

**HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
HON'BLE SRI JUSTICE A. RAJASHEKER REDDY**

**WRIT APPEAL Nos.133, 198 and 199 OF 2019
and
WRIT PETITION Nos.40362 of 2017; 40127 of 2016; 13569 & 16364 of 2017**

COMMON JUDGMENT: *(per the Hon'ble the Chief Justice Sri Thottathil B. Radhakrishnan)*

The captioned Writ Appeals are filed challenging the interlocutory order issued by the learned Single Judge during the course of consideration of different Writ Petitions relating to, fundamentally, the same issues. Therefore, while considering the Writ Appeals, we thought it appropriate to withdraw the Writ Petitions, particularly, because the matter relates to acquisition for the purpose of National Highway and the grievance of the writ petitioners relates to the modality of fixing compensation and the procedure adopted by the authorities. Having considered the aforesaid purpose, all the Writ Petitions, therefore, were withdrawn to be heard along with the Writ Appeals.

2. Having heard the learned counsel for the writ appellants and the writ petitioners as well as the learned Government Pleader for Land Acquisition and the learned Standing Counsel for the National Highways Authority of India (NHAI), we see that the issues relate to acquisition for the purpose of widening the road from Hyderabad to Warangal.

3. On 06.03.2013, a notification was issued under Section 3A(1) of the National Highways Act, 1956 (for short 'the NH Act') by the competent authority notifying the intention to acquire the lands referred therein. That was followed by a notification under Section 3D(1) of the NH Act on 05.01.2014. By issuance of such notification under Section 3D(1) of the NH Act on 05.01.2014, the aforesaid notification dated 06.03.2013 under Section 3A(1) of the NH Act issued as to acquisition of the parcels of land has become final. Thereafter, on 07.11.2014, yet another notification was issued under Section 3A(1) of the NH Act, which was apparently related to certain parcels of land, which were left out of the notification on 06.03.2013 and 05.01.2014, but, was required for the purpose of carrying out the object of acquisition. The intention of that notification to acquire got fructified into a further notification under Section 3D(1) of the NH Act on 06.05.2015. That has also become final. This means that the two notifications generated under Section 3A(1) of the NH Act on 06.03.2013 and 07.11.2014 have reached its statutory culmination by the conclusiveness attained to the declarations issued in the form of notifications under Section 3D(1) of the NH Act on 05.01.2014 and 06.05.2015 respectively. Thereafter, a Common Award was passed on 28.01.2016 relating to the lands which are covered by the aforesaid two sets of notifications. The purpose of acquisition under both sets of

notifications is the same. The Common Award so passed was impeached before the learned Single Judge on different grounds.

4. During the course of adjudication of the Writ Petitions, it was thought appropriate to issue an interlocutory order to direct a joint survey to be conducted having regard to the assertions and denials of acquisition or likelihood of excessive dispossession over and above the lands that would be subjected to acquisition in terms of the notifications referred to above. A joint inspection report dated 28.01.2017 thus came on board following that interlocutory judicial order. It came out with the conclusion that land to an extent of Acs.4.39 guntas has apparently escaped the alignment for the purpose of acquisition, as prepared on ground. Obviously, therefore, the learned Single Judge considered whether it will be appropriate to conclude the matter in writ jurisdiction by permitting NHAI to deposit the amounts which could be treated as a value of that extent of Acs.4.39 guntas of land and thereupon, permit NHAI to continue with the project, so that, widening of the road would not get stultified.

5. The Writ Appeals in hand are filed raising different issues. The fundamental thrust of arguments on behalf of the appellants is that without yet another notification under Section 3A(1) of the NH Act followed by a declaration under Section 3D(1) of the NH Act, the land to an extent of Acs.4.39 guntas cannot be touched

as part of the acquisition on the strength of the notifications issued under Section 3A(1) of the NH Act by 06.03.2013 and 07.11.2014.

6. The second limb of argument is that unless a notification is issued, there cannot be any acquisition and deprivation of title to the property in terms of Section 3D of the NH Act and therefore, without such notification and declaration, it may not be feasible for the claimants to participate in the award enquiry merely on the strength of a judicial order.

7. Lastly, it is also argued that even assuming that we sustain the directions of the learned Single Judge, the compensation ought to be determined on the basis of the land value as on 01.01.2014. For this, a reference is made to the letter D.O.No.13013/01/2014-LRD(Pt.), dated 26.10.2015, which is issued in answer to various questions and queries raised in relation to the acquisition. Reference is also made to the decision of Allahabad High Court in **Prahlad Singh and others v. State of U.P. and others**¹ in respect of the said properties.

8. The learned Government Pleader for Land Acquisition pointed out that the controversy as to the extent of the land is not one that is apparently shown to have been raised by the petitioners during any award consequent on the notifications issued under Section 3A(1) of the NH Act. He also argued that the land sought to

¹ MANU/UP/1915/2016

be acquired has been described in consonance with the statutory prescriptions.

9. The learned Standing Counsel for NHAI pointed out that entire funds, as directed by the learned Single Judge through the interlocutory order impugned in the Writ Appeals, have already been deposited and the decision of Allahabad High Court referred to on behalf of the appellants rendered under the Land Acquisition Act, 1894, may not have any bearing on the proceedings of the NH Act.

10. An Award under the NH Act is one that can be subjected to proceedings under that Act before the competent authority. In terms of Section 3G of the NH Act, due procedure under Sub-Sections (1) or (5) thereof, would be followed. Notwithstanding that position, the learned Single Judge noticed that there is a controversy to be resolved and it ought not to be left to be dragged for too long. This apparently is the reason for that we see in the procedure adopted by the learned Single Judge in the discretionary writ jurisdiction in having obtained a joint inspection report and passed further order on the basis of that report. The sum and substance of the controversy ultimately, rests on the proceedings that an excess area of Acs.4.39 guntas is also found to be within the alignment ultimately required for widening of Hyderabad - Warangal road. Obviously, therefore, keeping aside the technicalities of procedure,

the proper course that may be adopted is to direct the competent authority under the NH Act to pass a supplementary award in furtherance of the Common Award passed on 28.01.2016. This will enable the parties to claim for funds which were already deposited by NHAI before the Land Acquisition Officer. In terms of the clarification of the Central Government, it needs to be said that the reference date for calculation of market value under Section 24(1)(a) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, should be 01.01.2014; that is, the date of commencement of that Act. It is directed that the supplementary award to be passed shall be governed by that principle as far as cut-off date is concerned for fixation of market value. The petitioners and any other person interested in compensation shall raise claims before the Land Acquisition Officer in accordance with law. In the light of the contentions in the Writ Petitions, the Land Acquisition Officer will also consider the question of re-fixing the compensation by re-determining it with effect from 01.01.2014 following the aforesaid directive of the Central Government as well as the Common Award dated 28.01.2016. It is directed that this shall be done.

11. Let the proceedings following this common judgment be concluded within an outer limit of four (4) weeks from the date of receipt of a copy of this common judgment and supplementary

award be passed within a period of four (4) weeks thereafter. All rights of the parties in terms of Section 3G of the NH Act will stand left open.

12. The Writ Appeals and Writ Petitions are ordered accordingly.

13. Miscellaneous petitions, if any pending, shall also stand disposed of. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

Date: 14.03.2019

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