

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 25414 of 2015

DATE:15.03.2018.

Between :

D.Balaji Rao S/o. D.Anantha Krishna Rao,
Aged about 38 years, occu: Cultivation,
r/o Demakethepally village, chilamattur
Mandal, Anantapur district and others.

..... Petitioners

and

The State of Andhra Pradesh, rep.by its
Principal Secretary, Irrigation Department,
Hyderabad and others.

..... Respondents



This Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 25414 of 2015

ORAL ORDER:

Handri-Neeva Sujala Sravanthi (for short HNSS) is an irrigation project to irrigate agricultural lands, supply water to 325 tanks to irrigate land to an extent of Ac.3.45 ayakat and drinking water facilities to Hindupur and two other towns. Construction of Madakasira Branch canal under Package 55 in Phase-II of HNSS Project is proposed. The Executive Engineer, HNSS Division No. 8, Penukonda sent requisition to acquire land to an extent of Ac.68.45 cents of Demakethapalli village, Chilamathur mandal to construct this branch canal. Out of this extent proposed, Ac.66.76 is classified as patta land and DKT land. On 8.4.2015 preliminary notification under Section 11 (1) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the Act, 2013) was published in the name of Special Collector, Telugu Ganga Project, Nellore.

2. Petitioners claim to own lands, respective extents and survey numbers of Demakethapalli village mentioned in tabulated form in paragraph 9 of the affidavit filed in support of the writ petition, the total extent of which comes to Ac.1.77. This extent of land is covered by preliminary notification for acquisition. It appears 7 persons filed objections, out of which 3 objections were accepted and other 4 objections were rejected and declaration under Section 19 of the Act, 2013 was published on 31.7.2015. Challenging preliminary notification and declaration, this writ petition is filed. Petitioners also pray that proposed alignment is illegal, arbitrary and without jurisdiction and to interdict the respondents from executing the Madakasira branch canal as per proposed alignment.

3. At the stage of admission of writ petition, it was contended that objections filed by petitioners on 5.6.2015 were not considered by the

Special Deputy Collector cum Land Acquisition Officer before issuing declaration under Section 19 of the Act, 2013. Learned Assistant Government Pleader informed the Court that for the purpose of determination of market value, the Land Acquisition Officer was conducting negotiations with the owners of the lands affected and the same is pending. While directing the matter to be listed after two weeks, by order dated 17.8.2015, this Court directed maintenance of status quo with regard to possession. Praying to vacate the said interim order, officials of Irrigation Department as well as Land Acquisition Officer filed vacate petitions in WVMP Nos.4534 of 2017 and WVMP 4211 of 2015 respectively.

4. With consent, writ petition is taken up for disposal. Heard learned counsel for petitioners and learned Special Government Pleader (AP) for respondents.

5.1. Learned counsel for petitioners contends that the Special Collector is not competent to issue preliminary notification under Section 11 of the Act, 2013. As per definition "Collector" in Section 3 (g) of the Act, 2013, is the Collector of a revenue district and includes a Deputy Commissioner and any officer specially designated by the appropriate Government to perform the functions of the Collector under the said Act. Only after issuing preliminary notification, Special Collector was designated as Collector, therefore, notification issued under Section 11 by Special Collector even before he was designated to act as Collector is vitiated on that count.

5.2. The Act requires conducting of social impact assessment study before proposing to acquire land, whereas, in the case on hand, no such survey was conducted and therefore the notification is also vitiated on this ground.

5.3. Learned counsel also sought to emphasize that as per Section 4 of the Act, 2013 read with Rule 19 of the Rules, 2014 Gram Sabha must be conducted, whereas, no Gram Sabha was conducted.

5.4. Learned counsel for petitioners further sought to contend that preliminary notification does not prescribe for what purpose the land is sought to be acquired. He would further submit that definition of “Public Purpose” under Section 3 (za) means activities specified under sub Section (1) of Section 2 of the Act, 2013. The public purpose has to be mentioned specifically. What is mentioned in paragraph 3 of the notification is to dig canal and digging of canal cannot be said as public purpose.

5.5. In response to the preliminary notification, petitioners filed objections but those objections were not considered. As required by Section 15 of the Act, 2013 personal hearing has to be conducted and due opportunity should be afforded to the owners of the properties affected by the notification, whereas, no personal hearing was conducted and therefore the declaration issued under Section 19 is vitiated on this ground also.

5.6. He would further submit that after preliminary notification, Grama Sabha has to be conducted before giving a declaration, whereas, no Grama Sabha was conducted.

5.7. Learned counsel for petitioners further submitted that alignment of canal is unscientific and has an impact on the lives of the villagers. Proposed alignment affecting the land to an extent of Ac.66.76 would destroy the livelihood of villagers; would cause displacement; damage to the nature; affect fertile agricultural lands where coconut, palm and bettle-nut are grown; would have detrimental effect on ecology; damage the existing borewells.

5.8 According to learned counsel as consistently held by the Supreme Court, State is mandated to preserve water bodies while undertaking land acquisition or development activities. The tanks which are proposed to be filled by constructing this canal are in upper stream and it is not possible to carry water to upper stream by digging canals and therefore, it is not possible to provide irrigation as well as drinking water facilities, as sought to be projected. The Government has to undertake revised alignment before constructing the canal.

6. With reference to the assertion of learned counsel for petitioners on not affording personal hearing to petitioners, on instructions, learned Special Government Pleader fairly submitted that personal hearing was not conducted and even though award is also passed, if the petitioners are willing, the competent authority will hold personal hearing and then proceed to issue declaration under section 19 of the Act, 2013 and further steps by fixing time schedule. Learned Special Government Pleader further submitted that personal hearing will be conducted only by the Special Collector (Land Acquisition). In view of this statement, controversy on this aspect rests.

7.1. With reference to competence of Special Collector, learned Special Government Pleader relied on Rule 2(d) of A.P.Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2014. Section 3(g) of the Act, 2013 vests power in the State Government to designate any officer to perform the functions of the Collector and this Rule defines Collector to include Special Collector. Learned Special Government Pleader further submits that on 15.4.2015 notification was issued notifying the Special Collector as competent authority. He would therefore submit that impugned notification is not vitiated on this ground.

7.2. According to learned Special Government Pleader, as per proviso appended to Section 6(2) of the Act, 2013 for irrigation projects, if Environment Impact Assessment is required by any other provision, the provision of Act, 2013 relating to social impact assessment study do not apply. He would submit that Environment Impact Assessment clearance was granted by the competent authority in the year 2005 and, therefore, there is no need to conduct social impact assessment study and on that ground the notification is not vitiated.

7.3. Learned Special Government Pleader justified alignment of canal. He would submit that on consideration of various parameters alignment was finalized long ago. He would submit that earlier changes were made in alignment. Said changes were challenged in W.P.No.38658 of 2012 and W.P.No.33720 of 2011. This Court found fault with change in alignment set aside changes and restored original alignment. Therefore, it is no more permissible to pray for change of alignment.

8. Petitioners' challenge to land acquisition proceedings can broadly classified as (1) competency, public purpose social assessment survey and holding Grama Sabha; (2) alignment and (3) not affording opportunity of personal hearing before declaration under Section 19.

9. In view of fair submission of learned Special Government Pleader, no finding is required on third aspect.

ISSUE No.1

10.1 A plain reading of definition of 'Collector' in Section 3 (g) of the Act, 2013, it is clear that it is inclusive definition. When the definition is inclusive, it must be given wider meaning. The word 'include' is generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when used must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the

interpretation clause declares that they shall include—{ **Oswals Fats & Oil Ltd v Additional Commissioner, Bareilly Division**¹, **Regional Director, Employees state Insurance Corporation v High Land Coffee Works**², **Mamta Surgical Cotton Industries v Commissioner**³}. The word ‘includes’ gives a wider meaning to the words or phrases in the statute—{**CTO v. Rajasthan Taxchem Ltd**⁴}.

10.2. Further, this section also vests power in the appropriate Government to designate any officer to perform the functions of the Collector. In Rule 2(d) of the Rules notified by Andhra Pradesh Government definition of ‘Collector’ includes ‘Special Collector (Land Acquisition)’. These Rules were notified prior to preliminary notification under Section 11 of the Act, 2013. Thus, it cannot be said that Special Collector (Land Acquisition) was not competent to issue preliminary notification under Section 11 of the Act. When provision is specific and clear, merely because by executive order also Special Collector (LA) is designated as competent authority after the preliminary notification, has no relevance. Therefore, I do not see any merit in the contention of the learned counsel for petitioners that Special Collector is not competent to issue preliminary notification.

11. Chapter-II of the Act deals with social impact assessment and public purpose. As per provisions in this chapter, before steps are taken to acquire land for public purpose social impact assessment study must be conducted. It lays down procedure to conduct such study. Chapter also carves out exemptions from such study. As per proviso appended to Section 6, for irrigation projects which require environment impact assessment, the provisions of Chapter-II are exempted. According to

¹ (2010) 4 SCC 728

² (1991) 3 SCC 617

³ (2014) 4 SCC 87

⁴ (2007) 3 SCC 127

learned Special Government Pleader, environment impact assessment is required for the HNSS project and was obtained in the year 2005. This assertion is not disputed by petitioners. Package 55 is part and parcel of this project.

12. Chapter-III deals with safeguard to food security. This chapter prohibits acquisition of irrigated multi-cropped land. However, proviso exempts linear projects including irrigation canals. Thus, irrigation canals are also exempted from Chapter III. In view of exception carved to irrigation canals, the contention of learned counsel for petitioners that acquisition process is vitiated on this count is stated to be rejected.

13. There need not be specific mention that acquisition is for 'public purpose'. It can not be said that laying of irrigation canal is not for public purpose. By digging irrigation canals water from irrigation projects are channeled to agricultural fields and also to fill small tanks and to attend to drinking water needs of people. In the counter affidavits filed by respondents, they have explained the relevance of HNSS project and package 55. Thus, contention that as public purpose was not mentioned in preliminary notification and digging irrigation canal is not for public purpose is rejected.

14. Chapter-II envisages holding of Grama Sabha to enlighten affected persons and to consider their objections. As application of chapter-II is exempted, the preliminary notification cannot be invalidated on the ground that Grama Sabha was not conducted. Thus, petition fail on first issue.

ISSUE NO.2

15. Learned counsel for petitioners vehemently contended that alignment was not properly determined and respondents ought to have opted to alternative alignment. According to learned counsel for

petitioners, petitioners have stated in their objections about the improper determination of alignment affecting their lives, environment and properties, whereas alternative alignment would save environment, properties of individuals and would be more conducive for proper water flow.

16. Earlier alignment of Package No. 55 was changed. This change of alignment was challenged before this Court in W.P. Nos. 38658 of 2012 and 33720 of 2011. It was contended that alignment was changed at the behest of the Hon'ble Minister to suit certain individuals and same was not permissible. This Court by judgment dated 1.7.2015 declared illegal change of alignment and upheld the original alignment. This very alignment upheld by this Court is now sought to be changed. Package 55 as per the original alignment stood the test of judicial scrutiny. Therefore, it is no more open for any party to seek change of alignment. However, this issue is also considered independently to test the submissions of petitioners on alignment.

17. The averments in paragraphs 12 to 19 of the counter affidavit deposited by Sri M Ram Mohan, Special Deputy Collector, would disclose that authorities have in fact studied alternate alignment and compared with the approved alignment. According to deponent, as per the guidelines, the alignment should avoid heavy banking, deep cuts and sharp curves. According to deponent, the change of alignment would increase the length of the canal and would also increase the extent of land required for acquisition and civil works. Therefore, it cannot be said that the respondents have not taken into consideration issue of change of alignment. It would also show that there will be additional financial burden on the State, if alignment as requested by the petitioners is accepted.

18. Alignment of an irrigation canal involves various aspects which are purely technical in nature and best left to the engineers to determine the alignment. Apparently, detailed exercise was undertaken before contours of canal was finalized. It is averred that alternative alignment was also examined but was not opted for operational reasons. When there is more than one option available, it is for the competent authority to choose an option, in the instant case, alignment and Court cannot assess what is good or what is bad and suggest a course different from the one chosen by competent authority. In infrastructural projects, Court is ill-equipped to dwell into such matters.

19. While exercising power of judicial review of administrative actions under Article 226 of the Constitution of India, the writ Court is required to see whether parameters of decision making are observed and made in compliance of the statutory requirements. What is required to be considered by the Court is whether process of decision making is vitiated on ground of illegality, procedural impropriety, bias and arbitrary exercise of power, but not on the merits of the decision taken, more particularly when it involves technical aspects like contours of irrigation canal. Prima facie, the reasons assigned by the respondents in the counter affidavit deposed by Sri Ram Mohan, would show that the proposed alignment is better suited than the alignment sought by the petitioners.

20. On the scope of judicial review against the decisions of executive, more particularly decisions involving technical matters, in **Union of India v. J.O., Suryavamshi**⁵, Supreme Court cautioned the Courts to resist the temptation to usurp the power of executive. The wholesome rule in regard to judicial interference in administrative decisions is if the

⁵ (2011) 13 SCC 167

Government takes into consideration all relevant factors, eschews from considering irrelevant factors and acts reasonably within the parameters of the law, Courts should keep off the same [paragraph 18, **Federation of Rly. Officers Assn. v. Union of India**⁶]. Legality of policy and not the wisdom or soundness of policy is subject of judicial review [paragraph 16, **Directorate of Film Festivals v. Gaurav Ashwin Jain**⁷].

21. In the following decisions, the parameters of judicial review of administrative decisions are further codified.

21.1 In **Tata Cellular v. Union of India**⁸, Supreme Court held:

73. Observance of judicial restraint is currently the mood in England. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the *court's ability* to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

.....

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

1. Whether a decision-making authority exceeded its powers?
2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. **Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:**

- (i) **Illegality** : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) **Irrationality**, namely, Wednesbury unreasonableness.
- (iii) Procedural **impropriety**.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time.

(emphasis supplied)

⁶ (2003) 4 SCC 289

⁷ (2007) 4 SCC 737

⁸ (1994) 6 SCC 651

21.2. In **Reliance Airport Developers (P) Ltd. v. Airports Authority of India**⁹, one of the issues considered was scope of judicial interference in matters of administrative decisions. Supreme Court elaborated on these three parameters. Supreme Court observed:

“57. The present trend of judicial opinion is to restrict the doctrine of immunity from judicial review to those class of cases which relate to deployment of troops entering into international treaties, etc. The distinctive features of some of these recent cases signify the willingness of the courts to assert their power to scrutinise the factual basis upon which discretionary powers have been exercised. One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is “illegality”, the second “irrationality” and the third “procedural impropriety”.

58. The court will be slow to interfere in such matters relating to administrative functions unless decision is tainted by any vulnerability enumerated above; like illegality, irrationality and procedural impropriety. Whether action falls within any of the categories has to be established. Mere assertion in that regard would not be sufficient.

.....

62. Therefore, to arrive at a decision on “reasonableness” the court has to find out if the administrator has left out relevant factors or taken into account irrelevant factors. The decision of the administrator must have been within the four corners of the law, and not one which no sensible person could have reasonably arrived at, having regard to the above principles, and must have been a bona fide one. The decision could be one of many choices open to the authority but it was for that authority to decide upon the choice and not for the court to substitute its view.

65. In other words, to characterise a decision of the administrator as “irrational” the court has to hold, on material, that it is a decision “so outrageous” as to be in total defiance of logic or moral standards. Adoption of “proportionality” into administrative law was left for the future.

66. In essence, the test is to see whether there is any infirmity in the decision-making process and not in the decision itself. (See *Indian Rly. Construction Co. Ltd. v. Ajay Kumar* [(2003) 4 SCC 579: 2003 SCC (L&S) 528].

.....

73. While exercising power of judicial review courts should not proceed where two views are possible and one view has been taken. In such a case, in the absence of mala fide taking one of the views cannot be a ground for judicial review.

(emphasis supplied)

⁹ (2006) 10 SCC 1

22. Guided by the above principles on scope of judicial review, considering the facts and material on record, it cannot be said that alignment determined is illegal and manifested by procedural impropriety. It can not be characterized as arbitrary. The alignment finalized cannot be said 'so outrageous' as to be in total defiance of logic or moral standards (**Reliance Airport Developers (P) Ltd**).

23. Further, 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 ANOTHER¹⁰ & COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER Vs. K G S BHATT¹¹**].

23.1. 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.

23.2. 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

¹⁰ AIR 1987 SC 2235

¹¹ AIR 1089 SC 1972

proceedings. Our country is now launched upon an ambitious 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)

24. No substantial question of public importance is involved in this case. On the contrary, it is contended by the respondents that primary objective of the project is to provide water to irrigate huge extent of agricultural lands and to provide drinking water to Hindupur town. According to respondents the digging of canal work is completed to a great extent i.e., 90 % and only small stretches remain to be completed. Respondents also express urgency by stating that Hindupur town is

having shortage of drinking water and there is urgent need to provide drinking water to the town. Thus, at this stage, if project is stalled on the premise that the alignment was not properly made, assessing what is contended by petitioners on contours of alignment and other infirmities pointed out by learned counsel for petitioners as valid. It would cause greater hardships to the larger public and therefore is not in public interest.

25. On assessment of facts of this case and principles governing scope of judicial review on infrastructural projects, and parameters of judicial review on administrative decisions, no interference is called at this stage. However, since, learned Special Government Pleader fairly conceded to the demand of petitioners to hold personal hearing, albeit passing of award, it is open to petitioners to raise all objections available to them under Section 15 of the Act. They are also at liberty to negotiate for appropriate compensation, if so advised.

26. Petitioners asserted that alignment is passing through community grave yards, residential colonies of BC, SC & ST people. This is denied by respondents. However, during the course of personal hearing petitioners may place relevant material in support of said assertion and if any material is placed on these two aspects, Special Collector (Land Acquisition) shall consider the same objectively. At this stage, learned counsel for petitioner would submit that application was made to furnish certain relevant documents and they were not furnished. Learned Government Pleader fairly submits that if a fresh application is made to the Special Collector (Land Acquisition), the relevant documents would be supplied.

27. Thus, writ petition fails on issues 1 and 2 i.e., competency, public purpose social assessment survey and holding Grama Sabha; and alignment and on third issue i.e., not affording opportunity of personal

hearing before declaration under Section 19 matter is remitted for fresh enquiry from the stage of personal hearing under Section 15 of the Act.

28. For the reasons afore stated, writ petition is disposed of as under:

i) The preliminary notification dated 08.04.2015 is valid and no interference is called;

ii) the plea to direct respondents to change alignment of Package No.55 of HNSS Project is rejected;

iii) If petitioners submit an application within one week from the date of receipt of copy of this order listing out the relevant documents required by them, the Special Collector (Land Acquisition) shall supply the documents which are relevant for the purpose of consideration of the issue. It is also open to the petitioners to file additional objections which are relevant to the issue, before the date of personal hearing;

iv) A schedule be drawn for completion of exercise. The Special Collector (Land Acquisition) shall fix a date to hold personal hearing and intimate the same in advance. Petitioners or their representatives shall appear on the date fixed and present their case. The Special Collector (Land Acquisition) shall duly consider the objections of petitioners on acquisition of their land, if any, pass a reasoned order and communicate the same to petitioners; and

v) Since personal hearing as required by Section 15 (2) of the Act was not held and now respondents agreed to hold personal hearing, the declaration under Section 19 and Land Acquisition Award to the extent of petitioners is unenforceable and matter reverts to the stage of holding personal hearing under Section 15 and to take further steps thereon as required by the Act. However, if petitioners do not attend to personal hearing on the date fixed and/or do not cooperate in finalizing land acquisition process, it is deemed that they have no objection to acquire

their land and in such an event, the declaration under Section 19 and award already made stands.

Miscellaneous petitions if any pending shall stand closed. There shall be no order as to costs.

P NAVEEN RAO,J

DATE:15.03.2018

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