

**THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN  
AND  
THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**

**W.A. No. 344 of 2015**

**JUDGEMENT :** (Per the Hon'ble Mrs. Justice Surepalli Nanda)

1. Heard the learned Advocate General appearing on behalf of the Appellants and Sri Praveen Vyapari, learned Counsel for the Respondent.
2. This Appeal is preferred assailing the legality and validity of the Order dated 27-03-2012 passed by the learned Single Judge allowing W.P.No.16948 of 2005 filed by the Respondents.
3. Order dated 27-03-2012 passed in W.P.No.16948/2005 reads as under :

*"The petitioner purchased an extent of Acs.10.00 of land in survey No.161/2 of Gollapally Khurd Village, Shamshabad Mandal, Ranga Reddy District, from one Mohd. Ali, through registered sale deed, dated 09.08.1996. That land was originally assigned in favour of one Mr.Jagannath Singh, in his capacity as Freedom Fighter long ago, and thereafter, two transactions of sale have taken place, by the time the vendor of the petitioner purchased it. Vast extents of land in the villages of Gollapally, Ananthareddyguda,*

*Galvaguda and Maqtha Bahadur Ali of Shamshabad were identified for establishment of an International Air Port. While in respect of patta lands proceedings under the Land Acquisition Act, 1894 (for short 'the Act'), were initiated, ex-gratia was paid for the assigned lands. A notification under Section 4(1) of the Act was issued in respect of Acs.4.30 guntas of land owned by the petitioner. However, possession of the entire land of Acs.10.00 was taken over. The grievance of the petitioner is that he was not paid compensation for the remaining extent of Acs.5.10 guntas. The respondents filed counter-affidavit, admitting the fact that the land was assigned in favour of Jagannath Singh and that sale transactions have taken place thereafter. It is also stated that the entire land that was originally assigned to Jagannath Singh was affected, on account of the construction of Air Port. The reason for not initiating proceedings under the Act in respect of Acs.5.10 guntas of land is that there is an overlapping of survey numbers in the neighbouring villages. Heard learned counsel for the petitioner and learned Government Pleader for Land Acquisition. An extent of Acs.10.00 of land in survey No.161/2 was assigned in favour of a Freedom Fighter. After expiry of 10 years from the date of assignment, he became entitled to transfer, and accordingly, series of transfers took place since it was purchased by the petitioner in the year 1996. The respondents do not dispute that the entire extent of Acs.10.00 was taken over from the petitioner. The compensation was paid only in respect of Acs.4.30 guntas and for the remaining land it was denied, on the ground that there is overlapping of survey numbers of two different villages. Even if that is true, it cannot constitute basis for*

*denying the compensation to the petitioner. The situation of boundaries and maintenance of records is totally in the realm of the Revenue Department of the Government. The private individuals have no say in the matter. It is not as if there existed any uncertainty as to the manner in which the land accrued to the petitioner. The Government itself assigned Acs.10.00 of land to a freedom fighter and possession thereof was delivered. There did not exist any impediment of overlapping of survey numbers, when possession was delivered. The petitioner also purchased Acs.10.00 of land and the entire extent was taken over by the respondents. The mere existence of dispute of overlapping cannot be a ground to deny the compensation to the petitioner. Hence, the writ petition is allowed, and the respondents are directed to pay the compensation to the petitioner for the remaining extent of Acs.5.10 guntas in survey No.161/2, of Gollapally Khurd Village, shamshabad Mandal, Ranga Reddy District, on par with the compensation paid to him for Acs.4.30 guntas, without there being any necessity to issue fresh notifications under Sections 4(1) and 6 of the Act. This process shall be completed within a period of three months from the date of receipt of a copy of this order.*

*The miscellaneous petition filed in this writ petition also stands disposed of.*

*There shall be no order as to costs".*

4. From the above we find that the Respondent herein approached the Writ Court seeking a direction to declare the memo bearing No.B/138/2005, dated 31-05-2005 refusing the request of the Respondent for granting compensation in

respect of land to an extent of Ac.5.10 gts., forming part of Sy.No.161/2 of Village Gollapally Khurd, Shamshabad Mandal, Ranga Reddy District as illegal, unreasonable, arbitrary and unconstitutional offending the valuable right of the Respondent herein under Articles 14, 21, 300-A of the Constitution of India and further a direction directing the Appellants to notify the said extent of land and grant compensation in lieu of such acquisition. Learned Single Judge allowed the writ petition and directed the Appellants herein to pay the compensation to the Respondent for the remaining extent of Ac.5.10 gts., in Sy.No.161/2 of Village Gollapally Khurd, Shamshabad Mandal, Ranga Reddy District at par with the compensation paid to the Respondent for Ac.4.30 gts., without there being any necessity to issue fresh Notifications U/s.4(1) and (6) of the Act and the said process to be completed within a period of 3 months from the date of receipt of a copy of the order.

5. The Memo impugned in Writ Petition No.16948 of 2005 is extracted hereunder :

**"GOVERNMENT OF ANDHRA PRADESH**  
**REVENUE DEPARTMENT**

*Office of the Spl. Dy. Collector (LA) I.A.P. Shamshabad*

*No. B/138/2005*

*Dated : 31-05-2005*

**MEMO**

*Sub:- Land Acquisition – R.R. Dist. – Shamshabad  
Mandal – Gollapally Khurd Vg., Sy.No.161/2,  
Extent Ac.5.10 – Request for payment of  
compensation – Reg.*

*Ref:- Representation of Smt. Asma Khan, GPA Holder  
of Abu Mohammed Mustafa Kamal Khaleel, dt.  
31-05-2005.*

*\* \* \**

*Smt. Asma Khan is hereby informed that her request  
for paymet of compensation in respect of Sy.No.161/2,  
extent Ac.5.10 gts., of Gollapally Khurd Village, Shamshabad  
Mandal will not be considered as the extent is coming under  
overlapping with Sy.No.23 of Ananthareddiguda Village which  
is also Government land. The Supplementary Sethwar  
entered might have been for an extent of Ac.9-39 gts.,  
without verifying the Survey records of adjacent lands which  
are coming under overlapping.*

*Sd/-*

*Spl. Dy. Collector (L.A.)  
International Airport At Shamshabad*

**6. The main contentions advanced by the learned  
Advocate General appearing on behalf of the appellants  
are as follows :**

a) That the order of the Learned Single Judge is contrary  
to law and evidence on record since the Learned Judge failed  
to appreciate the fact that the notification under Section 4(1)  
of the Land Acquisition Act was issued only to extent of Ac.4-  
30 gts in Sy.No.161/2 and the compensation was paid

accordingly to the respondent/writ petitioner to the said extent.

b) That the learned Single Judge ought not to have directed the Appellants to pay the compensation for Ac.5-10 gts to the respondent/writ petitioner without there being any declaration that the said land falls in Survey No. 161/2 of Gollapally Khurd village and without there being any evidence on record substantiating the claim of the Respondent herein/writ petitioner that he is the owner of the said subject land since no material evidence to prove title and possession had been placed by the Respondent herein/writ petitioner.

c) That the learned Single Judge failed to appreciate the fact that the subject land to an extent of Ac.5.10 gts., of Gollapally Khurd Village, Shamshabad Mandal, in Sy.No.161/2 is Government land and therefore no notification is issued for the said subject land since the Petitioner is not the owner of the said land, and the Petitioner had no right, title over the said land and further the fact as borne on record that the land in Sy.No. 135/2, 161/2, 203/2 admeasuring Ac 5-34 gts, Ac.

4-30 gts, Ac 10-04 gts., respectively totalling Ac. 20-28 gts., only was acquired.

d) That the Learned Single Judge failed to consider the fact that the award was passed on 04.03.2005 with the consent of the respondent/writ petitioner to an extent of Ac.4-30 gts., in Sy.No. 161/2 of Gollapally Khurd Village Shamshabad Mandal, Ranga Reddy District.

e) The Learned Advocate General contended that the Writ Appeal should be allowed as prayed for duly setting aside the order dt. 27.03.2012 passed in W.P.No.16948 of 2005 and further W.P.No.16948 of 2005 has to be dismissed in *limini* since no notification is issued for acquiring the land to an extent of Ac.5.10 gts., in Sy.No.161/2 of Gollapalli Khurd Village other than the land to an extent of Ac.4.30 gts., for which notification was issued and compensation paid to the respondent herein/writ petitioner.

**7. The Respondent is represented by his GPA and the main contentions put-forth by the learned counsel for the respondent are as follows :**

a) That the Respondent/Writ Petitioner is the sole, absolute and exclusive owner and pattedar of the agricultural land measuring Ac. 10-00 Gts. in Sy.No.161/2 (herein referred to as "Schedule Land"), having purchased the same under a Registered Sale Deed No. 809 of 1996 dt: 09.08.1996 at Village Gollapally Khurd, Shamshabad Mandal, Ranga Reddy District.

b) That the respondent/Writ Petitioner's predecessor in title Mr. Mohd. Ali Ahmed had purchased the schedule land from Jugta Devi vide Doc. No. 827 of 1980 dt: 18-11-1980. The said Jugta Devi had in turn purchased the said land vide Doc. No. 414 of 1967 dt: 6-3-1967 from Jagannath Singh, who was the original assignee of schedule land having been assigned such land in the year 1961-62 being a Freedom Fighter, through vide File No. G1/25/1962 issued by the office of 1<sup>st</sup> Appellant and the relevant Revenue Records were duly updated.

c) That after the respective sales, the Revenue Record has been duly mutated and mutation proceedings have been issued by the competent authorities. The mutation in favour



of the Respondent/Writ Petitioner herein was caused by the MRO Shamshabad Mandal, vide Proceedings No. B/872/96, dt.30.1.1997 and the relevant entry in ROR was also caused issuing Pass Book and Title Deed in favour of the Respondent/Writ Petitioner.

d) That the 1<sup>st</sup> appellant had issued Gazette Notification for acquisition of lands for the purpose of Proposed International Air Port at Shamshabad vide No.G1/3408/2004 dated 22.7.2004 under Section 6 of the Land Acquisition Act. In the said notification the land to an extent of Ac.4-30 Gts., forming part of Sy.No. 161/2 belonging to the Respondent/Writ Petitioner was also notified for acquisition.

e) That the land in Sy.No. 161/2 of Gollapally Khurd village to an extent of Ac.4-30 Gts. was acquired and compensation for the said acquisition was also paid to the Respondent/Writ Petitioner in terms of the consent award made by the State Level Negotiation Committee.

f) That the 2<sup>nd</sup> appellant herein however had taken over the entire extent of schedule land after the notification was issued in the year 2004 without any lawful authority and the

respondent/Writ Petitioner thereafter made enquiries with regard to the handing over of possession to the extent of Ac.5-10 Gts. or for notifying the said extent so as to acquire the same and for granting compensation in lieu of such acquisition. However, the respondent/Writ Petitioner's request was not acceded to and therefore on 31.05.2005 the Respondent/Writ Petitioner made a representation to the 2<sup>nd</sup> Appellant giving all the facts and requested him to either redeliver the possession of the land to an extent of Ac.5-10 Gts. in Sy.No. 161/2 in Gollapally Khurd Village or in the alternative to notify the said land to an extent of Ac.5-10 Gts, by following due process of law and award compensation in respect thereof.

g) That the 2<sup>nd</sup> appellant, however, upon receiving the said representation issued a Memo to the Respondent herein/Writ Petitioner vide No. B/138/2005 dt: 31.05.2005 refusing the request of the respondent/Writ Petitioner for payment of compensation in respect of the land to an extent of Ac.5-10 Gts. in Sy.No.161/2 of Gollapally Khurd Village stating that such request cannot be considered in view of such extent

being under overlapping with Sy.No.23 of Anantareddyguda village which is Government land.

h) That the 2<sup>nd</sup> Appellant further stated in the said Memo that the Supplementary Shetwar in which the extent of land of the Respondent/Writ Petitioner is mentioned as Ac.9-39 Gts. is without verifying the Survey Records of adjacent lands which are under overlapping.

i) That the act on the part of the 2<sup>nd</sup> Appellant herein in taking over possession of the Respondent/Writ Petitioner's land and further issuing the said impugned Memo dated 31.05.2005 is wholly unlawful, illegal and without authority of law and without following due process of law.

j) That the refusal of the request of the Respondent/Writ Petitioner by the 2<sup>nd</sup> Appellant is ex-facie unreasonable, arbitrary, unlawful and unconstitutional offending the valuable right of the Respondent/Writ Petitioner under Articles 14, 21 and 300-A of the Constitution of India.

8. The Learned Counsel for the Respondent contended that the Writ Appeal should be dismissed since there is no illegality

in the order of the Learned Single Judge dt. 27.08.2012 passed in W.P.No.16948 of 2005.

## **9. PERUSED THE RECORD**

10. The Respondent/Writ Petitioner in the main affidavit filed in support of W.P.No.16948 of 2005 at para 5 averred as follows :

*"That the 1<sup>st</sup> Respondent herein above had issued Gazetted Notification for acquisition of lands for the purpose of Proposed International Airport at Shamshabad vide No.G1/3408/2004, dt. 22.07.2004 under Section 6 of the Land Acquisition Act. In the said Notification issued by the 1<sup>st</sup> Respondent herein above the land to an extent of Ac.4.30 gts., forming part of Sy.no.161/2 belonging to the Petitioner herein, was also notified for acquisition. The Original Notification referred to above is filed herewith as Doc.No.11. In the proceedings in pursuance of such notification undertaken by the 2<sup>nd</sup> Respondent herein above the land in Sy.No.161/2 of Village Gollapally Khurd, Shamshabad Mandal, R.R. Dist., to an extent of Ac.4-30 gts., was acquired and compensation for the said acquisition was also paid to the Petitioner in terms of the consent award made by the State Level Negotiation Committee".*

11. Paras 7 & 10 of the counter affidavit filed by the appellants in W.P.No.16948 of 2005 on 17.08.2005 read as under :

7. *"In reply to Para 6 it is submitted that only an extent (4.30) of land in Sy.No.161/2 has been acquired after due process of law and compensation was also paid for the same area. The averment made by the Petitioner that entire 10.00 acres of land taken from the Petitioner is in Sy.No.161/2 is denied. As a matter of fact only 4.30 gts., of land in Sy.No.161/2 was acquired and compensation was paid. In reply to representation made by the Petitioner on 31.05.2005, the Petitioner was informed that the request for payment of compensation for (5-10) deserves no consideration since the extent coming under overlapping with Sy.No.23 of Ananthareddyguda village which is also in Government land.*

10. *In reply to para 9, it is submitted that the Petitioner claim for payment of compensation for (5-10) land in Sy.No.161/2 is not tenable in law. The land in Sy.No.161/1 actually demarcated and survey record was prepared which clearly establish that only an extent of (4.30) is coming under acquisition to the extent of petitioner land the remaining (5-00) is Government land. Hence the petitioner is not entitled compensation for the land to an extent (5-10) as he is not rightful owner. The land is vested with Government".*

12. Further in the Additional Counter Affidavit filed by the Appellants in W.P.No.16948 of 2005 on 09.12.2011, paras 4 and 5 read as under :

4. *"The averment made by the Petitioner that entire Ac.10.00 gts., of land taken from the Petitioner in Sy.No.161/2 is denied. As a matter of fact only Ac.4.30 gts., of land in Sy.No.161/2 was acquired and compensation was paid. Since the extent coming under over lapping with Sy.No.23 of Ananthareddyguda Village which is also in Government Land.*

5. *The land in Sy.No.161/1 actually demarcated and survey record was prepared which clearly establish that only an extent of Ac.4.30 gts., is coming under acquisition to the extent of petitioner land the remaining Ac.5.00 is Government land. Hence the Petitioner is not entitled for compensation of land to an extent of Ac.5.10 gts., as he is not rightful owner. The land is vested with the Government.*

13. In a judgement reported in (2020) 9 SCC 356 in **Hari Krishna Mandir Trust v. State of Maharashtra and Others** decided on 07-08-2020 the Hon'ble Apex Court at paras 102 and 103 observed as follows :

*102. In appropriate cases, in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the government or the public authorities should have passed, had it properly and lawfully exercised its discretion. In **Directors of Settlements, Andhra Pradesh and Others v. M.R. Apparao and Anr.** ((2002) 4 SCC 638) Pattanaik J. observed:*

*"17.... One of the conditions for exercising power under Article 226 for issuance of a mandamus is that the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority, could be enforced by issuance of a writ of mandamus, "Mandamus" means a command. It differs from the writs of prohibition or certiorari in its demand for some activity on the part of the body or person to whom it is addressed. Mandamus is a command issued to direct any person, corporation, inferior courts or government, requiring him or them to do some particular thing therein specified which appertains to his or their office and is in the nature of a public duty. A mandamus is available against any public authority including administrative and local bodies, and it would lie to any who is under a duty imposed by a statute or by the common law to do a particular act. In order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law."*

*103. The Court is duty bound to issue a writ of Mandamus for enforcement of a public duty. There can be no doubt that an important requisite for issue of Mandamus is that Mandamus lies to enforce a legal duty. This duty must be*

*shown to exist towards the applicant. A statutory duty must exist before it can be enforced through Mandamus. Unless a statutory duty or right can be read in the provision, Mandamus cannot be issued to enforce the same”.*

14 In **State of Kerala v. A.Lakshmi Kutti** reported in 1986 (4) SCC 632, the Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a Writ of Mandamus.

15. This Court vide its interim order dated 28.04.2015 was pleased to grant stay of the operation of the impugned judgment and order. Taking into consideration the stand taken by the Appellants herein in the Courter Affidavit and Additional Counter Affidavit, the relevant paras of which had



been extracted above which clearly indicate that only Ac.4.30 gts., of land in Sy.No.161/2 was notified, acquired and compensation was paid to the Respondent herein and the respondent's own averment at para '5' of the supporting affidavit filed by the respondent/writ petitioner in W.P.No.16948 of 2005 admitting the said fact that the Respondent received the compensation in terms of the consent award made by the State Level Negotiations Committee in respect of Respondent's land to an extent of Ac.4.30 gts., forming part of Sy.No.161/2 which was notified U/s.6 of the Land Acquisition Act by the 1<sup>st</sup> Appellant herein for the purpose of proposed International Airport at Shamshabad vide No.G1/3408/2004, dated 22.07.2004, and further the fact that remaining (5.00) is Government land as per Survey Record as stated in the counter affidavits filed by the appellants and further taking into consideration the law referred to and discussed above and the fact as borne on record that the Respondent herein has failed to satisfy this Court that he has a legal right to the performance of a legal duty by the Appellants against whom the mandamus is sought, this Court opines that W.P.No.16948/2005 filed by the

Respondent herein ought not have been allowed by the Learned Single Judge.

**16. The request of the respondent for granting compensation in respect of land to an extent of Ac.5.10 gts forming part of Survey No.161/2 of Village Gollapally Khurd, Shamshabad Mandal, R.R. District cannot be considered in view of the simple fact as borne on record for two reasons:-**

*Firstly, the said subject land has not at all been notified for acquisition, and*

*Secondly, the subject land is claimed both by the Government as Government land and the respondent as his own land and the rival claims cannot be adjudicated under Article 226 writ jurisdiction.*

**17. This Court opines that in order that mandamus may be issued to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance. In the instant case, this Court opines that it has not been shown or established by the respondent that the respondent has an existing legal right, which had been infringed nor there is any statute or rule**

**having the force of law which casts a duty on the appellants which they failed to perform. Accordingly we are clearly of the opinion that the Respondent was not entitled to apply for grant of Writ of Mandamus under Article 226 of the Constitution of India.**

18. In view of the circumstances explained above, the Writ Appeal is allowed as prayed for and the order of Learned Single Judge dated 17.08.2005 passed in W.P.No.16948/2005 is set aside.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

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**UJJAL BHUYAN, HCJ**

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**SUREPALLI NANDA, J.**

Dated: 08.09.2022  
Note L.R. copy to marked  
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