

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * * *

Writ Petition Nos.20896 and 23946 of 2017

W.P.No.20896 of 2017

Between
Union of India, rep. by the
Secretary to the Government of India,
Ministry of Defence, South Block,
New Delhi and others

.... Petitioners

And

K. Ravinder Reddy and others

... Respondents

JUDGMENT PRONOUNCED ON

: 20.10.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : YES
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : YES
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : YES
see the fair copy of the Judgment?

* THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

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W.P.No.20896 of 2017

Union of India, rep. by the
Secretary to the Government of India,
Ministry of Defence, South Block,
New Delhi and others

....Petitioners

Vs.

\$ K. Ravinder Reddy and others

... Respondents

! Counsel for the Petitioners : Asst. Solicitor General

^ Counsel for the Respondents 1 to 6 : Sri Harender Pershad
Counsel for Respondent No.8 : Ms. M. Siva Jyothi
Counsel for Respondent No.9 : GP for Land Acquisition

< Gist :

> Head Note :

? Cases referred:

1. AIR 1980 SC 1118
2. (1995) 2 SCC 326
3. (2015) 5 SCC 423
4. 2014(6) ALT 405
5. 1987 MLJ 189

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos.20896 and 23946 of 2017

Common Order:

These two Writ Petitions are being disposed of by this common order, as they involve a common point of law.

W.P.No.20896 of 2017 was filed challenging the judgment and decree in L.A.O.P.No.100 of 2011 dated 09.02.2016 passed by the learned II Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad, whereas W.P.No.23946 of 2017 was filed by the same petitioners challenging the judgment and decree in L.A.O.P.No.1123 of 2010 dated 06.02.2017 passed by the learned Special Sessions Judge for trial of Cases under Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act-cum-VII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad.

The facts in the two writ petitions are that the second petitioner sent a requisition for acquisition of lands of an extent of 4000 to 4500 acres in various villages of Ranga Reddy District vide its letter dated 05.11.2004 to the District Collector, Ranga Reddy District for the benefit of the petitioner Laboratories. Accordingly, a notification was issued under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') on 06.07.2006 and a declaration was published on 06.07.2007. The Land Acquisition Officer, 9th respondent passed an Award on 10.04.2008 awarding a compensation of Rs.600/- per sq. yard for the lands under acquisition, but having not satisfied with the said Award, the land owners sought reference under Section 18 of the Act and the same was numbered as L.A.O.P.No.100 of 2011. The Civil Court enhanced the compensation

from Rs.600/- per sq. yard to Rs.1250/- per sq. yard by its order dated 09.02.2016. Challenging the said order, W.P.No.20896 of 2017 was filed.

The petitioners in W.P.No.23946 of 2017 are also covered by the same notification, declaration and Award. However, their reference was numbered as L.A.O.P.No.1123 of 2010 and the compensation was enhanced from Rs.600/- to Rs.4000/- per sq. yard by the Civil Court by its judgment and decree dated 06.02.2017. Challenging the said judgement, W.P.No.23946 of 2017 was filed.

This Court, by order dated 30.06.2017, while issuing notice before admission in W.P.No.20896 of 2017, granted interim suspension of the operation of the judgment and decree dated 09.02.2016 in L.A.O.P.No.100 of 2011 for a period of six weeks and later on it is coming up for hearing. No counter affidavit is filed by the Land Acquisition Officer, but the other respondents filed an affidavit seeking vacation of the said order and the averments made in the counter affidavit are not being dealt with since this Court is disposing of these two Writ Petitions on the issue of maintainability and availability of alternative remedy.

Learned counsel for the petitioners submits that the Writ Petitions are maintainable and in the absence of any notice to the Requisitioning Authority, the Petitioners, the judgements of the reference courts are liable to be set aside.

Learned counsel for the land owners, on the other hand, submitted that after numbering the reference by the Civil Court, though intimation was given by the Land Acquisition Officer on 19.04.2014 to the third petitioner to take necessary steps for impleading and protecting the interest of the Government, no steps were taken by the third petitioner and hence the judgements of the Civil Courts are valid.

In the light of the above rival contentions, the points framed for consideration in the present Writ Petitions are;

- (1) Whether it is obligatory on the part of the Civil Court to issue a notice to the beneficiaries of the land acquisition in the case of a reference to the Civil Court at the instance of the land owners who were not satisfied with the award of the Land Acquisition Officer?
- (2) Whether the Writ Petitions are maintainable challenging the judgements of the reference courts?
- (3) To what relief.

The land of an extent of Ac.55.03 gts., situated in Survey Nos.1 to 8, 11 to 19, 21 to 25, 27, 30 and 31 of Roshanudowla village, Saroornagar Mandal, Ranga Reddy District is involved in the two writ petitions. The land was acquired for establishing 'Research facilities and security strip around the boundaries of DRDL (Defence Research and Development Laboratory)'. The lands of the unofficial respondent land owners are covered by the award of the Land Acquisition Officer and hence there is no dispute on facts. In L.A.O.P.No.100 of 2011 the learned II Additional District Judge, Ranga Reddy District at L.B. Nagar, Hyderabad enhanced the compensation from Rs.600/- per sq. yard to Rs.1250/- per sq. yard, whereas in L.A.O.P.No.1123 of 2010 the learned VII Additional District and Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad enhanced the compensation from Rs.600/- per sq. yard to Rs.4000/- per sq. yard. Thus, the judgements passed by the reference courts are challenged in the present Writ Petitions by the petitioners.

Admittedly, the petitioners were not put on notice and on that ground the validity of the Awards are under challenge.

Sections 18 to 21 of the Act read as follows.

“18. Reference to Court :- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken.

Provided that every such application shall be made:-

(a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award;

(b) in other cases, within six months of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

19. Collector's statement to the Court:- (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17, or either of them, and the amount of compensation awarded under section 11

(cc) the amount paid or deposited under sub-section (3A) of section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a Schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

20. Service of notice :- The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, namely: -

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) If the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

21. Restriction on scope of proceedings:- The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.”

A Division Bench of this Court in *M/ s. Orient Cement v. State of A.P.*, (W.P.No.17532 of 1988 dated 07.10.1994), by relying on a decision reported in *Himalaya Tiles & Marble (P) Limited v. F.V. Coutinho*¹, and interpreting Section 20(b) of the Act held that it is mandatory for the Court of reference to cause a notice served on the beneficiary for whom the land was acquired before proceeding to determine the compensation.

In *U.P. Awas Evam Vikas Parishad v. Gyan Devi (Dead)* by LRs², a Constitution Bench of the Hon'ble Supreme Court by its majority judgment held as follows.

“To sum up, our conclusions are :

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference court and adduce evidence for the purpose of determining the amount of compensation.
2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court before whom acquisition proceedings are pending of the date on which the matter of determination of compensation will be taken up.
3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference court to invoke the remedy under Article 226 of the

¹ AIR 1980 SC 1118

² (1995) 2 SCC 326

Constitution as well as the remedies available under the L.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference court the local authority, the should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened.”

The said Constitution Bench decision is holding the field and the decision of the Division Bench is binding on me. A reading of the above decisions would make it clear that the beneficiary has a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation. The said right carries with it the right to be given adequate notice by the Collector as well as the reference court, but the

beneficiary cannot seek a reference on its own. It can challenge the award of the Collector or the judgement of the reference Court in proceedings under Article 226 of the Constitution as well as the remedies available under the Land Acquisition Act. Even after issuing a notice to the beneficiary, it is open to the beneficiary to challenge the Award in proceedings under Article 226 of the Constitution on grounds on which judicial review is permissible. The beneficiary is a proper party. In the case of enhancement of compensation by reference Court, if the government does not file an appeal, the beneficiary can file an appeal against the judgement of the civil court in the High Court after obtaining leave of the Court.

Learned counsel for the respondents relied on a decision reported in *Radhey Shyam v. Chhabhi Nath*³ and submitted that the judicial orders of the Civil Court are not amenable to writ jurisdiction under Article 226 of the Constitution and those orders can be challenged only by way of statutory appeal or revision or under Article 227, but not by way of Writ Petition under Articles 226 or 32. The said decision did not arise out of the provisions of the Land Acquisition Act and it is only a decision of three Judge Bench. In fact the said decision was considered by me in *Pervaram Ramulu v. Government of Andhra Pradesh*⁴, and followed the ratio since the said case related to the exercise of civil jurisdiction by the court. When there is a Constitution Bench decision directly arising under the provisions of the Land Acquisition Act and holding that the Writ Petition is maintainable under Article 226 challenging the award passed by the Land Acquisition Officer or of the Civil Court, the said decision cannot be made applicable to the facts of the present case.

³ (2015) 5 SCC 423

⁴ 2014(6) ALT 405

Thus, the point Nos.1 and 2 above have to be held in favour of the petitioners.

Coming to the relief to be granted in the present Writ Petitions, when this Court pointed out that the scope of enquiry in a proceeding under Article 226 of the Constitution are circumscribed by the grounds of judicial review and a regular appeal under Section 54 of the Act would better serve the purpose of the petitioners, learned counsel for the petitioners submitted that the petitioners would be spectators in an appeal preferred before this Court, by relying on a decision reported in *Indian Rare Earths Limited v. The Sub Collector, Land Acquisition Officer, Padmanabhapuram, Thuckalay, Kanyakumari District*⁵. The observations of the Division Bench in the said case are no longer good law, in view of the Constitution Bench decision of the Hon'ble Supreme Court in *U.P. Awas Evam Vikas Parishad's case* (supra). The said decision is correct only to the extent of entitlement of the beneficiary for a notice and maintainability of a Writ Petition, but the observations relating to the scope of enquiry under Article 226 in the place of an alternative remedy available under the Act are not correct.

It is settled principle of law that the proceedings under Article 226 are limited to the grounds available for judicial review, whereas the appeal under Section 54 of the Act enables the appellate Court to go through the evidence adduced before the civil Court or available with it in the light of the evidence already adduced and examine whether the enhancement of compensation is proper or not. The alternative remedy and the scope of enquiry in the appeal is much wider than the discretionary remedy of Article 226 of the Constitution.

⁵ 1987 MLJ 189

In the circumstances, both the Writ Petitions are dismissed giving liberty to the petitioners to avail the remedy of appeal under Section 54 of the Act and the time spent for these proceedings can be exempted for condoning the delay, if any. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any pending in these Writ Petitions, shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 20th October, 2017
Nsr

