certain conditions for approving the completion of construction; that as per the terms and conditions so imposed, the lessee had already surrendered the land in question to the Greater Hyderabad Municipal Corporation, after laying down a black tar road and after making it into a public pathway; that these facts were either deliberately or fraudulently omitted to be taken note of by the Land Acquisition

Officer, who included the land in question in the proceedings for acquisition; that the Greater Hyderabad Municipal Corporation never had an occasion to bring it to the notice of the learned single Judge at the time when the writ petition came up for hearing; and that the Land Acquisition Officer himself had appeared in Court at the time when the writ petition came up for admission and agreed to hand over the cheques pre-empting the Greater Hyderabad Municipal Corporation from looking into the records and putting the facts in the right perspective.

6. But, by an order dated 01.05.2015, the learned Judge dismissed the review application, on a short ground that the allegation of fraud made in the review application was very vague and that mere allegation of fraud *per se* cannot be a ground for review.

7. Aggrieved by the order passed by the learned single Judge in the main writ petition and also the order dismissing the review application, the Greater Hyderabad Municipal Corporation has come up with the present writ appeals.

8. From the pleadings on record, the facts, about which there are no disputes on either side, can be summed up as follows:

- i) that the land sought to be acquired was part of the property leased out by the respondents 1 to 8 under a registered Lease Deed dated 19.10.2005 in favour of a Company, Chandana Brothers Textiles and Jewellers Private Limited;
- ii) that as per the terms of the lease, the tenure of lease was 30 years, expiring only in 2035;
- iii) that the said Lease Deed has not so far been terminated nor even a notice of termination was issued by the lessors, who are the respondents 1 to 8 herein;
- iv) that under the said Lease Deed, the respondents 1 to 8 actually put the lessee in physical possession of a larger extent of land described in the schedule to the Lease Deed; and
- v) that the land sought to be acquired forms part and parcel of the property described in the schedule to the Lease Deed.

9. From the above facts, it is clear that at the time when the notification for acquisition was issued on 22.07.2013/14.08.2013, the respondents 1 to 8 were not in actual physical possession of the property in question. It is the lessee which was in actual physical possession.

10. Unfortunately, the respondents 1 to 8 do not appear

to have brought it to the notice of the Land Acquisition Officer. They did not even make a mention about it in the affidavit filed in support of the writ petition.

11. As a matter of fact, the notification under Section 4(1) and the notices issued in terms thereof, should actually disclose the persons who were interested in the land in question. At any rate, Section 29, which speaks about the apportionment of compensation, makes it clear that compensation is to be apportioned to the persons who were interested. The Land Acquisition Act, rather than using the expression “owners”, uses the expression “persons interested”.

12. In the case on hand, on the date on which the notification for acquisition of land was issued, the lessee was certainly the person interested. Even assuming for a minute that the lessee need not be considered as the person interested, the lessee was the person from whom the requisitioning authority or the acquiring officer could have taken possession. Section 9 (1) of the Land Acquisition Act, which deals with the procedure for taking possession of the land, also speaks only about the persons interested and not about the owners. Therefore, there appears to have been a total failure on the part of

the acquiring authorities, to take note of these provisions.

13. Coming to the conduct of the respondents 1 to 8, they had sworn to an affidavit in support of the writ petition, where they made a positive averment that they were in possession and enjoyment of the property. In paragraph 3 of the affidavit in support of the writ petition, they have claimed that they were in possession and enjoyment of the property. They have repeatedly made assertions in the affidavit in support of the writ petition that they faced the threat of dispossession.

14. The positive averment made by the respondents 1 to 8 in their affidavit that they were in possession and enjoyment of the property, is not factually correct. This should be seen in the context of another fact, namely, that the affidavit did not even disclose the existence of a valid registered lease in favour of a Company and the handing over of possession to such Company way back in October, 2005. Therefore, it is clear that the respondents 1 to 8, who sought a writ of mandamus, did not come to Court with clean hands and they were guilty of *suppressio veri and suggestio falsi*. It automatically follows as a corollary that they will not be entitled to a writ of mandamus as prayed for, once the above facts are

established on record.

15. Let us keep aside for a minute, the issue as to whether the respondents 1 to 8 were guilty of suppression and whether they will be able to hand over possession, in accordance with the provisions of the Land Acquisition Act, 1894, when a valid lease is subsisting. Even then, we do not think that the respondents 1 to 8 could have laid any claim.

16. It is on record that the lessee made applications not only for conversion of use of the land from residential to non-residential purpose, but also for putting up a commercial complex, G + 5, in the property in question. Drawing our attention to the communications issued by the Officers of the Greater Hyderabad Municipal Corporation, it is contended by the learned counsel for the respondents 1 to 8 that though a Private Limited Company was the lessee, it was the Managing Director of such a Company who made all the applications, and that, therefore, those applications for the development of the property were unauthorized and illegal.

17. In other words, the contention of the learned counsel for the respondents 1 to 8 is that when the lessee did not make any application for development of the

property, but only the Managing Director of the lessee in his individual capacity made applications for development of the property, it was wrong on the part of the Greater Hyderabad Municipal Corporation to have sanctioned the building plan, allowed a complex to come up and took away the land which did not belong to the person who applied for development of the land.

18. Though the aforesaid contention appears to be very attractive at first blush, we do not think that it has substance, for a variety of reasons. The first is that under Clause 19 of the registered Lease Deed, the respondents 1 to 8 are entitled to take back possession of the leased out property, together with the fixed fixtures as they exist at the time of vacation. Clause 19 of the Lease Deed reads as follows:

“After expiry of the lease period of 30 years, the lessee shall vacate and hand over the vacant peaceful possession of the scheduled property in as is where is condition at the time of vacation along with fixed fixtures and shall not claim any additional amount or compensation or damages from the lessors. It is further made clear that the occupation of the scheduled property after the expiry of the lease period of 30 years shall be unauthorized and illegal and the lessee shall be liable to pay liquidated damages to the lessors and the same shall be double the rent that would be payable at that time.”

19. Therefore, in essence, by the time the lease expires in October, 2035, the respondents 1 to 8 would naturally become the owners of whatever is in existence in the property that was leased out. At the time when the lease was created, what was available on site was only vacant land, as could be seen from the description of the property contained towards the end of the Lease Deed.

20. The respondents 1 to 8 have not taken any steps so far to terminate the lease on the ground that the lessee or the Managing Director of the lessee has acted in contravention of the terms and conditions of the lease. Clause 21 of the Lease Deed makes it clear that the lessors had handed over vacant and physical possession of the property to the lessee on the date of execution of the lease. The lessors, who were the respondents 1 to 8, did not even take any step to resume possession from the lessee on the ground either that they had no business to put up a construction or that their handing over of possession to the Greater Hyderabad Municipal Corporation was illegal.

21. When we scan the documents relating to the grant of permission to the lessee to put up a construction, it is seen that by G.O.Ms.No.244, Municipal Administration

and Urban Development (II) Department, dated 12.04.2007, the Government approved the conversion of the land in question, to the extent of 3620.12 square meters, earmarked for residential use zone in the notified Zonal Development Plan of Kukatpally zone of non-municipal area as commercial use zone. Condition Nos.10 and 12 of the said Government Order read as follows:

“Condition No.10: After demolition of the existing building, clearance if any required from Urban Land Ceiling Authorities should be obtained before approaching the Municipal Corporation of Hyderabad/Hyderabad Urban Development Authority for building permission.

Condition No.12: The affected area under road widening (for 200 feet N.H.9) shall be handed over free of cost to the local Authority.”

22. The Hyderabad Urban Development Authority also issued proceedings dated 29.05.2007, granting technical approval of the building plan, subject to certain terms and conditions. The terms and conditions imposed by the said order read as follows:

“(a) The applicant shall form 9.0 Mts.B.T. Service road within 200’-0’ N.H.9 before release of plan from Municipality.

(b) The affected area under road widening shall be handed over to local authority with free of cost.”

23. The Deputy Commissioner of the Greater Hyderabad Municipal Corporation accorded sanction for the construction of a commercial building comprising of cellar+ground+4 upper floors of a commercial complex in the building, subject to certain terms and conditions.

Condition No.9 incorporated therein reads as follows:

“The applicant/builder should ensure that the minimum width of approach road as indicated in the technically approved plans and areas affected in the road widening is developed and maintained as Block Topped Road with proper chambers etc.”

24. It is only after all the aforesaid steps were taken by the lessee or the Managing Director of the lessee that the lessee was able to put up a pucca construction of a mall which appears to be standing there under the name “Siddhardha Towers”. The construction of such a huge building could not have come up with the wave of a magic wand overnight. The construction would have certainly taken a minimum period of 18 to 36 months. Till date, the respondents 1 to 8 have not moved their little finger, objecting to the putting up of the construction by the lessee. As part of the conditions for the grant of permission to convert the usage of the land and as part of the conditions to allow them to bring up a huge commercial complex, the lessee has handed over the very land in question to the Greater Hyderabad Municipal

Corporation, much before the notification under Section 4(1) was issued in 2013. Therefore, it is clear from the facts that someone has played fraud. According to the learned Advocate General, the Land Acquisition Officer issued a notification in collusion with the respondents 1 to 8 and also willingly conceded to an order before the learned single Judge for handing over the possession. But, according to the learned counsel for the respondents 1 to 8, the lessee and the Officers of the Greater Hyderabad Municipal Corporation were in collusion, while sanctioning the permission.

25. The underlying fact that would emerge out of the rival contentions is that at least someone has played fraud. Instead of finding out who had committed the fraud, it would be easy to find out who would be the beneficiary of such fraud. From the terms and conditions contained in the Lease Deed, it is clear that the respondents 1 to 8, who handed over the vacant land to the lessee in 2005, are entitled to take back the commercial complex, at the end of the lease period, together with all the attendant benefits. Therefore, they are the beneficiaries of the fraud or collusion, irrespective of who was guilty of such fraud or collusion. Therefore, such persons cannot get a mandamus, directing the appellants to pay compensation

for acquisition of the land, which was not in their possession on the date of notification under Section 4(1) and about whose title there is still a valid dispute raised by the appellants.

26. The learned counsel for the respondents 1 to 8 contended that even the writ appeals were not maintainable, inasmuch as the award passed by the Land Acquisition Officer has attained finality. According to the learned counsel, the only course of action open to the appellants is to take recourse to Section 48(1) of the Land Acquisition Act, 1894.

27. But, the answer to the above contention is two-fold. The first is that it is the respondents 1 to 8 who have secured an order from the writ Court. Therefore, the only manner in which the order of the learned single Judge could be questioned is to file an appeal. The order of the learned Judge cannot be upset by the Government issuing a notification under Section 48 at this stage withdrawing the acquisition. If they do so, they will be guilty of contempt. Fortunately, the appellants did not fall into such a trap and take recourse to Section 48 (1). Therefore, the contention that the writ appeals are not maintainable cannot hold.

28. The second ground, as to why the objection regarding maintainability cannot be accepted, is that when a person secures an order under Article 226, by swearing to an affidavit without disclosing the true facts or the entire truth, the only manner in which the same can be upset is to file a writ appeal.

29. Therefore, we are of the considered view that the respondents

1 to 8, who were not in possession of the land on the date of the notification and who could not have handed over possession on the date of the notification and who in law may not even be able to recover the land from the lessee after the termination of lease, were not entitled to the compensation that was awarded by the Land Acquisition Officer. Hence, the orders passed by the learned single Judge, refusing to review the original order that was passed on a concession given by the Assistant Government Pleader, cannot be allowed to stand.

30. As a result, both the Writ Appeals are allowed and the impugned orders are set aside. It will be open to the Government to initiate appropriate disciplinary proceedings, if any Officer is guilty of committing fraud.

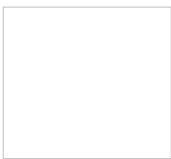
Consequently, miscellaneous petitions if any

pending in the writ appeals shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

**A. SHANKAR
NARAYANA, J.**

29th June, 2016
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