

**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**WRIT PETITION No.17301 OF 2003**

**ORDER:**

The State of Andhra Pradesh filed this writ petition under Article 226 of the Constitution of India, to issue a Writ of Mandamus declaring the notifications dated 22.06.1999 vide RCC2/1671/99 issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') and the supplementary award No.46/1999-2000, dated 27.11.1999 as null and void and set aside the consequent reference to the Civil Court and the judgment of the Reference Court dated 26.02.2002 in LAOP No.364 of 2000 on the file of the District Judge, Kadapa.

2. The brief facts of the case are that originally a notification under Section 4(1) of Act was issued for acquiring the land to an extent of Ac.39.59 cents for the Somasila Project under Telugu Ganga Project scheme. Large pieces of land and structures were acquired for submergence of land under back waters of Somasila Project and awards were passed. The compensation amounts were also disbursed to the claimants and land oustees. However, no award could be passed in respect of small extents of land - Ac.1.37 cents in Survey No.127/A and Ac.2.16 cents in Survey No.128/2 of Madhavaram Village as the claimants did not come forward to

participate in the award enquiry on the ground that they had already disposed of the said property.

The owners, subsequent purchasers, filed Writ Petition No.11794 of 1989 before this Court for payment of compensation for their houses which were submerged under the Somasila Project. The writ petition was allowed and against which, Writ Appeal No.590 of 1996 was filed. The said writ appeal was allowed on 13.06.1996. The respondents/writ petitioners had filed review petition against the order passed in writ appeal dated 13.06.1996. The Review Petition vide Rev. WAMP No.2155 of 1997 was disposed of on 04.09.1998. The operative portion of the order in review petition reads as follows:

“Upon hearing the submissions made on behalf of the parties, we do deem it fit to direct the Land Acquisition Collector to deal with the matter in accordance with law upon affording opportunity of hearing, within a period of two months from the date of communication of this order. While dealing with the matter, the claim for compensation on account of structures shall also be considered, and the Land Acquisition Collector shall offer necessary opportunity to adduce documentary evidence in support of the applicants’ contentions. The award be passed with utmost expedition immediately thereafter, and all steps be taken to make available the compensation as may be determined by the Land Acquisition Collector within a period of six months from the date of the award.

The Rev. WAMP stands disposed as above. No order as to costs.”

In pursuance of the order of this Court, Sri P.S.Manohar Reddy and nine others filed representations on

01.11.1998 enclosing documentary evidence, for payment of compensation for their lands and structures situated in Survey No.127/A and 128/2 of Madhavaram Village included in the Reach No.6 of Somasila Project. The details are as follows:

| S.No. | Name of the Writ Petitioner                                 | House tax Receipt No., date & year |                   |                 |
|-------|-------------------------------------------------------------|------------------------------------|-------------------|-----------------|
|       |                                                             | 1979                               | 1980              | 1981            |
| 1.    | Palampalli Narayana Reddy<br>S/o.Subba Reddy                | 64256<br>11.11.79                  | 36157<br>10.3.80  | 412<br>5.3.81   |
| 2.    | Mamidi Raja Reddy<br>S/o.Subba Reddy                        | 64277<br>11.10.79                  | 786600<br>10.3.80 | 433<br>5.3.81   |
| 3.    | Pallempalli Eswara Reddy<br>S/o.Bayapu Reddy                | 64272<br>11.10.79                  | 36173<br>10.3.80  | 428<br>5.3.81   |
| 4.    | Palempalli Suneel Manohar Reddy<br>S/o.Chandra Sekhar Reddy | 64261<br>11.10.79                  | 36162<br>10.3.80  | 417<br>5.3.81   |
| 5.    | Yanadadala Kameswara Rao<br>S/o.Subharayudu                 | 64260<br>11.10.79                  | 36161<br>10.3.80  | 416<br>5.3.81   |
| 6.    | Yanamadala Nagabhushana Rao<br>S/o.Subbarayudu              | 64276<br>11.10.79                  | 36174<br>10.3.80  | 432<br>5.3.81   |
| 7.    | Paparaju Jayapratap<br>S/o.Ramachandraiah                   | 64270<br>11.10.79                  | 36717<br>10.3.81  | 426<br>5.3.81   |
| 8.    | Dasaya Rama Rao<br>S/o.Hanumantha Rao                       | 64269<br>11.10.79                  | 36170<br>10.3.80  | 425<br>05.03.81 |
| 9.    | Yanamadala Chandrasekharaiah<br>S/o.Subbarayudu             | 64253<br>11.10.79                  | 36154<br>10.3.80  | 409<br>5.3.81   |
| 10.   | Bandi Pedda Subba Reddy<br>S/o.Subba Reddy                  | 64255<br>11.10.79                  | 36156<br>10.3.80  | 411<br>5.3.81   |

Thereafter, C.C.No.821 of 1999 was filed complaining non-compliance of the order passed in Review WAMP No.2155 of 1997 dated 04.09.1998.

Pending contempt proceedings, the proposals were submitted for draft notification and for draft declaration by the SDC/LAO vide Reference No.B.189/98, dated 20.06.1999 in respect of 10 structures of the petitioners in Writ Petition No.11794 of 1988 and the same were approved on 22.06.1999 and 23.06.1999 respectively, which were published in the A.P. gazette issue No.20/TGP/99, dated

23.06.1999 and 22/TGP/99, dated 12.07.1999 respectively and published in two daily local newspapers as per the procedure. Again, C.C.No.1501 of 1999 was filed complaining non-passing of the award in respect of their lands and structures. On a detailed enquiry, as per the provisions of the Act and on production of the evidence in support of their claim, the LAO passed supplementary award No.46 of 1999-2000, dated 27.11.1999, for the respondents/ petitioners' lands included in Reach No.6, submerged under Somasila Project. As the structures in Survey No.127/A and 128/2 were in existence much prior to the original notification issued in the year 1981, the LAO passed supplementary award No.46/1999-2000 dated 27.11.1999, awarding a sum of Rs.3,71,373/- towards compensation for 10 structures of the respondents existed in the land acquired in Survey No.127/A and 128/2 together with statutory benefits which comes to Rs.14,13,777/- in all. Dissatisfied with the compensation award, the respondents sought reference under Section 18 of the Act to the Civil Court. The Reference Court enhanced compensation amount from Rs.14,13,777/- to Rs.96,41,082/- in LAOP No.364 of 2000 dated 26.02.2002. The petitioners/Government filed A.S.No.1286/2002 before this Court against the judgment and decree of the Reference Court passed in LAOP No.364 of 2000, dated 26.02.2002. When the stay of the judgment and decree was sought, on 25.11.2002 in CMP No.22206 of 2006 in A.S.No.1286 of

2002, orders were passed staying the further proceedings pursuant to award dated 26.02.2002 in O.P.No.364 of 2000, on condition that the Land Acquisition Officer deposits half of the enhanced compensation, accrued interest and costs within eight weeks from that day and on such deposit, the claimants are at liberty to withdraw the same without furnishing any security. Later, the petitioners/Government filed a petition for modification of the order. This Court modified the order to deposit 1/3<sup>rd</sup> of decretal amount instead of 50%. Subsequently, the Government deposited the amount and requested the Court not to permit the respondents for withdrawal of the same. The respondents filed a petition in ASMP No.771 of 2008 in A.S.No.1286 of 2002, to permit them to withdraw the amount lying in the court and the same was allowed on 18.04.2008. Aggrieved by the said order, the Government preferred SLP (Civil) No.13199 of 2008 before the Hon'ble Supreme Court. After a detailed counter of the respondents, the Hon'ble Supreme Court passed orders on 02.02.2009 permitting the respondents to withdraw the amount. Further, the appeal was disposed of with a direction that the impugned order in that appeal is maintainable subject to the modification that the claimant shall give an undertaking to refund the amount in case the compensation awarded ultimately is found to be less than what has been withdrawn by them. The Appeal Suit No.1286 of 2002 was

partially allowed and the same has become final as no SLP was filed.

3. It appears that, the petitioner/Government, filed this writ petition on 19.05.2003 only to avoid the payment of 50% of the award as per order dated 25.11.2002 in CMP No.22206 of 2002 in A.S.No.1286 of 2002. However, Appeal Suit No.1286 of 2002 filed under Section 54 of the Act against the Reference Court award dated 26.02.2002 in LAOP No.364 of 2000 on the file of the Court of District Judge, Kadapa, was allowed on 18.09.2014. Para 11 and 12 of the said order read thus:

“11. A perusal of the impugned order passed by the reference Court also does not indicate any justifying reasons for allowing enhancement of market value for the structures per square meter by 200% over and above the market value as fixed under Ex.B.5. If the respondents/claimants are entitled for payment of compensation as per the value of the structures prevailing as on the date of Notification, at best, they are entitled for compensation as per the market value fixed under Ex.B.5, but, there is no reason for enhancement of compensation over and above the market value as fixed under Ex.B.5. In the absence of any valid reasons or evidence on record, we are of the view that the respondents/claimants are not entitled for enhancement of compensation for the structures as ordered by the reference Court and the impugned order is liable to be set aside.

12. Accordingly, this appeal is allowed setting aside the impugned order dated 26.2.2002 passed by the reference Court. We hold that the respondents/claimants are entitled for compensation as per the SSR fixed under Ex.B.5. It is needless to observe that the respondents/claimants are entitled for all the statutory benefits,

including the interest on solatium on such compensation fixed as per the market value fixed under Ex.B.5. No order as to costs.”

4. This writ petition is filed, even after filing A.S.No.1286 of 2002, availing the statutory remedy of appeal under Section 54 of the Act, challenging the notification dated 22.06.1999 vide RCC2/1671/99 and the supplementary award No.46/1999-2000, dated 27.11.1999 passed, as per the orders of this Court and the order in the Contempt Case. However, this writ petition came to be filed on the ground of fraud and arbitrariness in passing the impugned proceedings.

5. Sri Krishna Prasad, Learned Special Government Pleader appearing for the petitioners, would contend that in the course of these acquisitions, large-scale irregularities had occurred with the result of disastrous financial consequences to the State. The present writ petition is confined to a notification dated 23.03.1981 under Section 4(1) of the Act published in the gazette on 18.04.1981, for acquiring 87 structures. The LAO passed award No.18/86 dated 18.09.1986, awarding a total sum of Rs.40,79,809.28 Ps. as per 87 structures in various survey numbers including structures in Survey No.127/A and 128/2. However, the LAO issued notification dated 22.06.1999 under Section 4(1) and draft declaration under Section 6 in respect of the claims of the respondents. It is further contended that the impugned notifications dated 22.06.1999 vide RCC2/1671/99 and the supplementary award No.46/1999-2000, dated 27.11.1999

though challenged, LAO refused the claims of 87 petitioners. However, the LAO strangely passed the supplementary award in respect of 10 structures belonged to 10 petitioners in W.P.No.11794 of 1989 vide supplementary award No. 46/1999. Hence, there is large-scale fraud committed in issuing notification and passing award and reference in awarding LAOP. Hence, the issuance of impugned proceedings are liable to be dismissed.

6. Per contra, Sri P.Venugopal, learned senior counsel appearing for Sri Y.Venkatasatyam, learned counsel for the respondents, would contend that there is no legal evidence placed before this Court to show that there is a fraud in issuing notification, passing of award and reference in LAOP. In fact, the notifications and reference award in LAOP passed as per various orders of this Court in W.P.No.11794 of 1989 and Review WAMP No.2155 of 1997. Hence, the contention of the learned Government Pleader could not be justified in the light of the orders of this Court. However, the writ petition is not maintainable and liable to be dismissed, on the ground that the petitioner/Government could not challenge their own notification, at best the Government could withdraw the notification.

7. The learned Special Government Pleader would further contend that the award of reference court in enhancing the compensation in respect of 10 structures in Survey

Nos.127/A and 128/2 is illegal. Sri P.Venugopal would contend that the same could not be countenanced in view of the reasons given in the supplementary award No.46 of 1999-2000 for granting compensation for the 10 structures of the respondents and subsequent award of reference court enhancing the amount of compensation in A.S.No.1286 of 2002, which were concluded, but the learned Special Government Pleader could not be justified in filing the present writ petition challenging the impugned proceedings.

8. The learned Special Government Pleader relied on the decision of the Hon'ble Supreme Court in *Thansingh Nathmal and others Vs. The Superintendent of Taxes, Dhubri and others*<sup>1</sup>, wherein it is held thus:

“Ordinarily the Court will not entertain a petition for a writ under Art. 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Art. 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Art. 226 of the Constitution the machinery created under the

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<sup>1</sup> AIR 1964 S.C. 1419

statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.”

He also relied on the judgment of this Court in *Special Deputy Collector (Land Acquisition), Somsasila Project Vs. Narayana Nellore Subbnarayudu and others*<sup>2</sup>, wherein it is held thus:

“The reference Court while adjudicating a reference under Section 18 of the Act is under obligation to take note and decide each one of the stages covered by Section and the fact situation of case and pronounce the award. The reference Court examines the offer of Land Acquisition Officer, objections of claimants in reference under Section 18 of the Act, the documentary evidence brought on record by claimants etc. and decides the issues. These are very fundamental. But the reference Court failed in discharging this duty. Thus examined the Award of reference Court under challenge, without hesitation, it can be concluded that the reference Court did not attempt to enquire into whether the subject structures were in existence in Survey Nos.127/A and 128/2 by the date of notification of claimants choice. The reference Court without any material presumed that the claimants have title as on the date of Section 4(1) notification in distinct plots for which compensation is claimed. The registered owners of the agricultural lands are not the claimants before the Court, but their alleged vendees of small extents of plot are the claimants. The reference Court cannot frame a point for consideration prejudging every aspect in favour of the claimants. The basic aspects referred to above have to be put to issue between parties and tested from the material placed on record by the contesting parties. Admittedly, such procedure is not followed by the reference Court and the Award under appeal is certainly vitiated by illegalities. In our considered view, we hold that the point for consideration framed by the reference Court is completely illegal and unavailable in the peculiar facts and circumstances of this case and consequently the findings on point

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<sup>2</sup> 2016(2) ALT 779

for consideration in the Award under challenge are vitiated and are set aside as illegal.”

But, the said decisions are not applicable to the facts and circumstances of the present case.

9. Per contra, Sri P.Venugopal, the learned senior counsel by relying on the decision reported in *A.V.Papayya Sastry and others Vs. Government of A.P. and others*<sup>3</sup>, wherein it is held at Para 19 as follows:

“We are further of the view that the State Government, in the facts and circumstances of the case, was right in exercising revisional jurisdiction under Section 34 of the Act. Mr. Venugopal is indeed right in submitting that even though no period of limitation is prescribed for exercise of revisional jurisdiction by the State Government suo motu, such power must be exercised within a reasonable time (vide *State of Gujarat v. Patil Raghav Natha* ((1969) 2 SCC 187)). But taking into account the facts and circumstances in their entirety and in particular, a letter of Chief Engineer, Visakhapatnam Port Trust of 19-12-1985, it cannot be said that the power had not been exercised within a reasonable period. It is also pertinent to note that the subsequent development shows as to how some of the officers of the Port Trust were parties to fraud said to have been committed by landowners. In this connection, the respondents are right in inviting our attention to a letter dated 21-8-1989 by the Port Trust Authorities to the Commissioner of Land Reforms stating therein that the Government intended to exercise suo motu power under Section 34 of the Act but there was no necessity to reopen proceedings and suitable directions were required to be issued to District Collector, Visakhapatnam to pass an award in respect of land sought to be acquired under the Land Acquisition Act. In view of these developments, in our opinion, the High Court was fully justified in recalling the earlier order.”

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<sup>3</sup> (2007) 4 S.C.C. 221

It is emphatically pleaded that there is no fraud occurred as alleged by the petitioner and the same could not be permitted to re-agitate in this writ petition and as the only remedy against the judgment and decree passed in A.S.No.1286 of 2002 is before Apex Court, but the Government has not availed the same remedy. Hence, the plea of the learned Special Government Pleader could not be countenanced.

10. In the facts and circumstances of the case, the land of the petitioners in writ petition No.11794 of 1988 admeasuring Ac.1.37 cents in Survey No.127/A and Ac.2.76 cents in Survey No.128/2 of Madhavaram village, was acquired along with other lands for Somasila Project under Telugu Ganga Project scheme. A notification under Section 4(1) and draft declaration under Section 6 of the Act were issued as per the orders of this Court in Writ Petition No.11794 of 1989 and as ordered and modified in Rev. WAMP No.2155 of 1997. Thereafter, the award was passed in respect of the lands of the respondents. While rejecting the claims of 87 claimants for structures vide Supplementary Award No.47/99-2000 dated 02.12.1999 holding that those 87 claimants did not establish the existence of any structure in Survey No.127/A and 128/2. However, in respect of the respondents/claimants/petitioners, in Writ Petition No.11794/1988, the supplementary award No.46/1999-2000 dated 27.11.1999 was passed holding that as no award could be passed in

respect of the small extends of respondents' lands Ac.1.37 cents in Survey No.127/A and extent of Ac.2.16 cents in Survey No.128/2, whereas in respect of other lands award was passed in award No.5/86 dated 15.09.1986 for the lands and structures in respect of 87 structures.

11. Not satisfied with the award, the respondents by way of application sought for reference as per Section 18 of the Act. The Reference Court enhanced compensation amount from Rs.14,13,777/- to Rs.96,41,082/-. The petitioners/Government filed A.S.No.1286/2002 before this Court against the judgment and decree of the Reference Court passed in LAOP No.364 of 2000, dated 26.02.2002. The Appeal Suit No.1286 of 2002 was partially allowed and the same has become final as no SLP was filed.

12. This Court also found that in view of the conclusion of the proceedings as per various orders passed by this Court, and the same pleas which had become final in the earlier round of litigation could not be re-agitated under the alleged ground of fraud which could not be established legally, on mere surmises and conjectures, contrary to the reference court award and supplementary award and judgment in A.S.No.1286 of 2002. Hence, the pleas of the petitioner/Government could not be accepted as it would amount to reopening the issues which are already concluded in A.S.No.1286 of 2002. This Court could not sit over the

award passed by the appellate Court, has no power or jurisdiction to set aside the impugned proceedings which could not be justified by the petitioner/Government and also which would amount to reviewing the earlier order passed by the Division Bench of this Court in Review WAMP No.2155 of 1997 and A.S.No.1286 of 2002. As contended by Sri P.Venugopal, learned senior counsel, the writ petition is not maintainable and liable to be dismissed, on the ground that the petitioner/Government could not challenge their own notification and at best the Government could withdraw the notification.

13. This Court, after careful consideration of the matter, found that there is no legal force in the contention of the learned Special Government Pleader and the same is contrary to the evidence on record. Hence, the writ petition is liable to be dismissed.

14. Accordingly, the writ petition is dismissed with exemplary costs of Rs.50,000/- (Rupees Fifty thousand only) as the litigation fought in this writ petition is a vexatious litigation, payable to the respondent Nos.7 & 9.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

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**JUSTICE M.GANGA RAO**

06-04-2018  
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**THE HON'BLE SRI JUSTICE M.GANGA RAO**



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