

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

Civil Revision Petition Nos.6406 of 2016, 21, 49 and 50 of 2017

Common Order:

This batch of CRPs. are filed by Special Deputy Collector (LA), Somasila Project Unit-IV, Rajampet/petitioner/Referring Officer aggrieved by the order dated 10.11.2016 passed by I Additional District Judge, Kadapa whereby the learned Judge dismissed the I.A.Nos.1035, 1036, 1037 and 1038 of 2016 filed by the petitioner.

2) Before the trial Court, the petitioner filed four applications. I.A.No.1035 of 2016 was filed under Section 151 CPC to re-open LAOP No.1013 of 2001; I.A.No.1036 of 2016 was filed under Order XVIII Rule 17 CPC to re-call PW2 for adducing further evidence; I.A.No.1037 of 2016 was filed under Order VII Rule 14 CPC to condone the delay in filing the petition schedule mentioned documents i.e. certified copies of orders passed in W.A.No.590 of 1996 and W.P.No.4794 of 1998 on the file of High Court of A.P.; and I.A.No.1038 of 2016 was filed under Order XVI Rule 1 CPC to summon the Director General, Anti Corruption Bureau, Hyderabad to produce the petition schedule mentioned documents i.e.

- a) Report of Anti Corruption Bureau, Hyderabad connected to LAOP Nos.361, 218 to 222 of 2000, 851 of 1999 and 438 of 2000 and LAOP No.1013 of 2001;
- b) Statement of Sri A.C.Bayapu Reddy;
- c) Statement of Sri Valluri Ramakrishna, Special Deputy Collector, TGP, Nellore; and
- d) Proceedings of the Special Deputy Collector, TGP, Nellore, Sri V.Ramakrishna in Ref. No.587/87 dated 07.07.1988.

3) Petitioner's case in all the above petitions was that corruption allegations were levelled by A.C.Bayapu Reddy against S.Nagi Reddy former Special Deputy Collector and others, Somasila Project, Madavaram Village, Pennaperuru Village, Vontimitta Mandal, Kadapa District in passing the award in respect of structures raised in Sy.Nos.127/A and 128/2 pursuant to draft notification dated 18.04.1981 and in that connection the Director General, Anti Corruption Bureau, Hyderabad conducted enquiry and during the enquiry A.C.Bayapu Reddy and Sri Valluri Ramakrishna, Special Deputy Collector, TGP, Nellore who inspected the property pursuant to the orders passed in W.P.No.1002 of 1987, were examined and the report filed by said Ramakrishna was crucial. Further, the orders passed in W.P.No.4794 of 1988 and W.A.No.590 of 1996 on the file of High Court of A.P. were also relevant to the present case as the present acquisition proceedings involved litigation of more than Rs.30 crores; those documents and the enquiry report of Director General, Anti Corruption Bureau and other connected documents were very much crucial to establish the case of the Government in the present land acquisition proceedings. In the absence of those documents, it would be difficult to prove its case.

Hence, the above four petitions.

4) The respondents filed counter opposing the petitions, *inter alia*, contending that LAOP stood posted for addressing the arguments on behalf of petitioner/Government and the claimants have already filed their written arguments on 29.08.2016, but the Government without

getting ready in the matter have already taken four adjournments and at their own request their further evidence was closed on 01.08.2016 and the matter was posted for arguments. The petitioner has not assigned any reason for the delay in filing the proposed documents except stating that petitioner was not personally aware of the proceedings which was not a ground to re-open the matter. The respondents thus prayed to dismiss the petitions.

5) A perusal of the common order passed by the trial Court would show that the petitioner urged before the trial Court that PW2 took charge in the month of October, 2015 and he was not personally aware of the proceedings connected to the present LAOP and after verifying the record, he came to know about the importance of the proposed documents and therefore, an opportunity may be given to the Government to adduce further evidence.

6) The trial Court specifically observed that sufficient time was already granted to both parties to adduce evidence and also to advance arguments and if it was the version of Government Pleader that matter involved Rs.30 crores, in such circumstances, the Referring Officer should have acted in a conscious manner to gather oral and documentary evidence to produce before the Court and after taking several adjournments and at a belated stage the instant petitions have been filed and though PW2 was on record since October, 2015 he kept quiet for one year and hence granting time would amount to giving chance to

protract the proceedings. On the aforesaid observations the trial Court dismissed all the petitions.

7) Hence, the State preferred four CRPs. CRP No.6406 of 2016 against the order in I.A.No.1035 of 2016; CRP No.21 of 2017 against the order in I.A.No.1036 of 2016; CRP No.49 of 2017 against the order in I.A.No.1037 of 2016 and CRP No.50 of 2017 against the order in I.A.No.1038 of 2016.

8) Heard arguments of Sri Karra Narasimham, learned Assistant Government Pleader for Land Acquisition representing learned Advocate General (AP) and Sri K.Muralidhar Reddy, learned counsel for 7th respondent.

9) Learned Assistant Government Pleader representing learned Advocate General would submit that a scam was occurred in the hands of former Special Deputy Collector and others in the present land acquisition proceedings which involves Rs.30 crores as it was noticed that un-existed structures were manipulated on the acquired lands and thereby the value of the land and structures were falsely boosted to claim high compensation and therefore, a report was given and ACB police have conducted enquiry and in the appeals preferred against the tainted award, the High Court was pleased to set aside the award and directed the reference Court to conduct enquiry and liberty was also given to both parties to adduce their evidence and in that backdrop he would submit, it is the duty of the Government to place on record all the relevant material

to assist the Court to arrive at a fair compensation in the LAOP. He would further submit that as the present incumbent—Special Deputy Collector was not personally aware of all the previous proceedings, he could not secure the documents in time and file them and after making thorough verification and securing the documents he filed the petitions to permit him to file the documents and also summon Director General, ACB to file documents mentioned in the concerned petitions and there was no negligence much less wilful negligence, on the part of petitioner and having regard to the facts that the case involved high stake coupled with misdeeds of the concerned officers, the trial Court ought to have given an opportunity to the Government to file documents, but unfortunately dismissed the petitions on the mere ground of delay. He thus prayed to allow the CRPs.

10) Per contra, learned counsel for 7th respondent would submit that High Court while remanding the matter to the reference Court directed to complete the enquiry in LAOP No.1013 of 2001 within three months and in spite of the same and subsequent enhancement of time by High Court, the petitioner has not cooperated with the reference Court and filed the petitions at a belated stage when the matter was in the midst of arguments and hence absolutely there were no merits in those petitions and the reference Court rightly dismissed the same. Further, the petitioner has not shown any plausible cause for inordinate delay in filing the aforesaid documents. He placed reliance on the judgment of

this Court in *Cheerla @ Cuddapah Naganna vs. Koya Naganna*¹ to show that petition filed to re-call DW1 for further cross-examination when the matter was at the stage of arguments, was dismissed by the trial Court and approved by the High Court. He also relied upon the judgment of the Apex Court in *Vadiraj Naggapa Vernekar vs. Sharad Chand Prabhakar Gogate*² to emphasize the point that witness cannot be recalled to introduce certain evidence which was not based on new facts and which was already available when the witness submitted its affidavit earlier and in such instance, re-call cannot be permitted to fill up the lacuna. He thus prayed to dismiss the revision petitions.

11) In the light of above rival arguments, the point for determination is:

“Whether there are merits in the CRPs. to allow?”

12) **POINT:** The record shows that it is the second round of litigation in LAOP No.1013 of 2001. Earlier, the learned I Additional District Judge, Kadapa passed order in LAOP No.1013 of 2001 on 27.11.2008. Challenging the same, it appears, LAASMP Nos.827, 1011 of 2015 and LAAS No.136 of 2009 and WPMP Nos.10813 of 2011, 43075 of 2015 and WP No.27925 of 2010 were filed. As rightly submitted by learned Assistant Government Pleader, the matter involved around Rs.30 crores of compensation. Be that as it may, the High Court passed a common judgment in all the aforesaid matters on 16.12.2015. Certain important

¹ 2008 (1) ALD 806

² AIR 2009 SC 1604

points were framed for consideration in the common judgment such as: Whether the issue/point framed for consideration in LAOP No.1013 of 2001 is correct, valid and legal in the facts and circumstances of the case and whether the structures for which compensation is claimed in LAOP No.1013 of 2001 were in existence by the date of issuance of Section 4(1) notification dated 20.02.1981 and whether the claimants were entitled to compensation in respect of such structures etc.

13) A Division Bench of this Court passed an elaborate judgment whereby it set aside the award passed in LAOP No.1013 of 2001 and remanded the matter to the reference Court for disposal in accordance with law. While making such remand, this Court gave liberty to both parties to place on record the material in support of their case. It, of course, directed the reference Court to complete the enquiry within three months from the date of receipt of copy of its order.

That was how the matter was resuscitated.

14) The impugned order would show that after remand the claimants have examined 5 witnesses and Referring Officer was examined as PW2 and thereafter the matter was posted for arguments and at that stage, it appears, the Referring Officer filed the instant petitions as mentioned in para-2 supra.

15) The submission of learned Assistant Government Pleader is that the documents which were sought to be marked, are very much essential to appraise the true facts to the reference Court as to how some of the

claimants and black-sheep acquisition officers colluded together and manipulated the non-existing structures to boost up the compensation for such structures and as how the ACB enquiry exhumed those facts into light.

16) I find considerable force in the submission of learned Assistant Government Pleader. As stated supra, in common judgment of this Court some of the points for consideration were: whether the structures for which compensation was claimed in LAOP No.1013 of 2001 were in existence by the date of issuance of Section 4(1) notification dated 20.02.1981 and if so, whether the claimants are entitled for compensation. While setting aside the award in LAOP No.2001, this Court in respect of aforesaid point observed that those points were substantial in nature and instead of deciding those two points by itself, opportunity could be afforded to the parties to appraise their case before the reference Court. Accordingly, this Court has given opportunity to the parties to place the relevant material for proper adjudication of the matter by the reference Court on remand. It is needless to emphasize that since the matter is under remand, every endeavour has to be made by the reference Court to pass an award for appropriate compensation in respect of the properties which were in existence by the relevant date but not in respect of the properties which were manipulated. Hence, re-call of PW2 for adducing further evidence and summoning of the record from Director General, ACB are quite essential in the matter. Delay is concerned, no doubt the petitions under impugned orders were filed

during the course of arguments and hence, there was admittedly some delay. However, in a matter of this magnitude, where the High Court while remanding LAOP granted liberty to the parties to produce the record to substantiate their case and when it was the case of Referring Officer that large scale scam was occasioned which is required to be appraised to the Court, mere delay in filing the petitions cannot be a ground to discard the petitions and thereby to stifle the truth.

17) In *K.K. Velusamy vs. N.Palanisamy*³ the Honourable Apex Court observed that where additional oral or documentary evidence would assist Court to clarify evidence on issues and would assist in rendering justice, Court could exercise its discretion to recall witnesses or permit fresh evidence when it satisfied that non-production earlier was for valid and sufficient reasons.

18) This Court has no hesitation to hold that the evidence sought to be produced would assist the reference Court to adjudicate the matter in a proper manner. The delay was cogently explained to the effect that the Special Deputy Collector, Somasila Project was not personally aware of the proceedings connected to the present case and hence he could not present the documents in time. Above all the compensation involved in this case is of high magnitude. Hence, the objection of the respondents that the petitions were filed at a belated stage and re-call of witness would amount to fill up the lacuna, cannot be accepted.

³ (2011) 11 SCC 275

19) In the result, all the four CRPs. are allowed and impugned orders dated 10.11.2016 are set aside and consequently I.A.Nos.1035, 1036, 1037 and 1038 of 2016 are allowed. No costs.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Dt. 23.02.2017
Murthy

