

A.P.Indstl.Infrastructure Corpn.Ltd vs Chinthamaneni Narasimha Rao & Ors on 15 September, 2011

Equivalent citations: AIR 2011 SUPREME COURT 3558, 2012 (12) SCC 797, 2011 AIR SCW 5047, 2012 (1) AIR JHAR R 540, AIR 2011 SC (CIVIL) 2301, (2012) 1 LANDLR 477, (2011) 114 REVDEC 843, (2011) 10 SCALE 460, (2011) 4 CGLJ 20, (2012) 1 ALD(CRL) 104, (2011) 106 ALLINDCAS 24 (SC), (2011) 2 CLR 776 (SC), (2011) 89 ALL LR 235, (2012) 2 ALL WC 1109, (2011) 4 CURCC 104

Author: Anil R. Dave

Bench: Anil R. Dave, Mukundakam Sharma

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NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 304-305 OF 2005

A.P. Industrial Infrastructure
Corpn. Ltd.

.....Appellant.

Versus

Chinthamaneni Narasimha Rao & Ors.

.....Respondents

J U D G M E N T

ANIL R. DAVE, J.

1. Being aggrieved by the Judgment and Order dated 23rd July, 2001 in Writ Appeal No. 1337 of 1999 and Review W.A.M.P. No. 1822 of 2002 in Writ Appeal No. 1337 of 1999 dated 01st October, 2004 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad, these appeals have been filed by the original petitioners-

respondents herein, whose lands have been acquired by the State for a public purpose.

2. The facts giving rise to the present litigation in a nutshell are as under:

A notification under Section 4(1) of the Land Acquisition Act, 1894 (in short the 'Act') was issued on 27th August, 1993 for acquisition of land admeasuring 101 acres and 33 cents in and around Eluru town for a public purpose for setting up an Auto Nagar so as to develop the said land for industrial purpose. On 20th September, 1993 and 21st September, 1993, the said notification was published in two daily newspapers whereas on 29th September, 1993 the substance of the said notification was published in the locality where the land was situated. Looking into the urgency, under the provisions of Section 17 of the Act, an inquiry under Section 5 A of the Act was dispensed with. Thereafter notification with regard to the declaration under Section 6 of the Act was published on 8th October, 1993. A Writ Petition No. 5036 of 1994 was filed on 18th September, 1995 challenging the validity of the proceedings on the ground that the provision of Section 17 of the Act could not have been invoked for dispensing with the enquiry under Section 5A of the Act and in the said petition, the High Court of Andhra Pradesh had passed an interim order whereby the authorities were restrained from taking possession of the land in question. Ultimately the said petition was finally disposed of on 18th September, 1995 whereby the declaration under Section 6 had been quashed and it was directed to hold an enquiry under Section 5A of the Act.

In pursuance to the above order passed by the High Court, necessary enquiry under Section 5A of the Act was made, objections were invited and ultimately it was decided to acquire only 54 acres and 54 cents land out of the land in question admeasuring 101 acres and 33 cents. Declaration under Section 6 of the Act was thereafter published on 7th August, 1996.

After making declaration under Section 6 of the Act, Award was made on 7th January, 1998 and possession of the land in question was taken on 9th March, 1998. After possession of land in question was taken by the Land Acquisition Officer from the owners of the land, on 16th July, 1998, the Land Acquisition Officer handed over possession of the land in question to the present appellant-Corporation for a public purpose, for which the land in question had been acquired.

It is pertinent to note that after declaration under Section 6 of the Act made on 7th August, 1996 and after taking possession of the land in question on 9th March, 1998, writ petition No. 32806 of 1998 was filed in the High Court of Andhra Pradesh challenging the validity of declaration under Section 6 of the Act on the ground that the declaration was not made within the period prescribed under Section 6 of the Act.

By an order dated 27th August, 1999, the learned Single Judge dismissed the aforesaid writ petition after recording the fact that award was made on 7th January, 1998 and possession of the land in question had been handed over to the present appellant on 9th March, 1998. Moreover, the learned Single Judge also held that the declaration under Section 6 was made within the period stipulated under Section 6 of the Act.

Being aggrieved by the dismissal of the petition, the land owners-the present respondents filed Writ Appeal no. 1337 of 1999. The said Writ Appeal was allowed by an order dated 23rd July, 2001 whereby the order passed by the learned Single Judge dated 27th August, 1999 was quashed and set aside as it was held by the Division Bench of the High Court that the declaration under Section 6 of the Act was made beyond the period prescribed under Section 6 of the Act.

Being aggrieved by the said Judgment and Order, A.P. Industrial Infrastructure Corporation- the present appellant filed a Review petition being Review WAMP No. 1822 of 2002 in Writ Appeal No. 1337 of 1999 on 29th August, 2001 which was also dismissed by the Division Bench of the High Court by the impugned judgment and order on 01st October, 2004.

3. Being aggrieved by the above judgment and orders passed by the Division Bench of the High Court these appeals have been filed by the A.P. Industrial Infrastructure Corporation Ltd., which is an undertaking owned by the Government of Andhra Pradesh for whose benefit the land in question had been acquired.

4. The learned counsel appearing for the appellant mainly made two submissions: the first is with regard to the delay caused in filing the petition or initiation of litigation challenging the validity of the acquisition proceedings and the Second is with regard to delay caused in making the declaration under Section 6 of the Act. According to him the declaration was made within the period prescribed under Section 6 of the Act.

5. On the other hand, the learned counsel appearing for the land owners supported the reasons given by the Division Bench of the Andhra Pradesh High Court and submitted that the declaration under Section 6 was made beyond the period prescribed under Section 6 of the Act.

6. We have heard the learned counsel at great length. Several judgments were cited by the learned counsel so as to substantiate their cases. In our view there was substantial delay caused in filing the petition before the Andhra Pradesh High Court whereby the land acquisition proceedings had been

challenged by the land owners and, therefore, we would not like to go into other reasons and other submissions which pertain to delay causing making declaration under Section 6 of the Act.

7. It is not in dispute that Notification under Section 4 of the Act was issued on 27th August, 1993 and it was lastly published, in the locality where the land is situated, on 29th September, 1993. We have already referred to the earlier litigation and the objections filed by the land owners and decision with regard to the land acquisition officer and the Government Authorities for not acquiring the entire land, which was sought to be acquired at an earlier stage. Ultimately the land admeasuring 54 acres and 54 cents had been acquired out of the land in question admeasuring 101 acres and 33 cents . It is not in dispute that the Declaration under Section 6 was made on 7th August, 1996 and an award was made on 7th January, 1998. Though there is some dispute with regard to the fact of taking possession of the land, it is an admitted fact that atleast paper possession of the land in question was taken on 9th March, 1998 and possession was handed over to the appellant on 16th July, 1998.

8. Thus, it is an admitted fact that declaration under Section 6 of the Act was made on 7th August, 1996 and the Award was made on 7th January, 1998. A petition challenging the validity of the declaration under Section 6 of the Act on the ground that it was declared beyond the period specified under Section 6 of the Act was filed in November, 1998. In our opinion, the petition had been filed at a belated stage. If the land owners were really aggrieved by the declaration under Section 6 of the Act, they ought to have challenged the same immediately after the declaration under Section 6 was made.

For the reasons best known to them, they waited for more than two years. Award was made on 7th January, 1998 and even possession was taken on 9th March, 1998 and on 16th July, 1998, the possession was also handed over to the present appellant so that it can use the land in question for a public purpose for which it had been acquired.

9. The learned Single Judge duly recorded the fact that possession of the land in question was taken from the land owners on 9th March, 1998.

10. We see no reason for the land owners to wait for a few years for challenging the declaration made under Section 6 of the Act on the ground of delay. If the land owners had been really aggrieved, they ought to have challenged the proceedings immediately after declaration made under Section 6 of the Act.

11. This Court has held in several judgments that if the land owners are aggrieved by the acquisition proceedings, they must challenge the same atleast before an award is made and the possession of the land in question is taken by the government authorities.

It has been held in *Swaika Propeties (P) Ltd. & Another vs. State of Rajasthan & Others* [(2008) 4 SCC 695] as under:

"6. This Court has repeatedly held that a writ petition challenging the notification for acquisition of land, if filed after the possession having been taken, is not maintainable. In *Municipal Corpn. of Greater Bombay v. Industrial Development Investment Co. (P) Ltd.* (1996) 11 SCC 501 where K. Ramaswamy, J. speaking for a Bench consisting of His Lordship and S.B. Majmudar, J. held: (SCC p. 520, para 29) "29. It is thus well-settled law that when there is inordinate delay in filing the writ petition and when all steps taken in the acquisition proceedings have become final, the Court should be loath to quash the notifications. The High Court has, no doubt, discretionary powers under Article 226 of the Constitution to quash the notification under Section 4(1) and declaration under Section 6. But it should be exercised taking all relevant factors into pragmatic consideration. When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article 226. The fact that no third-party rights were created in the case is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

Similarly, in the case of *State of Rajasthan & Ors. vs. D.R. Laxmi & Ors.* [(1996) 6 SCC 445] following the decision of this Court in the case of *Municipal Corporation of Greater Bombay* (supra) it was held :

".... When the award was passed and possession was taken, the Court should not have exercised its power to quash the award which is a material factor to be taken into consideration before exercising the power under Article

226. The fact that no third party rights were created in the case, is hardly a ground for interference. The Division Bench of the High Court was not right in interfering with the discretion exercised by the learned Single Judge dismissing the writ petition on the ground of laches."

To the similar effect is the judgment of this Court in *Municipal Council, Ahmednagar & Another vs. Shah Hyder Beig & Ors.* [(2000) 2 SCC 48] wherein this Court, following the decision of this Court in *C. Padma and Others vs. Dy. Secy. to the Govt. of T.N. and Others* [(1997)2 SCC 627] held: (Shah Hyder case SCC p. 55, para 17) "17. In any event, after the award is passed no writ petition can be filed challenging the acquisition notice or against any proceeding thereunder. This has been the consistent view taken by this Court and in one of the recent cases (*C. Padma v. Dy. Secy. to the Govt. of T.N.* [(1997) 2 SCC 627]...."

12. Therefore, we are not referring to the other judgments, which have been cited by the learned counsel on the subject of validity of declaration made under Section 6 of the Act for the reasons that we are convinced that there was gross delay in challenging the validity of the acquisition proceedings.

13. It is also pertinent to note that according to the appellant, possession of the land in question had been handed over to the appellant-

Corporation on 16th July, 1998 and in view of the said fact, this Court had granted interim stay in favour of the appellant on 10th January, 2005 and an application made by the land owners for vacating the said stay had been rejected and it was directed to maintain status quo.

14. Looking to the facts of the present case and in the light of the law laid down by this Court, which has been referred to hereinabove, we firmly believe that the petition filed by the land owners was at a belated stage. For the said reason, we do not desire to interfere with the acquisition proceedings, which had been challenged after more than two years of declaration under Section 6 of the Act and on that ground alone we feel that appeals deserve to be allowed.

15. The impugned judgment and orders passed by the Division Bench of the High Court of Andhra Pradesh is quashed and set aside. The appeals are allowed with no order as to costs.

.....J. (Dr. MUKUNDAKAM SHARMA)J.
(ANIL R. DAVE) New Delhi September 15, 2011.