

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

% 01.05.2019

W.P.NO.21082 OF 2016

PASULA RAVINDER

Petitioner

AND

UNION OF INDIA, REP. BY ITS SECRETARY, MINISTRY OF
ROADS,TRANSPORT AND HIGHWAYS, NEW DELHI AND FOUR OTHERS.

RESPONDENTS

Counsel for the applicant: : Sri V.S.R.Anjaneyulu

Counsel for the respondents: For respondent No.1, Standing Counsel for
Central Government.

For respondents 2 to 4
Sri A.Laxminarayana, Standing Counsel
for National Highways Authority of India.

For respondent No.5 – Government
Pleader for Land Acquisition.

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- Head Note.
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?Cases Referred:

1. 2004(3) ALT 78(DB)
2. 2017(5) ALD 575

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**W.P.NO.21082 OF 2016****ORDER**

In this writ petition, petitioner / claimant, challenges the award bearing Rc.No.F/4438/2012, dated 15.10.2015 passed by the respondent No.5 – Competent Authority, Land Acquisition Officer and Revenue Divisional Officer, Warangal.

2. The Union of India issued notification vide Gazette No. S.O.810(E) dated 22-03-2013, under Section 3(A)(1) of the National Highways Act, 1956 (Act 48 of 1956), declaring its intention to acquire lands in the specified survey numbers at Vangapahad village of Hasanparthy mandal of Warangal District, for the public purpose of four laning of National Highway No.202 (New NH No.163) from K.M. 76/800 to 150/000 KM (Yadagiri – Warangal Section) in Warangal District, and calling for objections from the persons interested. In terms of Section 3(a) of Act 48 of 1956, the Revenue Divisional Officer, Warangal was appointed to perform the functions of the competent authority – Land Acquisition Officer. Subsequently, the Government of India, approving the proposals, issued notification under Section 3(D)(1) of the Act, vide Gazette of India through S.O.332 dated 05.01.2014. Eventually, the competent authority passed award in Rc.No.F/4438/2012 dated 15.10.2015. Assailing the said award, the present writ petition has been filed.

3. Learned counsel appearing for the petitioner, based on the averments made in the affidavit filed in support of the writ petition, submits that the petitioner

is the owner and possessor of the land in an extent of Ac.0.02 ½ gts in Sy.No.501, Ac.0.38 gts in Sy.No.502 and Ac.0.01 ½ gnts in Sy.No.506 and, thus in all he owns Ac.1.02 ½ gts. situate in Vangapahad village, Hasanparthy mandal, Warangal District, and the said land was acquired for the above said purpose and the competent authority passed the award fixing the compensation.

4. Learned counsel for the petitioner submits that by virtue of the power conferred under Section 113(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act 30 of 2013), the Ministry of Rural Development, Government of India vide notification SO. 2368(E) dated 28.08.2015, extended the provisions of Act 30 of 2013 to the acquisitions under Act 48 of 1956. Under Section 25 of Act 30 of 2013, the award shall be made within a period of twelve months from the date of publication under Section 19 of the said Act, and if no award is made within that period, the entire proceedings for the acquisition of the land, shall lapse. Since, the provisions of Act 30 of 2013 are made applicable to the acquisitions under Act 48 of 56, the time limit prescribed under Section 25 of Act 30 of 2013, also applies and in terms of the said provision, the competent authority has to pass award within twelve months i.e., one year from the date of publication. In the present case, the notification for intention under Section 3(A)(1) of Act 48 of 56, was given on 22.03.2013 and after approval of proposals, the Government of India, issued notification under Section 3(D)(1) of said Act and published in the Gazettee of India through S.O.332(E) dated 05.01.2014. In view of limitation prescribed under Section 25 of Act 30 of 2013, the competent authority has to pass award within one year from the date of publication i.e., 5.1.2014, but the

competent authority passed award beyond the period of one year i.e., on 15.10.2015. Therefore, in view of Section 25 of Act 30 of 2013, the entire acquisition proceedings shall be declared as lapsed.

5. Learned counsel for the petitioner further submits that the subject land of the petitioner is agriculture land situated in Vangapahad village, Hasanparthy mandal, Warangal District, and comes under rural area, but the Land Acquisition Officer, relying on G.O.Ms.No.1177 MA (HMA & UD) Department dated 6.11.1981, has treated the Vangapahad as an urban area, and arrived the market value at Rs.7,00,000/- per acre. He contends that the subject property of the petitioner is agricultural land situated in rural area, and would fetch more amount, but the Land Acquisition Officer, treating the same as urban area, awarded less compensation. He submits that the Joint Sub Registrar – 12 Warangal has furnished certificate dated 07.04.2016, showing the market value in respect of Sy.No.501, where the subject land of the petitioner is situate, as Rs.38,72,000/- per acre, and the Joint Sub Registrar – 12 Warangal has issued Market Value Assistance Certificate dated 13.05.2015, which establish that the market value of the subject land as Rs.38,72,000/- per acre from 1.4.2013 onwards. But, without considering the said market value, the competent authority has taken the market value of the land at Rs.7,00,000/-, per acre, which is very meagre. Learned counsel contends that as the competent authority, fixed the market value, without following the parameters prescribed under Section 26 of the Act 30 of 2013, the award is liable to be set aside.

6. Learned counsel for the petitioner further contends that as per the material evidence produced by the petitioner before the competent authority, he owns in all Ac.1.02 ½ gts, but the Land Acquisition Officer, though arrived at Rs.7,00,000/- per acre, awarded only an amount of Rs.79,524/-, which is incorrect.

7. He submits that if the amount granted under the award is not acceptable to the party, he has to seek for arbitration under Section 3 (G)(5) of Act 48 of 1956, but in the present case, as the award is passed in utter disregard to the statutory provisions, the petitioner is entitled to invoke the jurisdiction of this court under Article 226 of the Constitution of India, and he cannot be relegated to avail the alternative remedy. In support of this contention, learned counsel for the petitioner placed reliance on the judgment of a Division Bench of the erstwhile High Court of Andhra Pradesh at Hyderabad in ***K.PEDA VENKATAIAH v. GOVT. OF ANDHRA PRADESH***¹.

8. With the above contentions, learned counsel for the petitioner sought praying to set aside the impugned award.

9. The Project Director, National Highways Authority of India – 4th respondent filed counter affidavit on behalf of respondents 1 to 4, and while not disputing the factual aspects with regard to issuance of notification under Section 3(A) of the Act with regard to intention for acquisition of the lands, including that of the petitioner, for the purpose of four laning of the National Highway 163 of Yadagiri – Warangal Section; calling for objections under

¹ 2004(3) ALT 78(DB)

Section 3(C) of the Act 48 of 1956; issuance of publication under Section 3(D) and eventual passing of the award by the competent authority; denied the above contentions of the petitioner and sought for dismissal of writ petition.

10. Sri A.Laxminarayana, learned Standing Counsel for National Highways Authority of India, referring the averments made in the counter affidavit, submits that the Ministry of India, Government of India, vide order dated 28.08.2015 made the provisions of Act 30 of 2013 applicable for the purpose of determination of compensation with regard to the first schedule, rehabilitation and resettlement in accordance with the second schedule, infrastructure amenities in accordance with the third schedule and to all case of land acquisition under the enactments specified in the fourth schedule. The land acquisition under Act 48 of 56 is covered under the enactments specified in the fourth schedule of Act 30 of 2013. Therefore, he submits that only for the limited purpose of determination of compensation, the provisions of Act 30 of 2013 i.e., Section 26 of the said Act, are applicable to Act 48 of 1956 and the period of one year prescribed under Section 25 of Act for the purpose of passing award from the date of publication of declaration under Section 19 of Act 30 of 2013, is not applicable to the proceedings under Act 48 of 1956. He submits that Act 48 of 56 prescribes time limit of one year from the date of publication of intention under Section 3(A), and the date of publication of declaration under Section 3(D) of the Act. He submits that in the present case, the notification under Section 3(A) of the Act was issued on 22.03.2013 and the declaration for acquisition under Section 3(D) was published on 5.1.2014 and hence there is compliance of time schedule prescribed under Section 3 of the Act.

11. Learned Standing Counsel further submits the market value as per Sub Registrar records as on the date of the publication of Section 3-A notification for the dry lands of Vangapahad village vide letter dated 22.08.2015, is Rs.7,00,000/- per acre and accordingly the 5th respondent, awarded compensation by duly following the procedure prescribed under Section 26 of Act 30 of 2013. He further submitted that as per G.O.Ms.No.1177 dated 06.11.1981, Vangapahad village was declared by the State Government as urban area and accordingly the compensation was awarded.

12. Learned Standing Counsel submits that the petitioner has submitted proof of ownership only to the extent of Ac.0.02 ¼ gts. in the acquired land in Sy.No.502, and accordingly, the compensation was award at Rs.79,524/- and in respect of payment for the lands acquired in Sy.Nos.501 and 506, the compensation could not be made, as the petitioner has not furnished the proof of ownership in the award enquiry conducted on 19.05.2015 and 28.11.2015 and therefore, the 5th respondents recorded owners for the said survey numbers as 'unknown'.

13. Learned Standing Counsel submits that the competent authority, in strict compliance of the procedure prescribed under Section 3 of Act 48 of 1956, and further following the procedure prescribed under Section 26 of Act 30 of 2013 for determination of compensation, awarded just compensation and if the petitioner is aggrieved with regard to quantum, they are at liberty to invoke arbitration clause under Section 3(G)(5) of Act 48 of 1956, and they cannot seek to stall the entire proceedings. He submits that the land of the petitioner, which is

being acquired, is a small extent and because of the interim order obtained by the petitioner, the project got stalled and there is escalation of project costs and the public interest is at stake. Therefore, he sought to vacate the interim stay granted by this court and to dismiss the writ petition.

14. Heard the learned Standing Counsel for the Central Government appearing for 1st respondent and the learned Government Pleader for Land Acquisition appearing for 5th respondent.

15. In order to met the principal contention raised by the learned counsel for the petitioner with regard to limitation for passing of award from the date of publication of declaration, certain provisions of Act 25 of 2013 and the notification issued by the Central Government making provisions of Act 30 of 2013 applicable to Act 48 of 1956, have to be considered.

16. The present Act 30 of 2013, received the assent of the President of India on 26.09.2013 and it came into force with effect from 01.01.2014, and under Section 114 of Act 30 of 2013, the earlier Land Acquisition Act, 1894 (1 of 1894), stood repealed. Under Section 105 of Act 30 of 2013, certain provisions of this Act are made applicable to the enactments relating to land acquisition specified in the fourth schedule, and Act 48 of 1956, is one such enactment. Section 113 of the Act, empowers the Central Government to make order for removal of any difficulty that arises in giving effect to the provisions of this enactment. The said provisions, to the extent relevant, are extracted as under for ready reference:

105. Provisions of this Act not to apply in certain cases or to apply with certain modifications:

- (1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.
- (2)
- (3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.
- (4) . . .

THE FOURTH SCHEDULE
(See Section 105)

List of Enactments Regulating Land Acquisition and Rehabilitation and Resettlement)

1.
7. The National Highways Act, 1956 (48 of 1956)
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113. Power to remove difficulties:

- (1) If any difficulty arises in giving effect to the provisions of this Part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.
- (2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

17. From a combined reading of the above provisions it is clear that subject to sub section (3) of Section 105, the provisions of Act 30 of 2013, are not applicable to the enactments relating to land acquisition specified in the fourth schedule. However, sub-section 3 of Section 105, empowers the Central Government to issue notification directing that any of the provisions of the Act 30 of 2013 **relating to the determination of compensation** in accordance with First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases

of land acquisition under the enactments specified in the Fourth Schedule. Act 48 of 1956 is one such enactment under the Fourth Schedule to Section 105. Therefore, the provisions relating to determination of compensation, under Act 30 of 2013, shall be made applicable by the Central Government by virtue of a notification, to the land acquisitions under Act 48 of 1956. The provision to issue such notification, as required under sub-section 3 of Section 105, is provided under Section 113 of the Act 30 of 2013.

18. In terms of Section 113 of Act 30 of 2013, the Ministry of Rural Development issued order on 28.01.2015 in S.O.2368(E). The same is extracted as under for ready reference:

“MINISTRY OF RURAL DEVELOPMENT

O R D E R

New Delhi, the 28th August, 2015

S.O.2368(E):-- Whereas, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013) (hereinafter referred to as the RFCTLARR Act) came into effect from 1st January, 2014;

And whereas, sub-section (3) of Section 105 of RFCTLARR Act provided for issuing of notification to make the provisions of the Act relating to the determination of the compensation, rehabilitation and resettlement applicable to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act.

And whereas, the notification envisaged under sub-section (3) of Section 105 of the RFCTLARR Act was not issued, and the RFCTLARR (Amendment) Ordinance, 2014 (9 of 2014) was promulgated on 31st December, 2014, thereby *inter-alia* amending Section 105 of the RFCTLARR Act to extend the provisions of the Act relating to the determination of the compensation and rehabilitation and resettlement to cases of land acquisition under the enactments specified in the Fourth Schedule to the RFCTLARR Act.

And whereas, the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015) was promulgated on 3rd April, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2014;

And whereas, the RFCTLARR (Amendment) Second Ordinance, 2015 (5 of 2015) was promulgated on 30th May, 2015 to give continuity to the provisions of the RFCTLARR (Amendment) Ordinance, 2015 (4 of 2015).

And whereas, the replacement Bill relating to the RFCTLARR (Amendment) Ordinance 2015 (4 of 2015) was referred to the Joint Committee of the House for examination and report and the same is pending with the Joint Commission;

As whereas, as per the provisions of Article 123 of the Constitution, the RFCTLARR (Amendment) Second ordinance, 2015 (5 of 2015) shall lapse on the 31st day of August, 2015 and thereby placing the land owners at the disadvantageous position, resulting in denial of benefit

of enhanced compensation and rehabilitation and resettlement to the cases of land acquisition under the 13 Act specified in the Fourth Schedule to the RFCTLARR Act as extended to the land owners under the said Ordinance;

And whereas, the Central Government considers it necessary to extend the benefits available to the land owners under the RFCTLARR Act to similarly placed land owners whose lands are acquired under the 13 enactments specified in the Fourth Schedule; and accordingly the Central Government keeping in view the aforesaid difficulties has decided to extend the beneficial advantage to the land owners and uniformly apply the beneficial provisions of the RFCTLARR Act, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government make the following order to remove the aforesaid difficulties, namely:--

1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.
(2) It shall come into force with effect from the 1st day of September, 2015.
2. The provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructures amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act."

19. Thus, by virtue of the above order, it is clear that the Central Government has specifically made the provisions of Act 30 of 2013, relating to the determination of compensation and rehabilitation and resettlement as were made applicable to cases of land acquisition under the said enactments in the interest of the land owners, applicable to Act 48 of 1956. The provision prescribing the period of limitation under Section 25 of Act 30 of 2013, with regard to passing of award within one year from the date of publication of the declaration, has not been made applicable to the acquisitions under the Act 48 of 1956. In the absence of any such provision, the period prescribed under the Act 30 of 2013, with regard to passing of the award from the date of publication of declaration under Section 25 of Act 30 of 2013, cannot be imported to Act 48 of 1956.

20. A learned single Judge of this court in **NEERAJALA NAGESWARA RAO AND ANOTHER v. UNION OF INDIA**² considering the Sections 3-D, 3-E, 3-G and 3-J, held that provisions of Act 2013 shall apply for determination of compensation as per its first schedule and where required to be provided for rehabilitation and resettlement and / or infrastructure amenities with reference to Schedules I to IV.

21. In view of the above position, the contention of the learned counsel on the aspect of limitation for passing of the award, merits for rejection and accordingly rejected.

22. The other contentions of the learned counsel for the petitioner relates to factual aspects of the matter. The contention of the learned counsel for the petitioner is that as per market value certificate issued by the Sub Registrar – 12 Warangal rural dated 07.04.2016, the market value of the agricultural land in the area is question is Rs.38,72,000/-, whereas only an amount of Rs.7,00,000/- was awarded by the Land Acquisition Officer, therefore, this amounts to improper determination of market value, and the impugned award is liable to be set aside.

23. Here it is to be seen that the impugned award was passed on 15-10-2015 and the market value certificate stated to be issued by the Sub Registrar – 12 Warangal Rural, is dated 07.04.2016. Therefore, as on the date of passing of the award, the market value certificate dated 07.04.2016, was not available for consideration of Land Acquisition Officer. Moreover, the Land Acquisition Officer, while determining the market value of the lands acquired,

² 2017(5) ALD 575

has taken the market value as per the records of the Sub Registrar as on the date of publication of notification under Section 3-A in respect of dry lands of Vangapahad village vide letter dated 22.08.2015 and arrived at compensation of Rs.7,00,000/- per acre and hence no exception can be taken.

24. Similarly the other contention of the learned counsel for the petitioner that compensation was awarded treating the land of the petitioner as urban land, also pales into insignificance, since the Land Acquisition Officer, as noted above, relied on the market value as per the records of the Sub Registrar and awarded compensation, which is in accordance with the procedure prescribed under Section 26 of Act 30 of 2013.

25. The next contention of the learned counsel for the petitioner is that though an extent of 1.02 ½ gts. was acquired, and the Land Acquisition officer, valued the land at Rs.7,00,000/- per acquired, only an amount of Rs.79,524/- was awarded. This aspect of the matter is factual in nature. As per the material on record, it could be seen that the petitioner could prove ownership only to an extent of Acs.0.02 ¼ gts in Sy.No.502, and in so far as land claimed by the petitioner in Sy.Nos.501 and 506, he could not prove ownership in the enquiry conducted on 19.05.2015 and 28.11.2015, therefore, the 5th respondents recorded owners for the said survey numbers as 'unknown'. Hence, the contention of the learned counsel for the petitioner in this regard, cannot be countenanced.

26. Coming to the judgment of the Division Bench in K.PEDA VENKATAIAH v. GOVERNMENT OF ANDHRA PRADESH (1 supra), relied on

by the learned counsel for the petitioner, the facts of the said case disclose that while determining the market value of the land acquired, the Land Acquisition Officer, has taken the date of taking of possession of the land, whereas under Sections 11 and 23 of the Land Acquisition Act, 1894, the market value of the acquired land shall be determined as on the date of publication of notification under Section 4(1) of the said Act. As the award was passed in utter disregard to the mandatory provisions of the said Act, the Division Bench held that existence of an alternative remedy is not a bar to entertain a writ petition, where the impugned order is void. But in the present case, the facts are different. The Land Acquisition Officer, in conformity with the provisions of the Act 48 of 1956 and following the procedure prescribed under Section 26 of Act 30 of 2013, relating to determination of compensation, awarded compensation. Hence, the judgment of the Division Bench, cannot be made applicable to the facts of the present case.

27. For the foregoing reasons, I do not find any merit in the writ petition and the same is accordingly dismissed.

28. Before parting with the case it is made clear that the observations made in this order with respect to the market value and compensation, are only for the limited purpose, and the same shall not be construed as disentitling the petitioner for seeking higher compensation before the competent authority as provided under Act 48 of 1956. Considering the fact that the petitioner's writ petition was pending all along, subject to the condition of the petitioner making an application before the competent authority i.e., the District Collector within two

weeks from the date of receipt of a copy of this order, the case of the petitioner shall be referred to the Arbitrator. On such reference, the Arbitrator shall decide the same in accordance with law.

29. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM,J

DATE:01—05—2019

Note: L.R. copy to be marked.

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(AVS)

