

**HON'BLE SRI JUSTICE SURESH KUMAR KAIT**

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**W.P. Nos. 19151, 1842 & 650 of 2016**

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**DATE: 09.08.2016**

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**W.P.No. 19151 of 2016**

Between:

Noushad Ali .. Petitioner

And

The Union of India  
and three others .. Respondents

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**W.P.No. 1842 of 2016**

Between:

B. Rathna Reddy  
and another .. Petitioners

And

The Union of India  
and three others .. Respondents

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**W.P.No. 650 of 2016**

Between:

P. Gangaiah Naidu .. Petitioner

And

The Union of India  
and three others .. Respondents

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**COMMON ORDER:-**

Inasmuch as the question of fact and law involved in the three writ petitions is one and the same, these matters are taken up together for disposal by this Common Order.

W.P.No. 19151 of 2016 is filed seeking to declare the proceedings of the 3<sup>rd</sup> respondent dated 02.04.2016 rejecting the objections filed by the petitioner and the Notification alleged to have been published under Section 3-D of the National Highways Act, 1956 and Section 3-G Notice dated 09.05.2015 published on 20.05.2016 including the Notification No.814 vide S.O.1048(E) dated 17.04.2015 issued for the purpose of proposed Bangalore-Chennai Expressway (four line road) from KM. 74/870 to 82/150 and 83/150 to 164/500, as illegal and arbitrary.

W.P. No.1842 of 2016 is instituted seeking to declare the action of the 3<sup>rd</sup> respondent in not considering the objections dated 27.07.2015 filed by the petitioners in regard to acquisition of their lands in pursuance of the Notification No.814, dated 17.04.2015, as illegal and arbitrary.

So also, the relief sought for in W.P.No. 650 of 2016 is to declare the Endorsement dated 05.12.2015 of the 3<sup>rd</sup> respondent rejecting the objections dated 03.08.2015 filed by the petitioner in regard to acquisition of his lands in pursuance of the Notification No.814, dated 17.04.2015, as illegal and arbitrary.

The factual aspects of the writ petitions are on similar lines, as such, for the sake of convenience, the averments made in W.P.No. 19151 of 2016 are *inter alia* indicated for the purpose of adjudication of the cases.

The learned counsel for the petitioner has submitted that the action of the respondents is contrary to law and violative of Articles 21 and 300-A of the Constitution of India besides being violative of principles of natural justice and prays that the same may be set aside and to declare the action of the respondents in interfering with the possession and enjoyment of the petitioner's land admeasuring Ac.1.80 cents in Sy.No.246, Ac.8.75 cents in Sy.No.264 and Ac.0.04 cents in Sy.No.265 situated in Palamaner, Palamaner Mandal, Chittoor District, as arbitrary and illegal.

The learned counsel has further submitted that Section 3A of the National Highways Act, 1956 (for brevity "the Act") describes the manner of acquisition of land. Where the Central Government is satisfied that for a public purpose, any land is required for the building, maintenance, management or operation of a national

highway or part thereof, it may, by notification, declare its intention to acquire such land. Every notification under Sub-section (1) shall give a brief description of the land. The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in vernacular language. In Section 3B of the Act, it is mandatory to make any inspection, survey, measurement, valuation or enquiry. It is also mandatory to take levels, dig or bore into sub-soil, set out boundaries and intended lines of work, mark such levels, boundaries and lines placing marks and cutting trenches. In Section 3C of the Act, it is clearly mentioned that every objection shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, the competent authority by order, may either allow or disallow the objections. Thereafter, under Section 3-D of the Act, declaration of acquisition has to be made by the competent authority as contemplated.

The learned counsel has also submitted that the 3<sup>rd</sup> respondent, vide Endorsement dated 05.12.2015, opined that the land of the petitioner is being taken away for Bangalore-Chennai Expressway and appropriate compensation would be paid to the petitioner for his land

as per Government Regulations. It is nowhere mentioned in the Endorsement about the nature of objections raised by the petitioner and how they were dealt with as per law. He has further submitted that as per Section 3A of the Act, plan and description of the land must be attached for effective filing of the objections, but in the Notice dated 10.03.2016, even though it is stated that all the records are available in the office, but the petitioner was not provided with the documents sought for. Moreover, the date for hearing objections was fixed on 26.03.2016.

The learned counsel has further submitted that the petitioner, by letter dated 22.03.2016, informed the 3<sup>rd</sup> respondent that he would be out of the country during the period from 23.03.2016 to 31.03.2016 as he had already got booked tickets for his journey as long back as on 15.02.2016 and he would not be able to attend hearing on the specified date and requested to fix the date for hearing of objections after 01.04.2016. However, without advertent to the above request, the 3<sup>rd</sup> respondent proceeded further.

The learned counsel for the petitioner has further submitted that even though the 3<sup>rd</sup> respondent claimed that communication was served on the petitioner on 30.03.2016, but the fact remains that the petitioner was out of country on that day, and it is unbelievable how the petitioner received the communication sent by the 3<sup>rd</sup>

respondent. However, vide proceedings dated 02.04.2016, the 3<sup>rd</sup> respondent informed that the objections of the petitioner were sent to the 4<sup>th</sup> respondent, who in his report, stated that the proposed Bangalore-Chennai Expressway has been designed for 120 kmph as per IRC codal provisions and also the proposed alignment has been fixed after detailed studies conducted by consultant, the geometry of the road alignment, ground terrain, avoiding the major built-up area, rivers/streams, reserve forest, hillock, region, etc. Therefore, any modification to change the alignment requires a series of sharp curves to be inserted in the alignment which is not safe for design speed of 120 kmph and also IRC would not recommend such alignments according to Road Safety requirements. Accordingly, requested the CALA to disallow the petition considering that the project is envisaged for public purpose. In the said communication, it is further stated that notice was issued to the petitioner vide Roc G1/1008/2012, dated 10.03.2016 informing that the petitioner himself or by any of his representatives has not approached the office of the 3<sup>rd</sup> respondent for supply of plans and records for the above project.

To buttress the above arguments, the learned counsel for the petitioner has relied upon the judgment of the Supreme Court rendered in the case of **Competent**

**Authority vs. Barangore Jute Factory**<sup>[1]</sup> wherein it is held that the question that arose before the Supreme Court was that which side of which part was sought to be acquired whether on the northern, southern, western, eastern side or in the centre. How can one know which part is under acquisition? The absence of proper description of land makes it impossible to file objections against acquisition. According to the writ petitioners, non-compliance of sub-section (2) of Section 3A of the Act renders the Notification invalid and the same is, therefore, liable to be quashed. Accordingly, the Apex Court, opined that the absence of any reference to a plan in the impugned notification and in fact non-availability of any plan linked to the Notification, fortifies the argument that the description of the land under acquisition in the impugned notification fails to meet the legal requirement of a brief description of the land which renders the notification invalid.

The learned counsel for the petitioner has relied on another judgment delivered by a Division Bench of this Court in **Bhimavarapu Giridhar Kumar Reddy vs. Union Government of India, Department of Shipping Roads, Transport & Highways**<sup>[2]</sup> wherein issue was regarding violation of the mandatory provisions of Section 3-C(2) in failing to provide an opportunity of hearing to the petitioner therein (despite the mandate of Section 3-C(2) and the

specific request made to the respondent). The relevant portion of the judgment is extracted hereunder:

“On the above analysis, the appeal required to be and is allowed. The Notification dated 24.09.2009, issued under Section 3-D, and the public notice dated 01.05.2010 issued under Section 3-G (only to the extent these pertain to the land of the petitioner – proposed for acquisition) are declared invalid and operative. The

4<sup>th</sup> respondent – the competent authority may however issue a notice to the petitioner intimating the date for hearing, affording reasonable time therefore and upon hearing of such objections, may pass appropriate orders. Such orders shall be communicated to the petitioner by Registered Post Ack. Due. Further process of acquisition, of the petitioner’s property shall depend on the order passed by the 4<sup>th</sup> respondent under Section 3-C and proceedings thereafter, under the provisions of the Act, in accordance with law.”

The learned counsel for the petitioner has submitted that since there is no detail mentioned in the Notification and the relevant documents are not furnished to the petitioner, the petitioner could not file his effective objections, and as he was out of country, he could not attend the personal hearing. Therefore, the Notification is contrary to the specific provisions contemplated under Sections 3A, 3B, 3C and 3D of the Act.

The learned Advocate General appearing on behalf of the 3<sup>rd</sup> respondent – Joint Collector-cum-Land Acquisition Officer has drawn the attention of this Court to a Communication dated 29.02.2016 wherein the petitioner stated that he filed objections regarding acquisition of land in Sy.Nos.246, 264 and 265 of Palamner village and



Mandal of Chittoor District tentatively and requested for supply of the plans and description of the land so as to enable him to file additional objections. Whereas, in the Notification dated 17.04.2015, it is specifically mentioned that the land plans and other details of the land covered under this Notification are available and can be inspected by interested person at the office of the competent authority. Subsequently, in the Notice dated 03.03.2016 also, it was informed to the petitioner that he did not approach the office of the

3<sup>rd</sup> respondent either himself or by any of his representatives for supply of plans and records. Therefore, the learned Advocate General has submitted that in spite of the fact that the documents are very much available in the office, the petitioner did not bother to come to the office and inspect the documents required by him.

At this juncture stage, the learned counsel for the petitioner has submitted that in the Communication dated 22.03.2016 sent to the 3<sup>rd</sup> respondent, the petitioner has specifically mentioned that he never stated that he came to the office of the 3<sup>rd</sup> respondent personally and concerning his representative, it would have been fair enough if the

3<sup>rd</sup> respondent had enquired with the clerk who received his objections presented through his representative in addition to the representations sent by post. The fact

remains that the respondents sent the communication vide postal receipt dated 30.03.2016 as is evident from the Indian Postal Receipt - Ex.P14 which is filed at page 46 of the material on record.

Heard the learned counsel for both the parties and perused the material placed on record.

The learned Government Pleader, while relying on the judgment dated 19.09.2007 delivered by a Division Bench of this Court in W.A.No. 504 of 2007 and W.P.No. 378 of 2007, has submitted that in paragraph No.12 of the judgment, this Court referred the judgment of the Supreme Court in the case of Competent Authority vs. Barangore Jute Factory (1<sup>st</sup> cited supra) wherein the Apex Court held as under:

“The appendix contains a long list of various portions of lands sought to be acquired. This list runs into more than 10 pages in the paper-book. We have chosen to reproduce only a small portion of the appendix in order to appreciate the rival contentions of the learned counsel for the parties. The learned counsel for the writ petitioners submitted that the purpose of giving a brief description of the land sought to be acquired is that the person whose land is to be taken away, should at least know what he is being deprived of. This becomes all the more necessary when only a part of the land out of a bigger chunk of land is sought to be acquired.”

With reference to the above extracted portion, this Court observed in the judgment that the Notification, which was considered by the Supreme Court, did not contain reference to any land plan. Not only this, incorrect assertions were made before the Supreme Court that the

plans were available and were produced before the High Court. Further, the Supreme Court took cognizance of this lacuna and observed:

“The availability of a plan would have made all the difference. If there is a plan, the area under acquisition becomes identifiable immediately. The question whether the impugned notification meets the requirement of brief description of land under Section 3-A(2) goes to the root of the matter. The High Court rightly observed “It is just not possible to proceed to determine the necessity of acquisition of a particular plot of land without preparation of a proper plan”. The appendix to the impugned notification shows that in many cases small parts of larger chunks of land have been notified for acquisition. This is not possible without preparing a plan. But where is the plan? The notification in question makes no reference to any plan. Our attention was drawn to averments in pleadings by the writ petitioners and replies thereto of the acquiring authority. The writ petitioners have pleaded that there was no plan. Replies are vague and by way of rolled-up answers. There is no specific reply. It is obvious that there was no plan and, therefore, none was referred to in the pleadings nor anything was produced before the Court at the hearing. Learned counsel for the competent authority tried to submit before us that there was a plan at the time of issue of the notification and the writ petitioners ought to have inspected it, if they so desired. He further submitted that the plan was produced before the High Court. We find that both these submissions are not sustainable as they are not correct. A reference to the impugned notification shows that there is no mention of any plan. Without this, how can anybody know that there was a plan which could be inspected and inspected where? We are inclined to accept that there was no plan accompanying the impugned notification. During the course of hearing we were shown a plan which we are unable to link with the impugned notification. This was a 1996 PWD plan. PWD is a department of the State Government. The impugned notification is by the Central Government. NHAI is established under a Central Act. The competent authority under Section 3 of the Act is appointed by the Central Government. Therefore, this State Government plan of 1996 (the impugned notification is of 1998) is of no assistance. The impugned judgment of the High Court

emphasizes the need for a plan. It is clear from the judgment of the High Court that no plan was produced before it. The absence of any reference to a plan in the impugned notification and in fact non-availability of any plan linked to the notification, fortifies the argument that the description of the land under acquisition in the impugned notification fails to meet the legal requirement of a brief description of the land which renders the notification invalid."

(Emphasis added)

However, it is made clear that the land plans and other details of the land covered under the notification are available in the office of the Competent Authority and the interested person can inspect the same.

Similar is the position in the present case. It is clearly mentioned in the Notification dated 17.04.2015 that the land plans and other details of the land covered under the Notification are available and can be inspected by interested person at the office of the competent authority.

So far as the issue relating to affording an opportunity of personal hearing to the petitioner is concerned, since the petitioner did not come forward and inspect the required documents to raise effective objections, it is pertinent to note that neither he made any request thereafter nor had any document in his possession. Therefore, the provision of opportunity to him for effective hearing would defeat the purpose. As stated in the Notification and by other correspondence made by the respondents, it is obvious that the documents are available in the office of the competent authority but the petitioner did not approach the office.

However, the petitioner's main grievance is that even though he sent communication dated 22.03.2016 requesting the 3<sup>rd</sup> respondent to furnish land plans and other relevant material so as to enable him to file effective objections, the 3<sup>rd</sup> respondent, in violation of the relevant provisions of the Act, without furnishing necessary documents / records, rejected his objections by proceedings dated 02.04.2016 on the ground that his objections require no consideration.

Facts remain that the Project is for the public purpose. Divergence of the same will certainly cause inconvenience as per the design for 120 Kmph as per IRC codal provisions as the proposed alignment has been fixed after detailed studies conducted by consultant considering the geometry of the road alignment, ground terrain, avoiding the major built-up area, rivers/streams, reserve forest, hillock region, etc. Any modification to change the alignment requires a series of sharp curves to be inserted in the alignment, which is not safe for design speed of 120 Kmph, also IRC would not recommend such alignments according to Road Safety requirements.

In view of the above discussion, I am of the opinion that if the petitioners in these writ petitions have not received adequate compensation, they may approach the 3<sup>rd</sup> respondent - Competent Authority and put forth their grievances.

However, there are no merits in these three writ petitions, and the same are, accordingly dismissed. No order as to costs.

As a sequel to the dismissal of the Writ Petitions, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

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**SURESH KUMAR KAIT, J**

09.08.2016

Note:- Furnish copy in one week

b/o

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[\[1\]](#) 2005 Law Suit (SC) 1559

[\[2\]](#) 2012 Law Suit (AP) 363