IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

MONDAY, THE TWENTY FIRST DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J SREENIVAS RAO

WRIT APPEAL NO: 66 OF 2014

Writ Appeal under clause 15 of the Letters Patent against the Order dated 24.12.2013 in WP No. 3087/2012 on the file of the High Court.

Between:

1. Bhatharaju Shankaraiah, S/o. Sri B. Bikshamaiah, Agriculture, R/o. H.No. 18-112/2, Kamala Nagar, Road No. 5, Chaitanyapuri, Dilsukhnagar, Hyderabad - 500 060.
2. Smt. Pabba Radhika, W/o. Pabba Vinay Kumar, Agriculture/Doctor, R/o. H.No. 1-5-38/18, Fine Building Complex, Maruthi Nagar, Kothapet, Hyderabad - 500 060.
3. Smt. Boggaraju Bhagya Laxmi, W/o. B. Sanjay, Agriculture, R/o. H.No. 1-5-38/18, Fine Building Complex, Maruthi Nagar, Kothapet, Hyderabad - 500 060.
4. Smt. Boggaraju Pooja, W/o. B. Phani Madhav, Housewife, R/o. H.No. 1-5-38/18, Fine Building Complex, Maruthi Nagar, Kothapet, Hyderabad - 500 060.
5. Sri Seekuri (Cheekuri) Manoj Kumar, S/o. Sri Ushaiah, Agriculture, R/o. H.No. 16-2-752/21/26, Trevine nagar Colony, Gaddi Annaram, Hyderabad - 500 036.
6. Smt. Cheekuri Prameela, W/o. Sri Jagadish, Housewife, R/o. H.No. 2-94, Post Panthangi, Mandal Choutuppal, Nalgonda District.
7. Sri Madagoni Muthyalu, S/o. Late M. Sattaiah, Agriculture / Advocate, R/o. H.No. 7-1-977, Shanker Veedhi, Secunderabad.
8. M/s. Amsri Pesticides & Chemical, Rep. by its Manager, Sri B. Prasad, Employee, S/o. Sri B. Ranga Charyulu, R/o. H.NO. 3-61, Sundarrayya Colony, Lakkaram, Choutuppal Mandal and Post, Nalgonda District.
9. Sri Bhatharaju Venkatesham, S/o. Sri B. Bikshamaiah, Agriculture/Business R/o. H.No. 1-92, Panthangi Village, Choutuppal Mandal, Nalgonda District.
10. Sri Bhatharaju Yadaiah, S/o. Sri B. Bikshamaiah, Agriculture/Business, R/o. H.No. 1-92, Panthangi Village, Choutuppal Mandal, Nalgonda District.

...APPELLANTS

AND

1. The Union of India, Represented by its Secretary, Ministry of Road Transport and Highways, New Delhi.

2. The National Highway Authorities of India, rep. by its Chairman, New Delhi.
3. The National Highway Authorities of India, rep. by its Project Director, Hyderabad.
4. The Revenue Divisional Officer / Land Acquisition Officer, Bhongiri Division, Nalgonda District.
5. M/s.G.M.R. Hyderabad Vijayawada Express Highway pvt Ltd., Rep. by its Managing Director, 6-3-866/1/G2, Green Lands, Begumpet, Hyderabad - 500016.

...RESPONDENTS

I.A. NO: 1 OF 2014(WAMP. NO: 74 OF 2014)

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents not to dispossess the petitioners in so far as their lands of various extents are concerned admeasuring Ac.00- 26.5 gts., Ac.01-00 Gts., Ac.0-20 Gts., Ac.00-20 gts., Ac.0-35 Gts., Ac.0-23 Gts., Ac. 025 Gts., Ac. 0-14 Gts., Ac. 0-26.5 Gts. and Ac. 0-26.5 Gts. respectively situate in Sy No. 554 and 611 of Panthangi Village, Choutuppal Mandal, Nalgonda District, by suspending the Writ Order dated 24-12-2013, in WP No. 3087 OF 2012.

Counsel for the Appellant : SRI SIDDHARTHA SARMA,
rep., SRI P.VENUGOPAL, Senior Counsel

Counsel for the Respondents No.1to3,5: NONE APPEARED

Counsel for the Respondent No.4 : SRI E.RAMA CHANDRA GOUD, GP FOR LA

The Court delivered the following: JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE

AND

THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

WRIT APPEAL No.66 of 2014

JUDGMENT: *(Per the Hon'ble Sri Justice J. Sreenivas Rao)*

This intra-court appeal has been filed by the appellants aggrieved by the order passed by the learned Single Judge in dismissing W.P.No.3087 of 2012 dated 24.12.2013.

2. Heard Mr. Siddhartha Sarma, learned counsel for the appellants and Mr. E.Ramesh Chandra Goud, learned Government Pleader appearing on behalf of respondent No.4. No representation on behalf of respondent Nos.1 to 3 and 5.

3. **Brief facts of the case:**

3.1. The claim of the appellants is that they are the owners of land to an extent of Ac.6.16 gts. in Sy.Nos.554 and 611 situated at Panthangi Village of Choutuppal Mandal, Nalgonda District. Respondent No.1 has issued notification on 14.12.2010 under Section 3A(1) of the National Highways Act, 1956 (hereinafter referred to as 'the Act') for acquisition of Ac.22.24 gts. in various survey numbers of Panthangi Village including the lands of the appellants and the same are required for building

(widening/four/six laning etc.,) maintenance, management and operation of National Highway No.9 on the stretch of land from km. 40.000 to km. 62.290 on Hyderabad-Vijayawada Section. Thereafter, the respondent authorities exercising the powers conferred under the Act issued Section 3D notification on 27.08.2011 and Section 3G notification on 02.12.2011. Questioning the notification dated 02.12.2011, the appellants filed W.P.No.3087 of 2012 on the ground that the respondent authorities acquired the appellants' lands for the benefit of respondent No.5, but not for the public purpose, especially the lands of the appellants are utilized for construction of toll plaza. As per the Concession Agreement, if the lands of the appellants are required for operation and maintenance of Centre, the Concessionaire has to acquire the land at his own cost and risk and further averred that the notifications dated 14.12.2010 and 27.08.2011 issued by the respondents amounts to colourable exercise of the powers. However, learned Single Judge dismissed the writ petition on the ground that the land acquired by the respondent authorities is treated as for public purpose and further observed that there is no procedural infirmity or irregularity in the

acquisition proceedings issued by the respondent authorities. Aggrieved by the same, the appellants filed the present writ appeal.

Submissions of learned counsel for the appellants:

4. Learned counsel for the appellants contended that the National Highway Authority has entered into a Concession Agreement basing on Design, Build, Finance, Operate and Transfer (DBFOT). As per clause 4.10.1 of the Concession Agreement, respondent No.5 has to operate and maintain the centres either at the toll plazas or at any other location along the highway as identified by the concessionaire and the land for the same shall be acquired by the concessionaire at his cost and risk. However, respondent No.3 had issued notification and acquired the lands of the appellants for the purpose of road widening and allotted to respondent No.5 for construction of toll plaza, which is not for the public purpose. Hence, the notifications issued under the Act by the respondents acquiring the lands of the appellants for the benefit of respondent No.5 only and it amounts to colourable exercise of powers and the same is not permissible under law. He further contended that during pendency of the writ petition, respondent No.4 passed Award dated 02.03.2012. Hence, initial notifications issued by the respondents are declared as illegal and

consequential proceedings will go and there is no need to question the Award passed by respondent No.4.

4.1. In support of his contentions, he relied upon the following judgments.

4.2. In **Rajahmundry Electric Supply Corporation Ltd., v. A.Nageshwara Rao and others**[1], the Hon'ble Supreme Court held at para 5 that:

> "This point is not dealt with in the judgment of the trial court, and the argument before us is that as the objection went to the root of the matter and struck at the very maintainability of the application, evidence should have been taken on the matter and a finding recorded thereon. We do not find any substance in this contention. Though the objection was raised in the written statement, the respondents did not press the same at the trial, and the question was never argued before the trial Judge. The learned Judges before whom this contention was raised on appeal declined to entertain it, as it was not pressed in the trial court, and there are no grounds for permitting the appellant to raise it in this appeal. Even otherwise, we are of opinion that this contention must, on the allegations in the statement, assuming them to be true, fail on the merits. Excluding the names of the 13 persons who are stated to be not members and the two who are stated to have signed twice, the number of members who had given consent to the institution of the application was 65. The number of members of the Company is stated to be 603. If, therefore, 65 members consented to the application in writing, that would be sufficient to satisfy the condition laid down in

[1] AIR 1956 SC 213

section 153-C, subclause (3)(a) (i). But it is argued that as 13 of the members who had consented to the filing of the application bad, subsequent to its presentation, withdrawn their consent, it thereafter ceased to satisfy the requirements of the statute, and was no longer maintainable. We have no hesitation in rejecting this contention. The validity of a petition must be judged on the facts as they were at the time of its presentation, and a petition which was valid when presented cannot, in the absence of a provision to that effect in the statute, cease to be maintainable by reason of events subsequent to its presentation. In our opinion, the withdrawal of consent by 13 of the members, even if true, cannot affect either the right of the applicant to proceed with the application or the jurisdiction of the court to dispose of it on its own merits."

4.3. In **Competent Authority v. Barangore Jute Factory and others**[2], the Hon'ble Supreme Court held at paras 8, 9, 11 and 14 that:

"8. The absence of plan also renders the right to file objections under Section 3C(1) nugatory. In the absence of a Plan, it is impossible to ascertain or know which part of acquired land was to be used and in what manner. Without this knowledge no objections regarding use of land could be filed. Since the objection regarding use of the land had been given up by the writ petitioners, we need not go any further in this aspect. We would, however, like to add that unlike Section 5A of the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 4 of the said Act, Section 3C(1) of the National Highways Act gives a very limited right to object. The objection can be only to the use of the land under acquisition for purposes other than those under sub-section

[2] (2005) 13 SCC 477

3A(1). The Act confers no right to object to acquisition as such. This answers the argument advanced by the learned counsel for the NHAI that failure to file objections disentitles Writ Petitioners to object to the acquisition. The Act confers no general right to object, therefore, failure to object becomes irrelevant. The learned counsel relied on the judgment of this court in Delhi Administration vs. Gurdip Singh Uban & Others [(1999) 7 SCC 44]. In our view, this judgment has no application in the facts of the present case where right to object is a very limited right. The case cited is a case under the Land Acquisition Act, 1894 which confers a general right to object to acquisition of land under Section 5A. Failure to exercise that right could be said to be acquiescence. The National Highways Act confers no such right. Under this Act there is no right to object to acquisition of land except on the question of its user. Therefore, the present objection has to be decided independently of the right to file objections. De hors the right to file objection, the validity of the Notification has to be considered. Failure to file objection to the notification under Section 3C, therefore, cannot non-suit the Writ Petitioners in this case.

9. The learned counsel supporting the acquisition submitted that the delay in filing the Writ Petition is fatal to the case of land owners. It is true that 11th June, 1998 Notification was challenged only in September, 2001 by filing the Writ Petition. But if the Notification violates the very statute from which it derives its force, will delay in challenging it clothe it with legitimacy? The Act requires the Notification to be issued in a particular manner with brief particulars of land being acquired. The Notification in this case fails to meet this requirement. We have held it to be bad in law. It has no legs to stand. The conduct of the opposite party cannot be used to make it stand. Moreover, the Writ Petitioners have explained the reasons for the delay in filing the Writ Petition. The Company which owns the lands had been de-registered. It is a Company registered in the U.K. It had

to be revived. Revival came in mid-2001 whereafter the action was taken. Thus we find no merit in the argument about delay in challenging the Notification rendering the challenge liable to be rejected.

11. About the argument based on vesting of the land in the Central Government, it is to be seen that if the initial Notification is bad, all steps taken in pursuance thereof will fall with it. Vesting under Section 3D(2) arises on a declaration by the Central Government under Section 3D(1).The declaration is the result of disposal of objections under Section 3C. Each step is a consequence of earlier step and in that sense all the steps are linked to initial Notification for acquisition under Section 3A(1) and (2). This initial Notification has been held to be not in accordance with law. When the foundation goes rest of the edifice falls. The invalid Notification under Section 3(A) renders all subsequent steps invalid. Therefore, vesting of land in the Central Government in the present case cannot be said to be lawful and it does not advance the case of the Competent Authority or the NHAI. Taking possession of the land is yet another step in the same sequence and is again subject to the initial Notification being held valid. The initial Notification having been invalidated, there can be no legal or valid vesting of land in the favour of the Central Government.

14. Having held that the impugned notification regarding acquisition of land is invalid because it fails to meet the statutory requirements and also having found that taking possession of the land of the writ petitioners in the present case in pursuance of the said notification was not in accordance with law, the question arises as to what relief can be granted to the petitioners. The High Court rightly observed that the acquisition of land in the present case was for a project of great national importance, i.e. the construction of a national highway. The construction of national highway on the acquired land has

already been completed as informed to us during the course of hearing. No useful purpose will be served by quashing the impugned notification at this stage. We cannot be unmindful of the legal position that the acquiring authority can always issue a fresh notification for acquisition of the land in the event of the impugned notification being quashed. The consequence of this will only be that keeping in view the rising trend in prices of land, the amount of compensation payable to the land owners may be more. Therefore, the ultimate question will be about the quantum of compensation payable to the land owners. Quashing of the notification at this stage will give rise to several difficulties and practical problems. Balancing the rights of the petitioners as against the problems involved in quashing the impugned notification, we are of the view that a better course will be to compensate the land owners, that is, writ petitioners appropriately for what they have been deprived of. Interests of justice persuade us to adopt this course of action."

4.4. In **G. Simhagiri v. Government of A.P. and others**[3], the Hon'ble Supreme Court held at para 34 that:

"The contention that, in view of the subsequent proceedings dated 13.12.2004 not having been challenged, the order in C.A.No.6409 of 2004 could not have been challenged must only be noted to be rejected. The proceedings of the Engineering-in-Chief dated 13.12.2004 was in purported compliance of the order of the Tribunal in O.A.No.6409 of 2004. Since the order of the Tribunal, in O.A.No.6409 of 2004, is itself under challenge in these batch of writ petitions, failure to challenge the consequential proceedings dated 13.12.2004 is of no consequence. The contention that the order of the Tribunal did not decide the rights of parties does not necessitate detailed

[3] 2007 (5) ALD 171

examination. The power and duty of the High Court under Article 226/227 of the Constitution of India is essentially to ensure that Courts and Tribunals, inferior to it, have done what they are required to do in law. The High Court would, ordinarily, interfere in cases where the subordinate Courts or Tribunals have acted contrary to law, erroneously assumed or have acted beyond their jurisdiction or where the orders have resulted in manifest injustice. Achutananda Baidya v. Prafulla Kumar Gayan ; State of A.P. v. Hanumantha Rao . In the present case the Tribunal has acted contrary to the provisions of the Administrative Tribunals Act and the rules made thereunder in allowing the O.As. at the admission stage without notice to the respondents and without giving them an opportunity of submitting their reply to the application and of being heard thereafter."

Submissions of learned Government Pleader for respondent No.4:

5. Learned Government Pleader appearing for respondent No.4 submits that the respondent authorities after following the due procedure as contemplated under the provisions of the Act passed Award on 02.03.2012 and the learned Single Judge had rightly dismissed the writ petition. There are no grounds in the writ appeal to interfere with the impugned order passed by the learned Single Judge.

Analysis:

6. Having considered the rival submissions made by the respective parties and after perusal of the material available on

record, it reveals that the respondent authorities have issued notification on 14.12.2010 under sub-section (1) of Section 3A of the Act for acquisition of the lands to an extent of Ac.22.24 gts. including the appellants' lands for the public purpose i.e., for construction of building (widening/four/six-laning, etc.) maintenance, management and operation of National Highway No.9 on the stretch of land from km. 40.000 to km 62.290 (Hyderabad - Vijayawada Section) in Nalgonda District in the State of Andhra Pradesh, presently the State of Telananga. Thereafter, the respondent authorities have issued notification under Section 3D of the Act on 27.08.2011 and Section 3G(3) notification on 02.12.2011 and subsequently, passed Award on 02.03.2012.

7. It appears from the record that pursuant to the notification dated 14.12.2010, the appellants have not submitted any objections/applications. Respondent No.3 conducted enquiry under Section 3C of the Act. The appellants have not appeared during the course of enquiry. Thereafter, respondent No.4 exercising the powers conferred under the Act issued 3D(1) notification on 27.08.2011 and also issued notification under Section 3G of the Act on 02.12.2011. Questioning the notification dated 02.12.2011 only, the appellants filed W.P.No.3087 of 2012.

It further reveals from the record that during pendency of the writ petition, respondent No.4 had passed Award on 02.03.2012 and paid the compensation to all the land owners. When the appellants have refused to receive the same, the said amounts were deposited before the Senior Civil Judge's Court, Bhongir.

8. It is pertinent to mention here that the appellants have not questioned the Award dated 02.03.2012. The core contention of the learned counsel for the appellants is that the lands of the appellants were acquired by the respondent authorities for the benefit of respondent No.5 and as per clause 4.10.1 of the Concession Agreement entered into by respondent No.2 with respondent No.5, respondent No.5 has to acquire the land at his own cost and risk and the acquisition made by the respondent authorities for the benefit of respondent No.5, amounts to colourable exercise of the powers, which is not tenable under law on the ground that in the notification dated 14.12.2010, the respondent authorities have specifically mentioned that the subject lands are required for the purpose of construction of building (widening/four/six-laning, etc.), maintenance, management and operation of National Highway No.9 on the stretch of land from km. 40.000 to km.62.290 from Hyderabad to Vijayawada. The

construction of toll plaza and maintenance is required to maintain the National Highway and the same is for public purpose only.

9. It is not the case of the appellants that the mandatory procedure prescribed either under the provisions of the Act or under the Rules for acquisition of subject land has not been followed. It is noteworthy that during the pendency of the writ petition, respondent No.4 passed an Award on 02.03.2012. In spite of being aware about passing of the Award, the appellants have not amended the relief claimed in the writ petition and have not chosen to challenge the Award, which has attained finality. In the absence of any challenge to the Award, it is not possible to grant any relief to the appellants. In **Mrs. Akella Lalitha v. Sri Konda Hanumantha Rao and another**[4], the Supreme Court held that *'It is well settled that the decision of a case cannot be based on grounds outside the pleadings of the parties and it is the case pleaded that has to be found. Without an amendment of the plaint, the Court was not entitled to grant the relief not asked for and no prayer was ever made to amend the plaint so as to incorporate in it an alternative case'.*

[4] 2022 SCC OnLine SC 928

10. Learned Single Judge having considered the provisions of the Act held that for the purpose of widening National Highway and for construction of buildings, maintenance, management and the operation of National Highway, it is competent for Government of India or any authorized person by the Government of India to acquire the land from private individuals on payment of suitable compensation and such acquisition is for the public purpose. Development, maintenance and management of the National Highways encompasses several aspects and from the reading of Section 16 of the Act, 1988, it is reasonable to assume that what is envisaged in the process of development of toll plaza is also covered by the functions entrusted to authority. Learned Single Judge further held that according to the respondents, land to an extent of Ac.22.24 gts. is acquired for the purpose of construction of toll plaza. Toll plaza includes 16 toll booths, control building, traffic aid post, medical aid post with quarters for the medical staff, vehicle rescue post, telecom system, main control block and administrative block, space for maintenance equipment and operation, place for storage of traffic signals, sign boards and other safety materials, workshops for maintenance, garage and repair shop, testing laboratory, parking place for large vehicles, space for

unloading and staking of over dimensional and over weight materials with the help of crane and also parking place for cranes, parking place for staff on duty, the visitors and also for installing weight in motion system at the approaches while the vehicles are in motion, strong room for the safe custody of the cash collected by way of toll, rest rooms for the staff and relieving staff and wash rooms, space for toll audit system etc. These are all essential requirements of a proper national highway and respondent No.5 cannot deviate from the designs already approved and utilize this land for any other purpose. Learned Single Judge while relying upon the judgments of Honb'le Supreme Court in **Sooraram Pratap Reddy and others v. District Collector, Ranga Reddy and others**[5], and **Nand Kishore Gupta and others v. State of Utter Pradesh and others**[6], held that there is no dispute that the National Highway is a work of immense public importance. A well laid National Highway establishes link to various parts of the country, enables fast moving of traffic resulting in curtailing travelling time, enables transportation of goods from one part of the country to another part. The project taken up by the respondent authority is conceived by the authority as an

[5] (2008) 9 SCC 552
[6] (2010) 10 SCC 272

instrumentality of the State with an intention to expand the existing National Highway and to provide better amenities to the road users. The concessionaire was chosen only to implement the project and was to be implemented on the basis of DBFOT. This, after the operating period is over, the entire assets get transferred to the authority. The land acquired remains with the Government of India. For all the activities mentioned in Section 16 of the Act, the land acquired by the authority is treated as for 'public purpose'. The toll plaza is part of expansion and modernization of National Highway.

11. It is already stated supra that acquisition of lands of the appellants and others is for the public purpose only and there is no procedural infirmity or irregularity committed by the respondents while acquiring the lands of the appellants as well as others pursuant to the notification dated 14.12.2010 and passed Award dated 02.03.2012 and taken possession of the subject properties by depositing compensation of the appellants before the concerned Civil Court. Hence, this Court does not find any ground to interfere with the impugned order passed by the learned Single Judge while exercising the powers conferred under Section 15 of the Letter Patent.

12. For the foregoing reasons, the writ appeal is dismissed without costs.

Miscellaneous applications pending, if any, shall stand closed.

SD/-T. KRISHNA KUMAR
DEPUTY REGISTRAR

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SECTION OFFICER

To,

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2. Two CCs to GP FOR LAND ACQUISITION, High Court for the State of Telangana at Hyderabad. [OUT]
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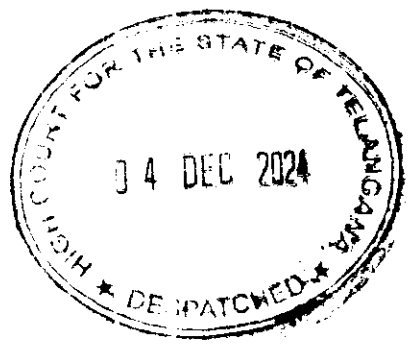
HIGH COURT

DATED:21/10/2024



JUDGMENT

WA.No.66 of 2014

DISMISSING THE WRIT APPEAL WITHOUT COSTS

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