

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

* * * *

WRIT PETITION Nos.12385 and 33043 of 2016

Between:

Pottipati Rajeshwari

....Petitioner

and

The Union of India,
Ministry of Road Transport and Highways,
(Land Acquisition Division),
Rep.by its Secretary, New Delhi,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 13.09.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes
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

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.12385 and 33043 of 2016

COMMON ORDER:

These two Writ Petitions are being disposed of by this common order as they are filed by the same petitioner.

Heard the learned Counsel for the petitioner, learned Counsel for respondent Nos.2 and 3 and the learned Government Pleader for respondent Nos.4 and 5.

The petitioner claims that she is the absolute owner of the land of an extent of Ac.0.05 cents situated in Survey No.843/B/1A, 1A of Chennur Village and Mandal as she purchased the same under a registered sale deed dated 24.07.1985. She constructed an RCC building consisting of ground + 2 floors in an extent of Ac.0.02 cents in the year 2007 and she has been residing in the said building. While so, on 09.10.2010 the first respondent issued a notification under subsection (1) of Section 3A of the National Highways Act, 1956, for acquiring the land of an extent of Ac.1.20 cents for the purpose of widening of National Highway i.e., NH 18 from Kurnool to Kadapa. In the said notification, Ac.0.03 cents belonging to the Petitioner including the residential building which was constructed in an extent of Ac.0.02 cents was also shown. She objected to the acquisition of the total extent of Ac.0.03 cents stating that only an extent of Ac.0.1816 cents is

required for acquisition and requested for conduct of resurvey of her land. However, an award was passed in Award No.70/2011-2012, dated 31.05.2012, fixing the compensation amount of Rs.8,84,054/- towards structure value and an amount of Rs.52,847/- towards land value for the total extent of Ac.0.03 cents. Since the value of the structure was not properly fixed, she filed an Arbitration Application before the fourth respondent, as the value of the structure was more than Rs.26.00 lakhs. It is the case of the petitioner that the fourth respondent, without considering the valuation report submitted by the Executive Engineer, R&B, vide his letter dated 25.02.2013 fixing the structural value as Rs.25,63,328/-, enhanced the compensation amount by Rs.4,87,117/- only in addition to the compensation already fixed by the fifth respondent by his proceedings dated 19.03.2015 without considering the request for resurvey of the land. She states that she submitted a representation to the fifth respondent on 30.04.2015 for resurvey of the land and also filed A.O.P.No.358 of 2015 before the learned Principal District Judge, Kadapa, challenging the proceedings of the fourth respondent. She filed I.A.No.427 of 2016 for appointment of Structural Engineer, Head of the Department, KSRRM Engineering College, Kadapa, as Commissioner to assess the value of the structure as per the market value. The said application was allowed. She also filed I.A.No.3086 of 2015 for grant of injunction restraining the respondents from interfering with her possession till resurvey

and reassessment of the value of the building was made. But, the said application was dismissed by order dated 06.01.2016 by the learned Principal District Judge. Against the said order, she preferred C.M.A.No.79 of 2016, and the same was disposed of on 18.02.2016 by a Division Bench of this Court giving liberty to the petitioner to take necessary steps for assessment of structural value in pursuance of the orders in I.A.No.427 of 2016. Pursuant to the order in I.A.No.427 of 2016, the third respondent issued a letter on 17.03.2016 directing the Commissioner to conduct joint inspection on 19.03.2016. The Commissioner visited the premises, conducted inspection and took measurements of the structures. Though the structure was sought to be demolished, she resisted the same as no compensation was paid. She submitted a representation to the fifth respondent for conducting resurvey of the land, as only an extent of 0.1816 cents falls under acquisition and when the said representation was rejected by an endorsement dated 20.05.2015, W.P.No.12385 of 2016 was filed.

A counter affidavit was filed stating that 3A notification was approved and published in the Gazette of India dated 09.10.2009 and it was published in the two local newspapers – Vaartha on 16.11.2009 and The Hindu on 18.11.2009, for an extent of Acs.8.96 cents including the land of Ac.0.03 cents claimed by the petitioner. The notification under Section 3D of the National Highways Act was also approved and published in the Gazette dated 26.02.2010. The notification under

subsections (3) and (4) of Section 3G of the National Highways Act was also published in two local daily newspapers indicating the details of survey numbers and occupants and requesting them to appear in person along with the documents. After following the procedure, an award was passed vide Award No.70/2011-2012, dated 31.05.2012, including the petitioner's land/structure in an extent of Ac.0.03 cents. She refused to take the compensation amount and hence it was deposited in the account of the competent authority duly deducting the income tax of Rs.1,14,927/-. She filed the Arbitration Application before the District Collector & Arbitrator, Kadapa, and he called for remarks from the Superintending Engineer, R&B, Kadapa, on the above issue. The Executive Engineer, R&B, Kadapa, submitted a revised valuation report for Rs.25,53,328/- for the building as per SSR 2012-2013. Since the District Collector got a doubt, he called for information from the Superintending Engineer, R&B, Kadapa, to specify the correct norms to be adopted for valuing the structures. The Superintending Engineer, R&B, Kadapa, stated that there were no prescribed guidelines or circular instructions for valuation of the structures, and in the absence of the same, the plinth area rates communicated by the Chief Engineer (R&B), Buildings, for preparation of proforma estimates are adopted for arriving at the value of the buildings. He further stated that since the building was constructed in the year 2007-2008, the SSR rates of that year can be adopted with depreciation @ 1.33% per year

for five years and 10% towards salvage value. When the Superintending Engineer, R&B, Kadapa, was again requested to inspect the structure and submit a report, he submitted a report on 27.10.2014 revising the value to Rs.13,71,171/- for the building. The Arbitrator issued notices to the petitioner and the Counsel for NHAI authorities and they were heard on 27.11.2014. The petitioner argued that she spent nearly Rs.26.00 lakhs for construction of her house. The Counsel for NHAI objected for enhancement of the structure value. The District Collector & Arbitrator, Kadapa, ultimately enhanced the structure value from Rs.8,84,054/- to Rs.13,71,171/- as per the valuation report submitted by the Superintending Engineer, R&B, Kadapa, by his Award dated 19.03.2015. She filed A.O.P.No.358 of 2015 without taking the compensation amount. When the structures were inspected by the Commissioner, pursuant to the order of the learned Principal District Judge in I.A.No.427 of 2016, she filed W.P.No.12385 of 2016, and this Court in W.P.M.P.No.15522 of 2016 directed the Joint Collector to conduct resurvey of the land. The resurvey was conducted on 01.06.2016 along with the National Highway Surveyor and Mandal Surveyor in the presence of the petitioner and other respectable ryots and it was noticed that only Ac.0.02 cents was coming under acquisition instead of Ac.0.03 cents. The petitioner was satisfied with the above work of peg marking and resurvey. An order was, accordingly, passed on 27.06.2016 modifying the award dated 31.05.2012 reducing the land value

from Ac.0.03 cents to Ac.0.02 cents, the same was served on the petitioner on 06.07.2016 and she was asked to receive the revised compensation amount by appearing before the Competent Authority & Joint Collector, Kadapa. But, the petitioner has not appeared. The same petitioner filed W.P.No.33043 of 2016 challenging the action of the fifth respondent in revising the compensation amount awarded in Award No.70/2011-2012, dated 31.05.2012, by proceedings dated 27.06.2016 to the acquired property/land of an extent of Ac.0.02 cents without determining the compensation as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), having issued revised acquisition proceedings dated 01.06.2016 as illegal and sought a direction not to dispossess the petitioner.

Learned Counsel for the petitioner vehemently argued that in view of not taking possession of the land of the petitioner and non-payment of the compensation amount to the petitioner, Section 24(2) of Act 30 of 2013 is applicable to the facts of the case. He further submitted that in view of the application of the said Section and the earlier proceedings having been lapsed, without issuing acquisition notification, the respondents cannot take possession of the land. He relied on the amendments made to Section 105 of Act 30 of 2013. He also placed reliance on **Sree Balaji Nagar Residential Association v. State of**

Tamil Nadu¹, Laxmi Devi v. State of Bihar², Rattan Singh v. Union of India³, Yogesh Neema v. State of Madhya Pradesh⁴, Vijay Latka v. State of Haryana⁵, Aligarh Development Authority v. Megh Singh⁶, Delhi Development Authority v. Reena Suri⁷ and Working Friends Cooperative House Building Society Limited v. State of Punjab⁸.

Though a separate counter affidavit and reply affidavit are filed in the cases, in view of undisputed facts as per the averments in W.P.No.12385 of 2016, the said averments are not repeated here.

The undisputed facts in the instant case are that the notification under Section 3A of the National Highways Act was approved and published in the Gazette of India dated 09.10.2010 for an extent of Acs.8.96 cents including the land of an extent of 0.03 cents of the petitioner. The declaration under Section 3D of the National Highways Act was also approved and published in the Gazette of India dated 26.02.2010. The said declaration was also published in the two local newspapers. Award No.70/2011-2012 was passed on 31.05.2012 for a total extent of Ac.0.28 cents in Survey No.843B/1A1A including the land/structure of Ac.0.03 cents of the petitioner. The structure value was fixed at Rs.8,84,054/-, whereas the land value was

¹ (2015) 3 SCC 353

² (2015) 10 SCC 241

³ (2015) 16 SCC 342

⁴ (2016) 6 SCC 387

⁵ (2016) 12 SCC 487

⁶ (2016) 12 SCC 504

⁷ (2016) 12 SCC 649

⁸ (2016) 15 SCC 464

fixed as Rs.52,847/- coming to a total of Rs.12,02,117/- (including 30% solatium of Rs.2,65,216/-). The petitioner refused to take the said compensation and hence it was deposited in the account of the Competent Authority (Land Acquisition) & Joint Collector, Kadapa, after deducting the income tax of Rs.1,14,927/-. She filed an Arbitration Application before the District Collector – cum – Arbitrator, Kadapa, and the structure value was enhanced from Rs.8,84,054/- to Rs.13,71,171/- by passing Arbitration Award No.50/2014, dated 19.03.2015. Then also she did not take the compensation amount. She filed A.O.P.No.358 of 2015 where a survey was conducted which revealed that only Ac.0.02 cents instead of Ac.0.03 cents of land of the petitioner was affected in the acquisition. Now A.O.P.No.358 of 2015 is pending before the learned Principal District Judge, Kadapa. When I.A.No.3086 of 2015 was filed requesting not to dispossess her from her building till resurvey and reassessment of the value of the building was made, it was dismissed by the learned Principal District Judge, Kadapa, on 06.01.2016 with the following observations:

“13. It is for the competent authorities to decide regarding alignment of the road, formation of the road etc. This Court cannot sit as an Appellate Authority regarding the acts done by the appropriate authority under the provisions of National Highways Act, 1956.

In those circumstances, I am of the view that petitioner has not made out any case for grant of relief at this stage. Petitioner ought to have worked out her remedies long back even before passing of award contending that her property is not required for the purpose of formation of National Highway. It is not open for the petitioner now to contend that her property

is not required and that re-survey has to be conducted and to pass award having kept quiet from the year 2009.

Petitioner thus failed to establish her prima facie case. Balance of convenience will not lie in favour of petitioner at this stage.

There is no scope for any politics regarding formation of National Highways. The allegation made by the petitioner in the affidavit are far from truth and devoid of merit.

The point is answered accordingly against the petitioner and in favour of respondents.

14. In the result, Petition is dismissed, but in the circumstances without costs. The earlier interim orders granting status-quo stands vacated.”

When the petitioner filed C.M.A.No.79 of 2016, a Division Bench of this Court disposed of the said appeal with the following observations:

“5) In our considered opinion, the problem ventilated by the learned counsel can be mitigated by taking out a commission to any of the approved structural engineer/valuer, whose inspection can be got photographed and videographed and preserved for the purpose of appreciation at any later point of time. The appellant also could have gone before the Court below for securing appointment of an independent valuer. Therefore, only for the purpose of enabling the petitioner to take necessary steps to inspect the structures, which are going to be effected due to the road widening project and also retrieve whatever valuables that she wishes to, we direct that the demolitions may not be carried out for a period of one week from today i.e., upto 25.02.2016. Except to the above extent, the order under appeal is confirmed as we approve the reasoning adopted by the learned District Judge.”

The Division Bench directed the respondents not to demolish the structures up to 25.02.2016 and in spite of the same, the petitioner filed W.P.No.12385 of 2016 and obtained the interim direction on 29.04.2016. In the subsequent Writ

Petition in W.P.No.33043 of 2016, she obtained an order of stay of dispossession, which is being continued till today.

As stated above, the A.O.P is pending before the learned Principal District Judge, Kadapa.

Now, the point involved in the present Writ Petitions is, whether the provisions of Section 24(2) of Act 30 of 2013 are applicable to the facts of the present case as contended by the learned counsel for the petitioner or not.

Learned Counsel for the petitioner submitted that the Central Government promulgated an ordinance on 31.12.2014 substituting the following sub section (3) to the original sub section (3) of Section 105 of Act 30 of 2013:

“(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1st January, 2015;”

Thereafter, the Central Government made an Order for removal of the difficulties by exercising its power under sub-section (1) of Section 113 of Act 30 of 2013 and it reads as follows:

“2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition

under the enactments specified in the Fourth Schedule to the said Act.”

A reading of the above Ordinance and the Order discloses that the provisions of the First Schedule, Second Schedule and Third Schedule of Act 30 of 2013 are applicable to the enactments mentioned in the Fourth Schedule of Act 30 of 2013. The National Highways Act, 1956 is one of the enactments included in the Fourth Schedule. Learned Counsel for the petitioner vehemently argued for thirty minutes each on two days misunderstanding the said Ordinance and the Order making applicable the provisions of Act 30 of 2013 more particularly Section 24(2) of Act 30 of 2013 to the National Highways Act and placed reliance on the above decisions. The argument was totally misplaced. All the decisions relied on by the learned Counsel are based on such misconception as they relate to the application of Section 24(2) to the cases arising out of application of provisions of the Land Acquisition Act only. Section 3J of the National Highways Act specifically states that nothing in the Land Acquisition Act, 1894, shall apply to an acquisition under the said Act. No decision is cited before this Court applying Section 24(2) of Act 30 of 2013 to the acquisition of land under National Highways Act. When the substituted sub-section (3) of Section 105 of Act 30 of 2013 speaks of application of the First, Second and Third Schedules of Act 30 of 2013 to the enactment mentioned in the Fourth Schedule, and when this Court asked the learned Counsel for the petitioner to point any particular provision existing in the said

Schedules making Section 24 applicable to the National Highways Act, learned Counsel for the petitioner could not point out, except repeating the ratio laid down in the above cases, which are not applicable to the facts of the case. Learned Counsel was assuming that Section 24(2) of Act 30 of 2013 is applicable to the acquisitions made under the National Highways Act, and I am of the clear opinion that, what is made applicable to the acquisitions under National Highways Act is the provisions contained in the First, Second and Third Schedules of Act 30 of 2013 only and not all provisions of the said Act. But the said ordinance lapsed as it was not made into an Act.

In all fairness, the petitioner should have vacated the premises by virtue of the orders of the Division Bench by 25.02.2016, but continued in possession and involved the respondents in unnecessary litigation. It is for the learned Principal District Judge, Kadapa, to decide A.O.P.No.358 of 2015 pending before him with regard to the entitlement of the Petitioner for enhanced compensation.

There is no provision in the National Highways Act for revising the award once passed under the provisions of the Act. Since the competent authority noticed that only the land of an extent of Ac.0.02 cents is involved in the acquisition, he passed an order on 27.06.2016. The said order is for the benefit of the petitioner and it is for the petitioner to accept the order and

take back possession of Ac.0.01 cent not involved in acquisition. But there is no obligation and in fact there is no power vested in the competent authority to revise the award once made pursuant to the notification for acquisition. The petitioner tries to take advantage of such revised order and contends that this is a fresh acquisition and the old acquisition lapsed. Such contention is totally untenable. There is no power to the competent authority to withdraw any part of the land from acquisition once declared under Section 3D of the National Highways Act as from the date of publication of declaration, the land stands vested in the Central Government. Since the petitioner filed W.P.No.33043 of 2016 challenging the order dated 27.06.2016, in the absence of any power on the authority, the said order has to be set aside and is accordingly set aside. The earlier Award No.70/2011-12 dated 31.05.2012 stands. It is always open to the respondents to take little more than the land required for the public purpose and it need not strictly confine to the purpose of acquisition. The issue in A.O.P.No.358 of 2015 is with regard to the proper compensation for structures but the said Court cannot go into the aspect of extent and the attempt in I.A.No.427 of 2016 is an infructuous attempt. The petitioner as well as the competent authority are under misconception with regard to the scheme of the Act.

Accordingly, Writ Petition No.12385 of 2016 is dismissed and Writ Petition No.33043 of 2016 is partly allowed to the extent of setting aside the order dated 27.06.2016. The

consequential prayer for application of provisions of Act 30 of 2013 is rejected. The miscellaneous petitions pending in these Writ Petitions, if any, shall stand closed.

(A.RAMALINGESWARA RAO, J)

13.09.2017
vs

