

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.462 of 2018

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.13408 of 2015 dated 30.01.2018. The appellants herein filed W.P.No.13408 of 2015 seeking a mandamus to declare the action of the respondents, in entering into their properties and marking the same for demolition and in taking steps to demolish more than 500 houses, 4 temples, a mosque, two burial grounds and a drinking and irrigation water tank, in the name of upgrading the existing R&B Roads as NH-565, without initiating any proceedings under the National Highways Act, 1956 (for short "the Act"), and without considering the unanimous resolution passed by the Kanigiri Nagar Panchayat, as illegal and arbitrary.

By a common order passed in W.P.Nos.13408 and 22848 of 2015 dated 30.01.2018, the Learned Single Judge noted the submission of the Learned Advocate General, appearing on behalf of the respondents, that pedda cheruvu is a tank; a bridge is being constructed across the tank; there is no requirement of the permission of the A.P. Pollution Control Board for such construction; the respondents were not otherwise touching the tank; the possession was not being taken of private properties, much less laying the proposed national highway road in any such property; and, if anything is required, they would strictly follow the due process of law contemplated by the Act.

Sri D.V.Sitaram Murthy, learned Senior Counsel appearing on behalf of the appellants-writ petitioners, would submit that Kanigiri Nagar Panchayat had examined the issues, which would arise if the National Highway was laid, in great detail; they had submitted an alternate proposal for the national highway to be laid in a different route; Parts IX and IX-A of the Constitutions of India confer constitutional status on these local bodies; the views of public bodies, such as the Kanigiri Nagar Panchayat, should be taken into consideration by the National Highways Authority before laying the road; since the Kanigiri Nagar Panchayat is now faced with the danger of vehicles plying at high speed within their territorial limits, and thereby causing pollution and a threat to the lives of people residing in the village, this Court should interfere and restrain the respondents from laying the National Highway in this route; and the National Highways Authority should be directed to consider the resolution of the Nagar Panchayat before a final decision is taken on whether or not the National Highway should be laid in the existing route, or diverted through another route as suggested by the Nagar Panchayat. Reliance is placed by the learned Senior Counsel on a Division Bench judgment of this Court in **S.B.Kirloskar vs. Hyderabad Urban Development Authority (HUDA)**¹ in this regard.

Article 300-A of the Constitution of India confers a constitutional right on any person not to be deprived of his property except in accordance with law. Acquisition of land, for the purposes of a National Highway, is governed by the provisions of the Act and, if a private property is sought to be acquired by the National Highways Authority, for expanding the existing road into a National Highway,

¹ 2010(6) ALD 598 (DB)

then the procedure contemplated by the Act necessitates strict adherence.

No law which obligates the National Highways Authority, even without acquiring private lands, to consider the objections of the Nagar Panchayat, for the National Highway to be laid in a particular route, has been brought to our notice. In the absence of any law obligating the National Highways Authority to consider the objections of the Nagar Panchayat, for laying the road in a particular route, it would be wholly inappropriate for us to issue a mandamus to the authorities concerned to do so. In case, the appellants-writ petitioners' lands are sought to be acquired, then the National Highways Authority would be obligated to strictly adhere to the provisions of the Act before depriving the appellants-writ petitioners of the lands they own.

Section 3-C(1) of the Act requires land owners to be given an opportunity of putting forth their objections to the acquisition of their land for the purpose of a National Highway; and, on objections being filed, to be given an opportunity of a personal hearing. While the Learned Advocate General would submit that not all the appellants-writ petitioners are land owners, and that some of them have encroached upon Government lands, even if some of the appellants-writ petitioners are held to be encroachers of Government land, they can only be evicted, in accordance with law, after putting them on notice, and after giving them an opportunity of being heard, as their possession over the subject land has not been disputed before us.

Reliance placed by Sri D.V.Sitaram Murthy, learned Senior Counsel on **S.B.Kirloskar**¹ is misplaced. In the said judgment, the validity of the notifications, issued under Section 4(1) of the Land

Acquisition Act, 1894 (for short “the 1894 Act”), were put in issue, and the right of the land owner to file their objections under Section 5-A of the 1894 Act was examined. Section 3-C of the Act is similar to Section 5-A of the 1894 Act and it is, at that stage, would the land owners be entitled to be given an opportunity of putting forth their objections.

As the learned Advocate General would reiterate that the irrigation tank would not be affected, as only a bridge is sought to be laid thereupon, we consider it appropriate to modify the order of the Learned Single Judge and direct the respondents, in case private patta lands are sought to be acquired, to strictly adhere to the provisions of the Act which would include a notification being issued under Section 3-A of the Act; for objections to be permitted under Section 3-C of Act; and, in cases where objections are filed, for a personal hearing to be granted under Section 3-C(2) of the Act.

Even in case a National Highway is sought to be laid over Government lands, which are under encroachment, such of the petitioners who are encroachers shall not be dispossessed except in accordance with law i.e after putting them on notice and after giving them an opportunity of being heard.

With the aforesaid modifications, the Writ Appeal is disposed of. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

19th March, 2018
JSU

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Date: 19.03.2018

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