

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO. 39909 OF 2018

Date: 20.11.2018

Between:

Sri Annapurna Sahita Kasi Visweswara Baktha Haindava
Sampradaya Parirakshana Samstha, Regd.No.312/1986,
Near Subrahmanya Cheruvu, Balaramunipet,
Machilipatnam, rep.by its President Sri G.V.Gunnayya
Chetty.

.....Petitioner

and

The Union of India, rep.by its Deputy Secretary,
Ministry of Roads, Transport and Highways,
New Delhi and others.

.....Respondents



The Court made the following:

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ORDER:

For the purpose of widening of National Highway No.9 Vijayawada-Machilipatnam section in the State of Andhra Pradesh, the Ministry of Road Transport and Highways proposed to acquire land to an extent of 8177 sq meters in Machilipatnam town and Mandal. Notification dated 26.5.2009 was issued under Section 3A (1) of National Highways Act,1956 (for short the Act, 1956) expressing intention to acquire above extent of land. On due consideration of the objections filed by some of the owners, same were rejected vide proceedings dated 25.11.2009. Petitioner herein filed W P No. 28442 of 2009 challenging the notification under Section 3A published in the Government of India gazette on 26.5.2009 and in the Hindu daily newspaper on 16.7.2009. This Court by order dated 29.12.2009 stayed all further proceedings. However, on 20.01.2010 declaration under Section 3D was issued and Award No. 7 of 2012 was passed on 31.12.2012.

2. In the said writ petition, petitioner opposed acquisition of his property on the ground that it would be offending Articles 25 and 26 of the Constitution of India as right to worship based on a community's overwhelming belief in their religious practices and acquiring the property in issue would be offending the said right. It is also contended that while acquiring the land for widening of the road, land was sought to be acquired only on one side of the road and not evenly on either side of the road. The substantive grievance of the petitioner is that by present acquisition, entire property of the petitioner is affected causing huge financial loss

and infrastructure already created for performing the religious functions totally gets wiped out. As during the pendency of the writ petition, award was passed, petitioner also filed application to amend the prayer in the writ petition challenging Award No. 7 of 2012 dated 31.8.2012 which relief was granted by the order of the Court dated 27.3.2018.

3. The plea taken by respondents was three fold. They contended that alignment was finalized and it is not possible to change the alignment at the instance of individual property owner and that change of alignment is not possible as it will have serious repercussions on overall alignment of the road. It was also contended that by the time award was passed on 31.8.2012 the competent authority was not aware of the stay granted by this Court and consequent to passing of the award land vests in National Highway Authority of India (for short NHAI). It was also averred that petitioner filed representation dated 17.10.2017 expressing no objection to cooperate with NHAI authorities for formation of four lane road, if land acquisition authority makes separate award under latest Rules and expressed no objection to withdraw the writ petition and to hand over the site.

4. The writ petition was heard and disposed of by order dated 27.3.2018. Learned single Judge issued following directions:

“The writ petition is ordered as follows :-

(a) Award No.7 of 2012, dated 31.08.2012 is set aside in so far as the petitioner is concerned.

(b) The petitioner is given liberty to represent to 1st respondent for granting compensation under the Act 30 of 2013 by enclosing a copy of this order, within four weeks from the date of receipt of a copy of this order.

(c) The 1st respondent considers the request and passes award determining the compensation payable to petitioner for land and structures affected with the acquisition of land belonging to petitioner within six weeks from the date of receipt of representation, serves copy of the award by registered post with acknowledgment due to petitioner, pays compensation and thereafter takes possession of the property of petitioner.”

5. During the course of hearing, three aspects were considered by the learned single Judge. One is with reference to passing of award during the subsistence of interim order; second is representation submitted by petitioner on 17.10.2017 for consideration of payment of compensation as per Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short the Act, 2013) and the substantial progress made in the execution of work for widening of the road. Court though found fault with passing of award during subsistence of interim order, it did not declare the notice dated 26.05.2009 as illegal but only sets aside the award dated 31.08.2012 to the extent of petitioner and issued directions extracted above, with reference to determination of compensation as per Act, 2013 on representation to be submitted by petitioner.

6. Consequent to the disposal of the writ petition, notification under section 3G (3) of the Act, was issued on 28.5.2018 and supplementary award, insofar petitioner's property is concerned, was made on 13.8.2018.

7. This writ petition is instituted praying to declare Notification No. 843 dated 26.5.2009 as deemed to have been lapsed in view of notification dated 20.1.2010 published under Section 3D during subsistence of interim orders and consequential

notification dated 28.5.2018 issued under Section 3G (3) and supplementary award No.1 dated 13.8.2018.

8. According to learned counsel for petitioner as the award was set aside by this Court in earlier writ petition on the ground that award was passed during the subsistence of interim order, same principle would also apply to the notification issued under Section 3D on 20.1.2010 and once notification dated 20.1.2010 is set aside, the supplementary award is also not valid. He would further submit that as per Section 105 (3) of Act, 2013 all provisions of Act, 2013 are applicable to acquisition of land for NHAI and therefore the entire procedure as required by Act, 2013 is required to be followed, whereas before passing supplementary award, such procedure was not followed and therefore supplementary award is vitiated. As per Act, 2013 appropriate compensation has to be paid; Act requires rehabilitation and re-settlement and provision of housing units to displaced persons and land for land losers, whereas none of these aspects were considered.

9. This Court having noticed that though in W.P.No.28422 of 2009 petitioner sought prayer to set aside the notification issued on 26.5.2009 as said relief was not granted, it is no more open to petitioner to challenge the very same notification in addition to consequential notification, and award, counsel for petitioner was requested to address the Court on maintainability of the writ petition.

10. Learned counsel sought to place reliance on observations made by learned single Judge in the judgment in

W.P.No.28422 of 2009 that all other issues are not gone into and, therefore, validation of notification dated 26.5.2009 can still be challenged in independent proceedings. Cause of action arose to petitioner on 13.8.2018 when supplementary award was passed without following the entire gamut of land acquisition as required by Act, 2013.

11. I am afraid that said contention is not valid. As can be seen from the record though in the earlier writ petition a challenge was made to notification under Section 4(1) of old Act, this Court did not set aside the said notification but sets aside the award dated 1.12.2012 to the extent of petitioner only and directed the competent authority to pass award on petitioner property by determining compensation as per Act, 2013. Passing of award would arise only if Section 4 (1) notification is not held invalid. It is also clearly discernable from the reading of the order that Court has not gone into the validity of the notification dated 26.5.2009 since petitioner consented to part with his land provided compensation is determined as per Act, 2013. Further, during the pendency of the writ petition as award was passed he has also challenged the award passed in addition to the challenge to the notification, dated 26.05.2019. However, by then, the notification dated 20.1.2010 was also issued and though petitioner was aware, he did not choose to challenge the said notification issued under Section 3D of the Act.

12. The contention of the learned counsel for petitioner that the Court has left open all other issues to be agitated in the independent proceedings and therefore it is open to petitioner to

challenge the notification under Section 4 (1) of old Act, dated 26.5.2009 once again in independent proceedings is stated to be rejected.

13. After recording contentions of the learned counsel for petitioner that award was passed during the subsistence of the interim order and respondents were having knowledge of interim orders, the Court also noticed the contention of respondents that during the pendency of writ petition, on 12.10.2017 petitioner represented for consideration of payment of compensation as per Act, 2013 and if same is considered he would be prepared to give up the other objections. It is appropriate to note the further observations of the Court in W.P.No.28422 of 2009, which read as under:

“Without getting into further debate on this aspect of the matter, learned Government Pleader submits that since the project of road widening has made substantial progress, Award No.7 of 2012 dated 31.08.2012 in so far as the petitioner alone may be set aside and remit the matter to 1st respondent for consideration and disposal of representation, dated 17.10.2017.”

14. From the extracted portion of the order, it is seen that Court noted the stand of respondents that substantial progress of road widening work was made pursuant to award dated 31.8.2012 and remitted the matter with reference to property of the petitioner for consideration and disposal of the representation dated 17.10.2017. It is also relevant to note the further observations of the Court, which read as under:

“This Court ought to have considered taking up *suo motu* action against respondents, for passing the award in spite of stay being granted by this Court, but, after perusing the record and by recording the statement of learned Government Pleader, the writ petition is disposed of by setting aside the award, the other aspects, hence, are not considered.”

15. The observations made above were with reference to passing of award during subsistence of interim order. Though, Court viewed the said action of respondents as offending the order of the Court but after perusing the record and recording statement of learned Government Pleader, writ petition was disposed of by setting aside the award only to a limited extent.

16. It is thus apparent that though the initial challenge was on the validity of the notification dated 26.5.2009 setting in motion the process of acquisition of private land for public purposes, having regard to the subsequent developments, more particularly, the representation made by the petitioner, coming forward to receive compensation if compensation is determined in accordance with Act, 2013, the Court did not go into the validity of notification dated 26.5.2009. Thus, it is no more open to petitioner to contend that petitioner is entitled to challenge the notification dated 26.5.2009 in this writ petition, even though it was already challenged, the issue was considered, Court did not set aside the notification, and no leave was granted by this Court to assail the notification dated 26.05.2009 in the independent proceedings, but the Court only remitted the matter for determination of the compensation under Act, 2013. On remand respondents were only required to determine compensation payable to petitioner as per Act, 2013 by passing supplementary award insofar petitioner is concerned. Thus, writ petition is liable to be dismissed on this ground alone.

17. Except for urging that notification dated 26.5.2009 and the notification dated 20.1.2010 are no more valid in view of

the earlier judgment and lapse of time, no new grounds are urged on the validity of said notifications.

18. Section 105 carves out exception excluding application of the provisions of Act, 2013 subject to such modifications as may be made to the various aspects and enactments. In 4th schedule to Act, 2013 NHAI Act is shown at Serial No.7. As per Section 105 (1) the provisions of the Act are excluded to land acquisition by the authority under NHAI Act. However, as fairly submitted by learned Government Pleader in the earlier writ petition it was stated that if compensation was not paid before coming into force of the Act 30 of 2013, compensation would be paid as per the said Act. The learned single Judge also directed determination of the compensation in accordance with Act, 2013. Thus, consequent to the earlier judgment, the competent authority was only required to determine compensation for the land of the petitioner acquired for widening of the National Highway and nothing more.

19. Even assuming on alignment of road what is sought to be contended as valid, it is appropriate to note that out of 8177 square meters of land required, covered by Notification dated 26.5.2009 the extent of land of the petitioner is 2083 square meters whereas to a large extent road widening work was already completed by the time earlier writ petition was disposed of. Thus, at this stage, it is not in the larger public interest to order the NHAI to change alignment to save the property of the petitioner and until and unless alignment is changed road widening work cannot be taken up without affecting the property of the petitioner.

20. At this stage, it is appropriate to note that learned counsel for petitioner was also making a submission that compensation determined was not in accordance with the Act, 2013 and that valuation was arrived at based on the market value of the property as on the date of notification issued on 26.5.2009, whereas, present market value is far higher. If petitioner is aggrieved by wrong determination of the compensation, he has to avail remedy as provided under Section 3G of NHAI Act. Notwithstanding the dismissal of the writ petition, it is open to the petitioner to avail the remedy provided under Section 64 of the Act, 2013 if petitioner has grievance against wrong determination of compensation.

21. Accordingly, writ petition is dismissed. Miscellaneous petitions, if any pending, are closed.

JUSTICE P.NAVEEN RAO

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