

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.25418 & 26044 OF 2015

Date:05.03.2018

WP No. 25418 of 2015:

Between:

Smt. P.Padmaja, W/o. late P.V.Prasad Chowdary,
Aged about 58 years, Occu: Housewife,
R/o. D.No.1-497, B.K.Palle, Madanapalle town and
Mandal, Chittoor District and another.

.... Petitioners

and

The State of Andhra Pradesh, rep.by its
Principal Secretary, I & CAD Department,
A.P.Secretariat, Hyderabad and others.

.... Respondents



The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.25418 & 26044 OF 2015

COMMON ORDER:

Heard learned counsel for petitioner Sri B Sudhakar Reddy and learned Government Pleader for Land Acquisition.

2. Facts that can be culled out from the respective pleadings are as under:

2.1. The Executive Engineer, AVR Hundry Neeva Srujala Sravanthi (HNSS), Division No.12, Madanapalle, vide his letter dated 10.03.2015 placed a requisition with the Land Acquisition Officer to acquire Ac.71.53 of land in Ponnutipalem Village of Madanapalle Mandal for construction of Punganur Branch Canal in Phase-II of the Project. Acs.60.32 of patta land was identified in various survey numbers including the land belonging to petitioners. After obtaining clearance on environmental impact assessment, notification was published vide proceedings dated 20.03.2015 under Section 11 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act, 2013) expressing intention to acquire above extent of land. At that stage, the villagers objected to alignment of proposed canal and requested for change of alignment. Though initially the Requisition Department did not agree for change of alignment, it reviewed extent of land required and affected, prepared revised alignment of canal, where under extent of private land for acquisition is reduced to Ac.39.68. On such revised assessment, fresh requisition was placed with the Land Acquisition Officer vide letter dated 17.07.2015. After

following due procedure, declaration in Form-VII under Section 19(1) read with Rule 25(1) of Rules made under the Act was published in local newspapers on 19.07.2015. Notification includes the extent of land in various survey numbers including land of petitioners to an extent of Ac.1.33 in Sy.No.56.

2.2. Petitioners filed W.P.No.25418 of 2015 alleging that respondents are trying to encroach land and trying to demolish the tombs belonging to petitioners' family members in Sy.No.56/1 to an extent of Ac.1.36 cents by deviating from the original notified plan of the HNSS Canal at the behest and influence of the contractor and adjacent landlords. Said writ petition was admitted on 12.08.2015. Petitioners filed W.P.No.26044 of 2015 challenging preliminary notification dated 20.03.2015 issued under Section 11(1) of the Act and declaration issued on 17.07.2015 under Section 19(1) of the Act to the extent of Ac.1.33 land of petitioners in Sy.No.56.

3.1. Learned counsel for petitioners contended that there was no prior notice to petitioners before acquiring their land in violation of the Act, 2013. Learned counsel further submitted that illegally land of petitioners is proposed for acquisition even though there is vacant land adjacent to their land, causing lot of hardships and suffering. There are existing structures and tombs on their land affected by acquisition. She would further submit that huge extent of their land was already acquired on earlier two occasions. Petitioners have donated lands for social cause. This land is abutting busy road and grave prejudice would be caused to them if

the same is acquired. Proposed canal can be constructed without affecting petitioners' land.

3.2. According to learned counsel, steps prescribed by Chapters II and III of the Act are mandatory, whereas same was not followed and authorities have no power to dispense with mandatory procedures incorporated in Chapters II and III. By referring to provision in Section 9, she submitted that only in case of urgency the land can be acquired without undertaking social assessment impact study and such exemption is not attracted in the instant case. By referring to provision in Section 10(4) of the Act, she would submit that only for linear projects such exemption is available, whereas drinking water supply to Madanapalli town for which the canal is proposed, cannot be classified as linear project, to claim exemption.

3.3. The alignment approved in the year 2008 was sought to be changed at the instance of contractor to save his money and local influential people to save their lands. There was no justification to change alignment once approved. By relying on report of the Sub Collector dated 25.3.2015, she would submit that this report highlights illegal action of respondents in undertaking change in alignment and contents of letter are sufficient proof to hold that change of alignment effected in the year 2010 was illegal.

3.4. By referring to various photographs and maps, she would submit that change of alignment is not in straight line and there are curves and those curves are made only to save lands of certain influential persons including Chairperson of the Madanapalli Municipality. Therefore, change of alignment and acquisition as

proposed is not in public interest but is vitiated due to personal prejudices and preferences.

3.5. She would further submit that land covered by graves cannot be acquired. Husband of first petitioner and her son died. In memory of the deceased persons graves were constructed and family offers prayers to departed souls. Lot of sentiment is attached to the graves and, therefore, those graves cannot be removed. Alignment now proposed is going through those graves.

4.1. *Per contra*, learned Special Government Pleader would submit that the project is exempted by provisions of the Act with reference to conducting of social impact survey and other requirements. He would further submit that Section 10(4) is very wide and cover all irrigation and drinking water projects and it being inclusive definition, it cannot be assigned narrow interpretation. He would submit that before issuing notification under Section 11 social impact survey was conducted.

4.2. Section 15 of the Act envisages hearing of objections to the notification issued under Section 11. This section envisages three aspects: a) Area and suitability of land proposed to be acquired, b) Justification offered for public purpose and c) Findings of social impact assessment report. It being an irrigation project, Clause 'c' is exempted. With reference to Clause 'b', construction of irrigation canal is to irrigate large extent of agricultural land and to provide drinking water and therefore is for public purpose and thus it complies the requirements of Clause 'b'. Thus, objections can be raised only with reference to Clause 'a' i.e., area and suitability of land proposed. He would further

submit that no objections were raised by the petitioners and thus it is not open to petitioners to oppose acquisition. He further submitted that as per sub section 2 of Section 15 personal hearing can be held only if objections are raised.

4.3. By placing reliance on decision of the Supreme Court in **TELSON REAL ESTATE Vs STATE OF MAHARASTRA**¹, learned Special Government Pleader would submit that without filing objections, petitioners are not entitled to question land acquisition proceedings and in the absence of objections, there is no need to give personal hearing.

4.4. By placing reliance on decision of the Supreme Court **RAMNIKLAL N BHUTTA Vs STATE OF MAHARASTRA**², he would further submit that with reference to land acquisition proceedings, scope of judicial review under Article 226 is very limited and writ court cannot go into scope of acquisition, purpose of acquisition and change of alignment etc and what is required to be considered by writ Court is on statutory compliance. Once statutory provisions are complied, the Court cannot enter merits of the acquisition as such.

4.5. By placing reliance on decision of the Supreme Court in **UNION OF INDIA Vs KUSHALA SHETTY AND OTHERS**³ he would submit that change of alignment is a technical issue to be left to the discretion of experts and Court cannot dwell into technical aspects of alignment. However, he would further submit that alignment is determined with reference to water flow; contours of

¹ (2007) 13 SCC 186

² (1997) 1 SCC 134

³ (2011) 12 SCC 69

the terrain and the extent of land required. There was some change in the alignment only to ensure minimum extent of acquisition of private land and there is no possibility of further correction to alignment.

4.6. He would submit that there is urgent need to construct canal. Major portion of the canal work was completed except this piece of land. The Madanapalli town is facing acute shortage of drinking water. The proposed canal is intended to attend to drinking water needs of the town. As summer is fast approaching, the Government is keen to complete entire work and provide drinking water to the town well before the advent of summer.

4.7. He would further submit that award proceedings were completed, and award was passed. Copy of the award was also sent to petitioners but petitioners refused to receive. Learned Special Government Pleader produced copy of the award and supplied a copy to learned counsel for petitioners.

5. In reply learned counsel for petitioners would submit that whatever is contended by the learned Special Government Pleader is not correct in view of report of the Sub Collector. She further submitted that for the first time, petitioners came to know about passing of the award only when a copy is given to her. They were never put on notice nor given opportunity, therefore, the award is non-est in the eye of law. She would further submit that during the pendency of these writ petitions, authorities could not have passed award. By pointing out to the photographs at page 79, she would submit that alignment took care of existing structures such as church, well etc and therefore it is permissible to undertake

small deviation in construction of canal to save land of petitioners. More particularly, when open adjacent land is available, it would make sense to undertake construction of canal from the open land instead of removing existing structures.

6. In W.P.No.25418 of 2015 simple declaration was sought, alleging encroachment into their land, though, notification under Section 11 and declaration under Section 19 of the Act, were already issued. Within a week thereafter, W.P.No.26044 of 2015 was filed, wherein notification dated 20.3.2015 under Section 11 (1) of the Act and the declaration under Section 19 (1) of the Act are challenged. No satisfactory explanation is given why petitioner adopted such litigative course. By the time writ petitions are considered awards are already made. These awards are not challenged. In the facts as noted above, though elaborate submissions are made, issue in these two writ petitions is in narrow compass, i.e., whether notification under Sections 11 and 19 were validly made.

7. Act, 2013 is a comprehensive enactment dealing with all aspects of the land acquisition from private persons for public purpose. After requisition department places indent on Land Acquisition Authority, as per Section 11 preliminary notification along with the details of the land to be acquired must be specified calling for objections. Notification would enable aggrieved persons to raise objections on intendment to acquire private land for public purpose. Section 15 of the Act provides areas in which such objections can be raised and holding personal hearing. Objections are required to be filed before the Collector within the time

stipulated. On scrutiny of the objections, as per Section 15, the Collector is required to afford opportunity of hearing. Thereafter, on due consideration of the objections, Collector is required to file his report. Thereafter, on observing due procedure, award must be made.

8. It is not in dispute that alignment was changed in the year 2010 i.e., long before land acquisition notification was issued. Petitioners did not raise objection when change of alignment was proposed. In terms of the alignment, finalised in the year, 2010 requisition department placed indent to acquire land, initially of larger extent and on review reducing the extent to Acs.39.68. Consequent to the requisition placed on the Land Acquisition Officer, following due procedure, notification under Section 11(1) of the Act was issued. Even assuming that petitioners were not aware of change in alignment, soon after preliminary notification was issued, they ought to have raised the objection. In paragraph-3 of the counter affidavit of 4th respondent, various steps taken in compliance of mandate of the Act are explained. These assertions are not controverted.

9. It is categorical assertion of respondents that no objections were filed by petitioners and therefore holding personal hearing does not arise. This assertion is not denied. What is contended is since preliminary notification is challenged such plea cannot be raised. Ordinarily, Court cannot entertain writ petition against preliminary notification unless the same is vitiate *ab initio*. No material is filed to show such invalidity. Petitioners did not file objections to preliminary notification. Even in the representation

made on 27.7.2015, petitioner did not ask for personal hearing from the Collector. This writ petition is filed after declaration under Section 19 was made. At least at that stage, they could have sought leave of the Court to raise objections. Thus, merely because preliminary notification is challenged is no ground to contend that petitioners need not file objections more so, by the time writ petition was filed declaration under Section 19 was already made. Unless objections are filed, there is no requirement to hold personal hearing.

10. As noted from the contentions urged by the learned counsel and the averments made in the affidavit filed in support of the writ petition, no procedural illegality or competence of the authority issuing notification under Section 11(1) and declaration under Section 19 (1) of the Act, are pointed out but contentions are urged on merits and justification for acquiring lands of the petitioners. Extensive submissions and averments in the affidavit allege that alignment was changed only to favour certain individuals; that there is open land available adjacent to land of petitioners that could have been utilised for constructing canal; and there was earlier acquisition of petitioners' land on two occasions and this acquisition would be affecting them adversely as the canal is passing through constructed areas of their land, causing hardship and suffering to them. These aspects ought to have been raised in response to preliminary notification.

11. Object of the Act is to afford due opportunity against compulsory acquisition of private properties for public purpose. Petitioners, failed to utilise opportunity when provided. Whether

alignment was properly made, whether there is scope for change of alignment and whether property of the petitioners could have been saved by making small change in alignment without affecting overall alignment etc are matters in the realm of competent authorities and are technical in nature and this Court cannot assess the same while undertaking judicial review.

12. There is no merit in the contention of learned counsel for petitioner on status of project. Section 10 of the Act is a provision to safeguard food security. However, provision grants exemption to linear projects. 'Linear Projects' is inclusive term and includes irrigation canals. The present project is an irrigation project. It intends to provide water to irrigate agricultural lands and also to provide drinking water to Madanapalli town. Thus, the project is excluded from rigours of Chapter-III.

13. Pending these writ petitions, awards are made. The Special Government Pleader produced copies of Award No.30 of 2016 dated 20.9.2016 and Award No.41 of 2016 dated 14.10.2016. Copy of the notice issued under Section 21 of the Act is also enclosed calling upon the petitioners to appear before the Sub Collector on 19.9.2016 with reference to determination of compensation. Thus, preliminary notification and declaration have now culminated into awards. These awards are not under challenge. Thus, it is for the petitioners to work out their remedies as available in law against awards made.

14. Based on the averments made in the counter-affidavit of 5th respondent deposed on 22.1.2018, it is asserted by learned Special Government Pleader that except two small stretches, the

canal work was completed. Along with counter-affidavit sketch of progress of work is also enclosed at page no.96. According to averments in paragraph 6 of counter-affidavit, total length of canal from Jeedipalli Reservoir upto Chippili village of Madanapalli is 409 kilometers, out of which construction work of 500 meters at Puttaparthi is now taken up and only 120 meters at Chippili village is stalled. Thus, at this stage, stalling the land acquisition process, would not be in the larger public interest. Determination or change of alignment involve consideration of technical parameters, best left to the engineers to decide. At this stage, when only small stretch remained to be completed, issue of change of alignment even within the limited parameters of judicial review, cannot be gone into by the Court.

15. It was vehemently contended by the learned counsel for petitioners that in the report of the Sub Collector, submitted after conducting Grama Sabha, he had pointed out illegalities committed while changing the alignment. As per the observations of the Sub Collector, no proper justification was given by the Superintending Engineer for change of alignment. He observed that they did not go to the field and verified the alignment and not bothered of genuine grievances of the villagers. The alignment was intended to favour the contractor. He suggested to take necessary disciplinary action against engineering officials and to direct engineering officials to cancel existing alignment. This report is dated 25.3.2015. Petitioners ought to have raised objections pointing out observations of the Sub Collector at appropriate time. However, substantial work of the project is completed except small stretch on the subject land. Thus, it is an irreconcilable situation

and holding at this stage that change of alignment was illegal would have far greater consequences.

16. A writ of mandamus is not a writ of course or a writ by right but is, discretionary. Though writ Court has wide amplitude of jurisdiction under Article 226 of the Constitution of India, it is discretionary and is subject to self-imposed limitations. It must be exercised with great caution and only in furtherance of public interest. Larger public interest must be kept in mind to decide whether intervention of Court is called for. Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved [**RASHPAL MALHOTRA Vs SATYA RAJPUT MRS AND ANOTHER⁴ & COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER Vs. K G S BHATT⁵**].

17.1. At this stage, I am reminded of the observations made by the Supreme Court in **RAMNIKLAL N BHUTTA** (supra). Supreme Court cautioned that while exercising writ jurisdiction under Article 226, the Court should keep in mind larger public interest with reference to infrastructural projects. The Supreme Court observed that discretionary jurisdiction under Article 226 should be exercised only in furtherance of interest of justice and not merely on making out of a legal point.

17.2. It is useful to extract observations of Supreme Court in paragraph-10. They read as under:

“10. Before parting with this case, we think it necessary to make a few observations relevant to land acquisition proceedings. Our country is now launched upon an ambitious

⁴ AIR 1987 SC 2235

⁵ AIR 1089 SC 1972

programme of all-round economic advancement to make our economy competitive in the world market. We are anxious to attract foreign direct investment to the maximum extent. We propose to compete with China economically. We wish to attain the pace of progress achieved by some of the Asian countries, referred to as “Asian tigers”, e.g., South Korea, Taiwan and Singapore. It is, however, recognised on all hands that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernisation. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. ***The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point.*** And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a civil suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. ***The courts have to weigh the public interest vis-à-vis the private interest while exercising the power under Article 226 — indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceedings is not the only mode of redress. To wit, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings.***”

(emphasis supplied)

18. Thus, stalling the project at this stage is not in the larger public interest nor substantial question of public importance is involved. As stated by the respondents in their affidavits and as contended by the learned Special Government Pleader, the primary objectives of this project is to provide water to irrigate agricultural lands and to provide drinking water to people living in Madanapalli

town. Further, learned Special Government Pleader expressed urgency to complete the project as there is serious drinking water crisis in Madanapalli town and problem would be more acute in summer and unless drinking water is made available before advent of summer, people of Madanapalli would suffer. That being so, based on the observations made by the Sub Collector in his report dated 25.3.2015, if the project is stalled at this stage, it would cause greater hardship to the larger public and therefore it is not in public interest to stall the project on this ground. Suffice to note that if this report was not examined by the competent authority so far or was not placed before him, the competent authority shall look into the observations made by the Sub Collector in his report and take appropriate action against the engineering officials if what is alleged is true.

19. As can be seen from the representation submitted by the petitioners on 27.7.2015, their primary grievance against proposed acquisition appears to be that there is an existing building which was let out to run a club, cellular tower and two tombs. Insofar as cellular tower is concerned, according to the averments made in the affidavit, contract period comes to an end on 31.3.2018, which is few days away from now. The petitioners claimed higher compensation having regard to the location of their property on highway connecting Madanapalli to Bangalore city. If that is so, it is always open to petitioners to negotiate with the competent authorities on determination of appropriate compensation commensurate with location of their property. Another objection raised is on the ground that two tombs are constructed, and present alignment is passing through the said tombs and would

result in removing the tombs which would be affecting their sentiments. This may be a valid objection and requires consideration on its merits and possible examination of small correction/small diversion to save those tombs. Petitioners can make appropriate request to save the tombs and said request should be positively considered by the authorities having regard to the sentiments attached to the issue. However, such request and consideration thereon shall not come in the way of completing the land acquisition process. At this stage, it is also pertinent to note the conduct of petitioners. As alleged by the respondents, which fact is not denied by the petitioners that the tombs were constructed after the land acquisition process was set in motion. Section 11 of the Act makes it clear that physical status of land cannot be changed after the land acquisition process was set in motion. Thus, petitioners could not have undertaken the construction of tombs falling directly in alignment with the proposed canal.

20. Since awards are already passed, copies of which are served on the learned counsel for petitioners, it is left open to the petitioners, if so advised, to work out remedies as available to them in law, if they are aggrieved by the awards passed against them.

21. Subject to above observations, Writ Petitions are dismissed. Interim orders granted on 18.08.2015 in W.P.No.26044 of 2015 stand vacated. Pending miscellaneous petitions are closed. No costs.

JUSTICE P.NAVEEN RAO

DATE:05-03-2018
TVK

HON'BLE SRI JUSTICE P.NAVEEN RAO



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