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Apsrtc Vs. Revenue Divisional Officer/Land Acquisition Officer and anr.

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Court : Andhra Pradesh

Decided On : Jul-27-2004

Reported in : AIR2005AP128; 2004(5)ALD1; 2004(4)ALT704

Judge : B. Sudershan Reddy and ;K.C. Bhanu, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 47; Land Acquisition Act, 1894 - Sections 18, 23(1A) and 23(2); [Constitution of India](#) - Article 226

Appeal No. : CMP No. 11759 of 2004

Appellant : Apsrtc

Respondent : Revenue Divisional Officer/Land Acquisition Officer and anr.

Advocate for Def. : Government Pleader for Respondent No. 1

Advocate for Pet/Ap. : A.V. Sivaiah, SC

Disposition : Petition dismissed

Judgement :

B. Sudershan Reddy, J.

1. The Andhra Pradesh State Road Transport Corporation (hereinafter referred to as 'the Corporation') filed these applications seeking leave of this Court to file a review petition, to condone the delay of 5509 days in filing the review petition and

to review the judgment dated 24.2.1989 passed in A.S. No. 1582 of 1982 by a learned Single Judge of this Court. All these applications are being disposed of by a common order.

2. That in order to consider as to whether the petitioner-Corporation has made out any case requiring the interference of this Court to review the judgment rendered by this Court after a period of 15 long years, a few relevant facts may have to be noticed.

3. The petitioner-Corporation some time in June, 1974 placed a requisition with the Revenue Divisional Officer, Kurnool to acquire an extent of Acs.37.17 cents of land covered by Sy.Nos. 412, 413, 415, 416, 417, 418 and 430 etc., situated at Kallur Village of Kurnool Town for construction of a Bus Station. The requisition was processed resulting in publication of the notification under Section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') in the Official Gazette on 2.1.1975. The possession of the lands was taken as early as on 11.3.1977. The Land Acquisition Officer passed Award . No. 1 of 1979 dated 25.1.1979 in respect of Ac.2.03 cents of land covered by Sy.Nos. 415/2B and 417/A&B; etc. fixing the market value at Rs. 30,000/- per acre with attendant benefits as per the Act. The 2nd respondent-claimant is the owner of Ac.1.74 cents out of the said land admeasuring Ac.2.03 cents in respect of which the award has been passed by the Land Acquisition Officer.

4. The respondent-claimant sought for a reference under Section 18 of the Act and it was numbered as OP No. 140 of 1979 on the file of the II Additional Subordinate Judge, Kurnool. The learned Subordinate Judge vide the award and decree dated 4.2.1982 assessed the market value of the acquired land at Rs. 50,000/-per acre and accordingly granted enhanced compensation.

5. The Revenue Divisional Officer/ Land Acquisition Officer, Kurnool preferred AS No. 1643 of 1982 challenging the correctness of the award and decree made in O.P. No. 140 of 1979. The amounts were deposited on 11.10.1984 in the Court.

6. This Court by its judgment dated 23.2.1989 dismissed the appeal in A.S. No. 1643 of 1982 upholding the decision of the reference Court. The Court while

dismissing the appeal preferred by the Land Acquisition Officer, however, observed that in addition to the market value of the land, the claimant shall be entitled to additional amount calculated at 12% per annum from the date of publication of the notification under Section 4(1) of the Act till the date of award of the Collector, or the date of taking possession of the land whichever is earlier as provided for under Section 23(1-A) of the Amended Act 68 of 1984. This Court also took the view that in addition to the market value of the land, the claimant shall be entitled to solatium of 30% on such market value under Section 23(2) of the Act. That if the compensation is not deposited on or before taking possession of the land, the claimant shall be entitled to interest on such amount at the rate of 9% per annum from the date of taking possession only and if such a compensation or any part thereof is not paid or deposited within a period of one year from the date of taking possession, interest at the rate of 15% per annum shall be paid from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited as provided under Section 34 of the Act. However, so far as such payment of additional amount, solatium and interest is concerned, the Court observed that the same shall be subject to the decision of the Supreme Court.

7. The appeal in A.S. No. 1582 of 1982 filed by the claimant has come up for hearing before the same learned Judge on 24.2.1989 after the dismissal of the appeal filed by the State against the very same order and decree of the reference Court in O.P. No. 140 of 1979. The appeal filed by the claimant was allowed in part enhancing the compensation from that of Rs. 50,000/- per acre to Rs. 95,000/- per acre. It was further held that the claimant shall be entitled to all additional benefits as per the Amended Act.

8. The claimant pursuant to the judgment and decree in A.S. No. 1582 of 1982 dated 24.2.1989 filed an execution petition for realization of the decretal amount of Rs. 5,11,906/- for which the Revenue Divisional Officer filed a counter inter alia contending that the decree holder was not entitled to the benefit under Section 23(1-A) of the Act. The objections were overruled by the Executing Court by order dated 13.6.2002 directing the Land Acquisition Officer to deposit the amount. That order passed by the civil Court on 13.6.2002 has become final.

9. In the review petition filed along with the application seeking leave of this Court, the case of the Corporation is that this Court committed an error in enhancing the compensation from that of Rs. 50,000/-per acre to Rs. 95,000/- per acre. This Court having dismissed the appeal filed by the Land Acquisition Officer ought to have dismissed the appeal filed by the claimant also. The claimant played fraud by not bringing the factum of dismissal of the appeal preferred by the Land Acquisition Officer and had that fact been brought to the notice of the Court, the appeal preferred by the claimant also in all probability would have ended in dismissal. It is also the case of the Corporation that the Court committed an error in awarding interest at 9% per annum for one year and 15% per annum thereafter till the realization of the decretal amount since the enhanced rate of interest is payable from the date of amended act coming into force and not earlier to 30.4.1982. In' the instant case, draft declaration was published on 27.11.1975 and an award has come to be passed on 25.1.1979 and the reference Court enhanced the compensation by order and decree dated 4.2.1982 and accordingly the rate of interest is liable to be modified. The sum and substance of the case of the Corporation is that the claimant is not entitled to additional benefits as held by the Supreme Court in K.S. Paripoornan v. State of Kerala, : AIR 1995 SC1012 . The benefits under the provisions of the Amended Act are available only to the cases pending before the reference Court in respect of acquisition initiated prior to 1982.

10. The question that falls for consideration is whether leave is to be granted to the petitioner-Corporation by condoning the delay of 5509 days in filing the review petition and whether the petitioner is entitled to intrude and rake up the issue of correctness of the judgment of this Court rendered in AS No. 1582 of 1982 dated 24.2.1989 after a long lapse of more than 15 years.

11. That admittedly, the petitioner did not raise its little finger when the proceedings were pending in the reference Court and as well as in this Court. It did not participate in the proceedings. But the case of the Corporation is that it came to know about the proceedings resulting in dismissal of the objections raised by the Revenue Divisional Officer, by the Executing Court on 13.6.2002 only on 18.7.2002 when the Revenue Divisional Officer, Kurnool requested the Corporation to deposit certain amounts towards the expenditure for obtaining the

certified copies and to file review petitions in this Court in four matters including this matter. The amounts were accordingly paid to him by the Executive Engineer on 5.9.2002. No steps were taken by the Land Acquisition Officer to challenge the orders passed by the Executing Court dated 13.6.2002. No steps were taken to file review petitions. It is under those circumstances, the Corporation filed these applications.

12. In our considered opinion, these applications filed by the petitioner-Corporation are not only frivolous but speculative in their nature. Even according to the averments made in the affidavit filed in support of the applications, the entire decretal amount as per the decree in OP No. 140 of 1979 was already deposited on 11.10.1984 and only the amount to be deposited is towards the additional benefit as per the Amended Act for which the claimants are not entitled to, in view of the fact that the award passed by the Land Acquisition Officer was much earlier to the Amendment Act coming into force as held by the Supreme Court in Paripoornan's case (supra). It is difficult to believe that the petitioner had no knowledge about the dismissal of the appeal filed by the Land Acquisition Officer in A.S. No. 1643 of 1982 and as well as the order in the appeal preferred by the claimant in A.S. No. 1582 of 1982 on 24.2.1989. Even according to the averments made in the affidavit filed by the petitioner, it is stated that on 18.7.2002 itself, the Revenue Divisional Officer addressed a letter to the Corporation duly informing them about the order passed by the reference Court. It is even averred that the Land Acquisition Officer insisted to deposit the amount ordered by the Court in the execution petition as early as on 18.7.2002. In our considered opinion, no relief could be granted to the petitioner to come on record at this stage to review the judgment rendered by this Court as early as on 24.2.1989 i.e., to say after about 15 1/2 years.

13. Learned Counsel for the petitioner-Corporation relying upon the judgment of the Supreme Court in Neyvely Lignite Corpn. Ltd. v. Special Tahsildar (Land Acquisition), Neyvely, : AIR 1995 SC1004 , submitted that the petitioner-Corporation being the beneficiary is a person interested and entitled to participate in the enquiry to ensure that only just and proper compensation for the acquired land is paid. It is entitled to canvass the correctness of the award passed by the

Land Acquisition Officer as well as the reference Court. The reference Court ought to have impleaded it as a party. Since it was not impleaded as a party, it is entitled to come on record and challenge the decree and judgment of this Court even at this stage.

14. In Neyvely Lignite Corporation's case (*supra*), notification under Section 4(1) of the Act was published in the year 1975 acquiring a large extent of 5200 acres of land for the purpose of excavating inferior quality of the coal in South Arcot District in the State of Tamil Nadu. The awards were passed in the years 1977-80 under Section 11 of the Act. Dissatisfied therewith, the claimants sought and secured over 2000 references under Section 18 to the Civil Court. In some of the references, the Civil Court made awards and decrees. In the pending references, M/s. Neyvely Lignite Corporation Limited sought to be impleaded as a party respondent to adduce the evidence in fixing a proper compensation. The Civil Court dismissed the applications. The High Court in the revisions by judgment dated 16.2.1987 upheld the order of the civil Court. In the appeals filed by the State under Section 54 of the Act, the Corporation sought to be impleaded as a party respondent which were turned down holding that the Corporation is not a person interested. The Supreme Court after referring to its earlier decisions held that the beneficiary i.e., to say local authority or company or statutory authority 'is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. It flows from it that the beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the Court and file the appeal against the enhanced award and decree of the Civil Court under Section 26 or of the judgment and decree under Section 54 or is entitled to file writ petition under Article 226 and assail its legality or correctness. When the award made under Section 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the settled law that the conduct of the Collector or Civil Judge is amenable to disciplinary enquiry and appropriate action. These are very valuable and salutary rights. Moreover in the language of Order 1, Rule 10 CPC. in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and

effectual determination of binding just and proper compensation to the acquired land would be made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1, Rule 10 CPC. The denial of the right to a person interested is in negation of fair and just procedure offending Article 14 of the Constitution.' (Emphasis is of ours)

15. In *U.P. Awas Evam Vikas Parishad v. Gyan Devi*, : AIR 1995 SC724 , a Constitution Bench of the apex Court having elaborately considered the issue as to the entitlement of local authority or company for whom land is being acquired and its right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence, laid down the following principles:

1. Section 50(2) of the L.A. Act confers on a local authority for whom land is being acquired a right to appear in the acquisition proceedings before the Collector and the reference Court and adduce evidence for the purpose of determining the amount of compensation.

2. The said right carries with it the right to be given adequate notice by the Collector as well as the reference Court before whom acquisition proceedings are pending on the date on which the matter of determination of compensation will be taken up.

3. The proviso to Section 50(2) only precludes a local authority from seeking a reference but it does not deprive the local authority which feels aggrieved by the determination of the amount of compensation by the Collector or by the reference Court to invoke the remedy under Article 226 of the Constitution as well as the remedies available under the I.A. Act.

4. In the event of denial of the right conferred by Section 50(2) on account of failure of the Collector to serve notice of the acquisition proceedings the local authority can invoke the jurisdiction of the High Court under Article 226 of the Constitution.

5. Even when notice has been served on the local authority the remedy under Article 226 of the Constitution would be available to the local authority on grounds

on which judicial review is permissible under Article 226.

6. The local authority is a proper party in the proceedings before the reference Court and is entitled to be impleaded as a party in those proceedings wherein it can defend the determination of the amount of compensation by the Collector and oppose enhancement of the said amount and also adduce evidence in that regard.

7. In the event of enhancement of the amount of compensation by the reference Court if the Government does not file an appeal the local authority can file an appeal against the award in the High Court after obtaining leave of the Court.

8. In an appeal by the person having an interest in land seeking enhancement of the amount of compensation awarded by the reference Court the local authority should be impleaded as a party and is entitled to be served notice of the said appeal. This would apply to an appeal in the High Court as well as in this Court.

9. Since a company for whom land is being acquired has the same right as a local authority under Section 50(2), whatever has been said with regard to a local authority would apply to a company too.

10. The matters which stand finally concluded will, however, not be reopened.

16. In the case on hand, we are required to notice that admittedly the petitioner herein was not impleaded as a party-respondent in the reference by the reference Court. No notice as such has been issued by the reference Court to the petitioner nor the petitioner filed any application seeking its impleadment as a party respondent so as to enable it to adduce any evidence in the matter.

17. The question that falls for consideration is whether the matter, which stood, finally concluded is required to be reopened at the instance of the petitioner at this stage?

18. That as held by the apex Court in U.P. Awas Evam's case (supra), the local authority for whose benefit the land is acquired has a right to appear and adduce its evidence and that right is independent of the right that is available to the local authority to appear and adduce evidence before the Collector, the local authority

has a right to be impleaded as a party in the proceedings before the reference Court. The local authority is necessary for the decision of the question involved in the proceedings before the reference Court and it is a proper party in the proceedings. That at any rate, in the instant case, no application has been filed by the petitioner to implead itself in the reference.

19. The Supreme Court while adverting to the question whether the local authority for whose benefit the lands have been acquired is entitled to file an appeal with the leave of the Court challenging the correctness of the Award passed by the reference Court observed:

'In case the amount of compensation has been enhanced by the Court and no appeal is filed by the Government the local authority if adversely affected by such enhancement may file an appeal with the leave of the Court. This right of the local authority does not depend on its being impleaded as a party in the proceedings before the reference Court. Even if the local authority is not impleaded as a party before the reference Court it can file an appeal against the award of the reference Court in the High Court after obtaining leave if it is prejudicially affected by the award. In case the Government files an appeal against the enhancement of the award the local authority is entitled to support the said appeal and get itself impleaded as a party.'

20. In the instant case, admittedly the appeal in A.S. No. 1643 of 1982 was preferred by the Land Acquisition Officer at the instance of the petitioner-Corporation. That even before stay orders were granted the total amount in full satisfaction of the decree dated 4.2.1982 was deposited by the Corporation on 11.10.1984. That makes it clear that the Corporation was not only aware of filing the appeal by the State but the appeal itself was filed at the instance of the Corporation. The Corporation made no effort to support the appeal preferred by the State and got itself impleaded as a party. No doubt, in the appeal preferred by the claimant seeking further enhancement of the amount of compensation, the Corporation was not impleaded as a party. But the Corporation also did not make any effort to come on record.

21. In our considered opinion, the judgment rendered by the Supreme Court in U.P. Avas Evam's case (supra) in no manner supports the case of the petitioner. The petitioner's case does not fall under any of the situations envisaged and the principles laid down in the said decision.

22. The legal remedies that are available to a local authority for whose benefit the lands have been acquired, if it feels aggrieved by the determination of the amount of compensation by the Collector or the reference Court are (a) to challenge the determination of the amount of compensation by the Collector by invoking the remedy under Article 226 of the [Constitution of India](#). But in cases where the local authority has failed to appear in spite of service of notice, local authority can have no cause or grievance. It is a different matter altogether if the award is assailed on the grounds of mala fides or perversity and (b) by preferring appeal with the leave of the Court against the award of the reference Court. It can even get impleaded as a party in the appeal preferred by the State at its instance. It can come on record in the appeal filed in the High Court against the award of the reference Court by the person having an interest in the matter.

23. The case of the petitioner in the instant case does not fall in any one of those categories. Being fully aware of the appeal preferred by the State, the petitioner did not come on record. Obviously, it is also aware of the appeal preferred by the claimant and yet had not chosen to come on record. It could have impleaded itself as a party respondent. Non-impleadment of the local authority in the appeal preferred by the person having interest in the land does not render the judgment and decree of this Court void. The local authority should be impleaded as a party in the appeal preferred by the claimant and it is entitled to be served the notice in the said appeal so that it can defend the award of the reference Court and oppose the enhancement of compensation before the High Court. Non-impleadment of the local authority in the appeal preferred by the claimant per se does not render the appeal proceedings void. The only requirement is that this Court should allow when an application is filed by the local authority to come on record so that it can oppose any further enhancement of the compensation.

24. The petitioner having not availed any such legal remedies that were available to it in law and having slept over the matter ever since the land was acquired for its benefit in the year 1974, had chosen to file the present applications seeking reopening of a finally concluded matter, which in our considered opinion is not only misconceived but untenable and unsustainable in law. It had woke up from its deep slumber after a period of 15 years when the matter stood finally concluded vide the judgment of this Court in AS No. 1582 of 1982 dated 24.2.1989.

25. However, it was contended that the respondent-claimant while advancing arguments in AS No. 1582 of 1982 filed by him suppressed the factum of dismissal of AS No. 1643 of 1982 on 23.2.1989 and therefore, the judgment in A.S. No. 1582 of 1982 dated 24.2.1989 is vitiated by fraud. There is no element of fraud involved as such. The appeals were disposed of by the same learned Judge of this Court vide two separate judgments rendered on 23.2.1989 and 24.2.1989 respectively. That even if both the appeals were heard together, this Court could have as well dismissed the appeal preferred by the State and allowed the appeal filed by the claimant. It is true that it would have been desirable and proper that the appeals were disposed of together. But the fact remains that none of the parties requested the Court to dispose of both the appeals together. On that count, it cannot be said that the judgment is vitiated by any fraud. It is easy to level allegations of fraud but difficult to establish and sustain the plea.

26. However, the learned Counsel contended that the decree of this Court as regards additional benefits as per the provisions of the Amended Act is nullity and can be raised at any stage even in the execution proceedings. It is brought on record that the Land Acquisition Officer resisted the execution petition raising more or less similar objections. However, the Executing Court rejected the objections and allowed the execution petition by its order dated 13.6.2002. That as against the said order which is common in its nature, the Revenue Divisional Officer filed CRP No. 2171 of 2003 in this Court and the same was dismissed by this Court vide order dated 12.9.2003. We cannot go into the correctness of the Order passed in the civil revision petition by this Court. The plea that the decree is a nullity had already been raised in the Executing Court unsuccessfully and the same plea cannot be permitted to be raised once again in these proceedings.

27. For the aforesaid reasons, we are not inclined to condone the delay of 5509 days in filing the review petition and grant any leave to file the review petition. In the result, the application to condone the delay and as well as to grant leave to file the review petition shall stand dismissed. Consequently, the review petition also shall stand dismissed with costs.

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