
(2013) 12 AP CK 0071

Andhra Pradesh High Court

Case No: Writ Petition No. 3087 of 2012

Sri Bhatharaju Shankaraiah and
Others

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision: Dec. 24, 2013

Citation: (2014) 3 ALD 170 : (2014) 3 ALT 790

Hon'ble Judges: P. Naveen Rao, J

Bench: Single Bench

Advocate: P. Venugopal, for the Appellant; S.S. Varma for Respondents 1 to 3,
Government Pleader for Revenue for Respondent No. 4 and Sri K.S. Gopala Krishnan, for
the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Naveen Rao, J.

Petitioners, who are ten in number, are the owners of agricultural lands in Sy. Nos. 554 and 611 of Panthangi Village, Choutuppall Mandal, Nalgonda District. Petitioners own different extent of lands as mentioned in a table in para-3 of the affidavit. This writ petition is instituted challenging the notification dated 02.12.2011 issued u/s 3G of the National Highways Act, 1956 (for short, "the Act, 1956"). Heard Sri P. Venugopal, counsel for the petitioners, Sri. S.S. Varma, counsel for respondents 1 to 3, Government Pleader for respondent No. 4 and Sri K.S. Gopala Krishnan counsel for respondent No. 5.

2. The National High Way Authority of India (for short, the authority) has entrusted the work of widening the national high way No. 9 from KMs 40.000 to KMs 221.000 on the Hyderabad-Vijayawada Section by four laning and subsequently to six laning thereon on the basis of Design, Build, Finance, Operate and Transfer (DBFOT) to the consortium comprising GMR Infrastructure Limited and Punj Lloyed Limited (5th

respondent). As per the concession agreement, the 5th respondent is also required to build toll plazas.

3. It is the responsibility of the authority to acquire the land, which is required for the purpose of widening the national high way and to make provision for required infrastructure for smooth operation and maintenance of the high way. Section 3A notification was issued on 14.12.2010. The notification was published in Hindu Daily Newspaper (English) and Sakshi Daily Newspaper (Telugu) on 02.2.2011. Section 3D notification was issued on 27.08.2011. Section 3G(3) notification was published in the Hindu and Sakshi newspapers on 02.12.2011. The award is made on 02.03.2012. The lands of the petitioners are also acquired in the process. The place where lands of petitioners are located, a toll plaza was to come up. As petitioners refused to receive compensation, the same is deposited in the Court of Senior Civil Judge, Bhongir. Construction of the toll plaza at KM 60/650 as envisaged in the concession agreement commenced in the year 2011.

4. The grievance of the petitioners stems from their apprehension that the lands of the petitioners are acquired by the authority at the behest of the 5th respondent who intend to develop the said land for the purpose of building malls, recreation centers, swimming pools etc. which are purely commercial projects, totally unconnected with the high way. Petitioners, therefore, contend that invocation of provisions of the Act, 1956 was illegal for the purpose of commercial development of the said property by the 5th respondent.

5. The authority and 5th respondent deny the allegation that the land of the petitioners is acquired for the purpose of construction of Malls, recreation centers etc., by the contractor. It is the assertion of the 2nd respondent authority as reinforced by the assertion of the 5th respondent that the land of the petitioners is acquired for public purpose as per the mandate of section 3A of the Act, 1956. In this stretch, where the lands of the petitioners are located, Toll Plaza was to be constructed as per the road development plan envisaged by the authority. Fifth respondent is required to develop the area around toll plaza to provide facilities like medical staff quarters, first aid post, traffic control building, service block, weigh bridge, vehicle parking, etc. Since 16 toll-booths are required to accommodate, eight on either side, wider road is required in addition to construction of toll collection booths etc., and therefore at the place where the toll plaza is envisaged the authority requires more land than other places on the national highway stretch. Thus, Ac. 22.24 guntas of land acquired, which includes the lands owned by the petitioners, is for the development of toll plaza and ancillary constructions required as stated supra.

6. By a side wind, to bolster the contentions of the petitioners that land of petitioners acquired by the authority is for the purpose of 5th respondent, learned counsel Sri P. Venugopal pressed into service provisions in Clause 4.10.1 of the Concession Agreement entered into by the 2nd respondent with the 5th

respondent. This clause envisages construction of operation and maintenance centers, either at the toll plaza or at any other location along the highway as identified by the concessionaire. For the establishment of such operation and maintenance centers, the concessionaire has to acquire the land at his own cost and risk. The operation and maintenance center would have following minimum facilities:

- i) Main control center and Administrative facilities,
- ii) Equipment for operation and maintenance and storage space for them
- iii) Storage space for equipment and material for traffic signs and markings
- iv) workshop
- v) General garage and repair shop

7. Learned counsel, therefore, contends that the land which is acquired by invoking provisions of Act, 1956 cannot be utilized by the concessionaire for the above purposes. This is categorically denied by respondents. Standing counsel for the authority contends that the assets to be built as per said clause are meant for use by concessionaire, whereas the assets to be built around toll plaza are meant for road users and ancillary to toll collection. The clause 4.10.1 of Concession agreement refers to permanent structures required by the concessionaire for the purpose of its establishment of offices and maintenance wings during the period of subsistence of agreement. They can be located at the choice of contractor and those assets are owned by the contractor. They are not transferable. For the said purpose, contractor has to buy the land at own cost.

8. The issue for consideration in this writ petition is whether the lands of the petitioners acquired by the 2nd respondent are for public purpose as envisaged by the Act, 1956, read with Act, 1988?

9. Before considering the issue it is appropriate to note that no objections are filed by the petitioners against Section 3A notification. They did not appear before the competent authority during Section 3C enquiry. They allowed the proceedings to be concluded and a notification is issued by the Government in exercise of power u/s 3D of the Act, 1956 and award is also passed. The award is not under challenge. Initially what is under challenge is order u/s 3G, which is nothing but determination of compensation payable. By way of amendment petitioners seek to challenge Section 3A notification. Lands of several persons were acquired and they were paid compensation. Except petitioners, who are few in number, there was no grievance on the purpose for which land is acquired.

10. In support of his contention that the acquisition of petitioners lands is not meant for public purpose, learned counsel Sri P. Venugopal placed on record, site maps, photographs and a C.D. and placed reliance on the following decisions:

- i. [Nand Kishore Gupta and Others Vs. State of U.P. and Others,](#)
- ii. [Dano Vaccines and Biological \(P\) Ltd., Hyderabad and another Vs. Government of India and another,](#)
- iii. [Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others,](#)

11. To appreciate the contentions of the petitioners and respondents, it is useful to consider the relevant provisions of the Act 1956, as also the National Highways Authority of India Act, 1988 (for short, "the Act, 1988). Section 16 of the Act 1988, provides functions of the Authority established under the Act. According to section 16 of the Act, 1988 functions of the Authority is to develop, maintain and manage the national high ways. As per section 16(2) of the Act, such functions include, survey, development, maintenance and management of high ways; construct offices or workshops; construct residential buildings and townships for its employees; regulate and control the plying of vehicles; provide such facilities and amenities for the users of the high ways. Section 16(2)(h) of the Act, 1988 vests power in authority to engage, or entrust any or all of its functions to any person on such terms and conditions as may be prescribed. Thus, all the functions as enumerated u/s 16(1) and (2) can be entrusted to any other person by the authority. According to Section 13 of the Act, 1988, any land required by the authority for discharging its functions under this Act be deemed to be land needed for a public purpose.

12. For the purpose of building, maintenance, management and the operation of a national high way, 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.

13. 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. The 5th respondent cannot deviate from the designs already approved and utilize this land for any other purpose. It is also the categorical assertion of the authority and 5th respondent.

14. At a first blush there appears merit in the submissions of learned counsel Sri P. Venugopal, but a closer look would dispel the myth so created. The various constructions proposed in this stretch of national highway is part of toll plaza and is permanent establishment and finally vests with the authority after the period of contract. The ownership of land is never transferred. In addition, the contractor may require sufficient space for his administrative office set up, maintenance workshops for his vehicles, storage space for materials, residential quarters for his staff etc., which are all essential for the contractor to establish for proper upkeep of the highway. For all this, it is the responsibility of the 5th respondent to acquire land and establish them. They can be located anywhere as per the choice of the contractor. Assets built by the 5th respondent as envisaged in Clause 4.10.1 of concessionaire agreement remains with the 5th respondent even after the operating period. What is referred to by learned counsel for petitioners is meant for this purpose.

15. As noticed above, initial challenge in the writ petition was order in notification, dated 02.12.2011 which was u/s 3G of the Act, 1956. After counters are filed and objections are raised on maintainability of writ petition, petitioners sought to amend the prayer in the writ petition by praying to challenge Section 3A notification dated 14.12.2010 and also to raise additional grounds. W.P.M.P. No. 33123 of 2012 and W.P.M.P. No. 39240 of 2013 are filed. These petitions are strenuously opposed by respondents. Respondents contend that all this is intend to drag on the litigation and respondents are subject to severe constraints due to pendency of writ petition. It is also contended that these pleas were available when writ petition was instituted and are not new pleas which are discovered later. Submissions are made on validity of Section 3A notification. Amendment of prayer and permission to raise additional grounds are granted. I have given my anxious consideration to the contentions urged on behalf of the petitioners and respondents on the validity of Section 3A notification also.

16. The photographs and the video presented on behalf of the petitioners does not come to the aid of the petitioners. The video and photographs only show the present stage of utilization of land at the disputed site. Except for the toll plaza and small building, no other constructions were made. The plan enclosed to the counter filed by the respondents was the plan as originally envisaged and according to the said plan, several buildings have to be constructed, but could not be taken up because of the pendency of this writ petition.

17. In [Sooraram Pratap Reddy and Others Vs. District Collector, Ranga Reddy Distt. and Others](#), Supreme Court explained what constitutes "public purpose". The

Supreme Court negated the challenge made therein against the acquisition of lands owned by the individuals for an integrated development project taken up by the State Government. Supreme Court held as under:

In our judgment, the respondents are right in submitting that in case of integrated and indivisible project, the project has to be taken as a whole and must be judged whether it is in the larger public interest. It cannot be split into different components and to consider whether each and every component will serve public good. A holistic approach has to be adopted in such matters. If the project taken as a whole is an attempt in the direction of bringing foreign exchange, generating employment opportunities and securing economic benefits to the State and the public at large, it will serve public purpose.

It is clearly established in this case that the infrastructure development project conceived by the State and executed under the auspices of its instrumentality (APIIC) is one covered by the Act. The joint venture mechanism for implementing the policy, executing the project and achieving lawful public purpose for realizing the goal of larger public good would neither destroy the object nor vitiate the exercise of power of public purpose for development of infrastructure. The concept of joint venture to tap resources of private sector for infrastructural development for fulfillment of public purpose has been recognized in foreign countries as also in India in several decisions of this Court.

The entire amount of compensation is to be paid by State agency (APIIC) which also works as nodal agency for execution of the project. It is primarily for the State to decide whether there exists public purpose or not. Undoubtedly, the decision of the State is not beyond judicial scrutiny. In appropriate cases, where such power is exercised mala fide or for collateral purposes of the purported action is dehors the Act, irrational or otherwise unreasonable or the so-called purpose is "no public purpose" at all and fraud on statute is apparent, a writ court can undoubtedly interfere. But except in such cases, the declaration of the Government is not subject to judicial review. In other words, a writ court, while exercising powers under Articles 32, 226 or 136 of the Constitution, cannot substitute its own judgment for the judgment of the Government as to what constitutes "public purpose".

18. Following the said decision, the similar challenge against acquisition of land of individuals for construction of Yamuna Expressway is rejected in [Nand Kishore Gupta and Others Vs. State of U.P. and Others](#). To reject the contentions of the claimants, Supreme Court relied on the earlier decision in Sooraram Pratap Reddy. Distinction sought to be canvassed that acquisition was not for the public purpose and the work was meant for the use by the public was negated.

19. As held by the Supreme Court in Sooraram Pratap Reddy, the scope of interference by the writ court against land acquisition proceedings is very limited and Court can interfere only if it is proved that the acquisition was unlawful,

unwarranted, mala fide, fraud on statute and taken up in colourable exercise of power. None of these parameters are satisfied in the present case.

20. There is no dispute that the national high way is a work of immense public importance. A well laid national high way establishes link to various parts of the country, enables fast moving of traffic resulting in curtailing traveling 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 instrumentality of the State with an intention to expand the existing national high way and to provide better amenities to the road users. Toll plazas are envisaged as part of modernization of road network. Such toll plazas are located at various places on the national highways. All toll plazas have similar facilities. The concessionaire was chosen only to implement the project and was to be implemented on the basis of design, built, finance, operate and transfer. Thus, 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, 1988, the land acquired by the authority is treated as for "public purpose". The toll plaza is part of expansion and modernization of national highway.

21. In the facts of this case, therefore, it cannot be said that the acquisition of lands of the petitioners is not for the public purpose. There is no procedural infirmity or illegality, much less grave, warranting interference by this Court. Hence, writ petition is liable to be dismissed. Accordingly, this writ petition is dismissed. No costs. In view of dismissal of writ petition, no orders are necessary in W.V.M.P. No. 3075 of 2013. Hence, W.V.M.P. No. 3075 of 2013 is closed.