

IN THE HIGH COURT FOR THE STATE OF TELANGANA, HYDERABAD

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WRIT APPEAL NOs.123 & 124 OF 2022

Between:

The National Highways Authority of India

...Petitioner

Vs.

G.Narsing Rao & Others

....Respondent

JUDGMENT PRONOUNCED ON: 22.04.2022

HON'BLE SRI JUSTICE UJJAL BHUYAN

AND

THE HON'BLE MRS.JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? : Yes
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals? : Yes
3. Whether His Lordship wishes to
see the fair copy of the Judgment? : **Yes**

UJJAL BHUYAN, J

*** THE HON'BLE SRI JUSTICE UJJAL BHUYAN**
+ WRIT APPEAL NOS.123 & 124 OF 2022

% 22.04.2022

Between:

The National Highways Authority of India

...Petitioner

Vs.

G.Narsing Rao & Others

....Respondent

! Counsel for Petitioner Sri P.Sri Raghuram

^ Counsel for the respondents: Sri E.Phani Kumar

<GIST:

> HEAD NOTE:

? Cases referred

1. (2011) 12 SCC 69

THE HON'BLE SRI JUSTICE UJJAL BHUYAN
And
THE HON'BLE MRS.JUSTICE SUREPALLI NANDA
WRIT APPEAL NOs.123 & 124 OF 2022

COMMON JUDGMENT:

(Per Hon'ble Sri Ujjal Bhuyan)

This common judgement will dispose of both the writ appeals and the connected interlocutory applications.

2 We have heard Mr. P.Sri Raghuram, learned senior counsel representing Mr. Padma Rao Lakkaraju, learned counsel for the appellant and Mr. E.Phani Kumar, learned counsel for the respondents / writ petitioners.

3 Respondents as writ petitioners had filed W.P.No.7374 of 2017 seeking the following reliefs:

“.....this Hon'ble Court may be pleased to issue a Writ Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd respondent in attempting to acquire the land of the petitioners in Sy.No.443 444, 445 of Kandi Village Sangareddy Mandal, presently Kandi Mandal of Sangareddy District for the purpose of the proposed 4 Lane Road on NH.161, Sangareddy-NandedAkola Road without acquiring the land on the west of the existing Mamidipally road and without any notice on the petitioners being arbitrary unconstitutional and opposed to law besides being capricious, bad and opposed to Art.300A of Constitution of India, with a consequential direction against the 2nd respondent to follow the acquisition procedure for such road widening purely in accordance with the plan as made available to the Revenue authorities by taking the measurements of 240' on either side of the road from the middle of the existing road to Mamidipally by following the provisions of the Right to fair Compensation and Transparency in Land Area

Rehabilitation and Resettlement Act 2013 and Rules
2014 (Act 30/2013) and to pass....”

4 From the above, it is seen that the writ petition was filed by the respondents opposing the action of the appellant herein who was arrayed as respondent No.2 in the writ petition to acquire the land of the petitioners for the purpose of four laning of N.H.161 for the stretch covering Sangareddy-Nanded-Akola without acquiring other lands and without notice to the respondents – writ petitioners.

5 Appellant had filed counter affidavit objecting to the writ petition.

6 Learned Single Judge, while hearing the writ petition, took note of the contention of the writ petitioners that alignment of the road from N.H.9 to Mamidipalli village was finalised but a departure was sought to be made from such alignment. According to the writ petitioners there was already in existence a small cart track route. For the purpose of widening the road, there ought to be acquisition of equal extent on either side of the cart track route. Instead entire lands of the petitioners were sought to be acquired. Learned Single Judge referred to the counter affidavit of the 2nd respondent (appellant) and the plan which was allegedly accepted by the competent authority for

widening the road. At that stage, learned counsel for the writ petitioners submitted that writ petitioners did not have any objection to such plan. After recording the statement of learned counsel for the writ petitioners, learned Single Judge, vide the order dated 27.04.2018 disposed of the writ petition giving liberty to the 2nd respondent (appellant herein) to proceed with the acquisition after taking note of the above observation. Relevant portion of the order dated 27.04.2018 reads as under:

“The petitioners refer to annexures P-3 (Page Nos.35 and 38) to show that the alignment of road from NH-9 to Mamidipalli Village is finalized and now there is departure from the accepted alignment of the road. The further objection of petitioners is that a small cart track route is in existence as on date. For the purpose of widening the road into a width of 200 ft, there ought to be acquisition of equal extent on either side of the cart track road. Hence, the writ petition.

The 2nd respondent filed counter affidavit and explained the technical details for finalizing DPR and has placed on record the plan accepted by the competent authority which is being implemented for widening the road. The same is marked as annexure R-5 (Page Nos.98 & 99). According to 2nd respondent, the proposed road passes through Sy.Nos.443, 444, a portion of 433 and 432. The learned counsel for petitioners submits that the plan placed as one of the annexures if is implemented on ground, the petitioners do not have objection. The statement is placed on record. The writ petition is disposed of. The respondents are given liberty to proceed with the acquisition after taking note of above observation.”

7 Appellant thereafter filed a review petition for review of the final order dated 27.04.2018 passed in W.P.No.7374 of 2017. In the review petition it was contended that the statement made in the counter affidavit that the proposed road passes through

Sy.Nos.443, 444, a portion of 433 and 432 would have to be understood in the context of finalisation of Detailed Project Report (DPR) and the fact that appellant had not even acquired the land in Sy.Nos.433 and 432. Therefore, insistence on the appellant to acquire a portion of land in Sy.Nos.433 and 432 by way of a writ petition would not arise. Hence, the order dated 27.04.2018 should be reviewed. The said review petition was numbered as I.A.No.2 of 2020.

8 By the order dated 15.11.2021, learned Single Judge dismissed the review petition by taking the view that order dated 27.04.2018 was passed by the writ Court based upon the averments made in the counter affidavit; therefore, it was a kind of admission by the appellant. Having admitted to the contention of the writ petitioners, it was not open to the appellant (respondent No.2) to file the review petition. Accordingly, the review petition was dismissed. Relevant portion of the order dated 15.11.2021 is extracted hereunder:

“Having considered the submissions, this Court is of the view that W.P.No.7374 of 2017 was disposed of on 27.04.2018 based upon the averments made in the counter affidavit. Having admitted in the form of counter affidavit that the road would be passed through Sy.Nos.443, 444, a portion of 433 and 432, the review petitioner cannot file the present application seeking to review the order passed by this Court.

Learned Senior Counsel appearing for the review petitioner contended that liberty be given to the National Highways Authority of India to acquire the land in Sy.Nos.43 and 432 also.

A perusal of the order discloses that liberty was already granted to the National Highways Authority of India.

No ground is made out under Order 47 Rule 1 of CPC. There are no merits in the review application and the same is liable to be dismissed.

Accordingly, the review application is dismissed.”

9 Thereafter, respondent No.2 as the appellant has preferred two writ appeals. W.A.No.123 of 2022 has been preferred against the order dated 15.11.2021 passed by the learned Single Judge in I.A.No.2 of 2020 (review petition) in W.P.No.7374 of 2017. It is stated that the above writ appeal has been filed within time.

10 Respondent No.2, as the appellant, has also filed W.A.No.124 of 2022 against the final order dated 27.04.2018 passed in W.P.No.7374 of 2017. However, while filing W.A.No.124 of 2022, there is delay of 1371 days for which appellant has filed an interlocutory application for condonation of such delay. The said interlocutory application has been numbered as I.A.No.1 of 2022 in W.A.No.124 of 2022. Respondents (writ petitioners) have filed objections to the delay condonation petition.

11 Let us first deal with the delay condonation petition. In this petition it is stated that order of the learned Single Judge dated 27.04.2018 was received on 15.06.2018. In the meanwhile appellant had invited tenders for four laning of N.H.161 from Kandi to Ramasanpalle in the State of Telangana on 20.12.2017 and issued authority letter to the selected bidder M/s. GKC Projects Limited on 21.03.2018 whereafter contract agreement was concluded between the appellant and the contractor on 14.05.2018. After several rounds of correspondence, appellant finally wrote to the contractor on 11.07.2019 to foreclose the contract in an amicable manner. Upon foreclosure, competent authority of appellant decided to take up the project on hybrid mode following which authority letter was issued to the newly selected bidder M/s. Ashoka Constructions Limited on 22.11.2019. Thereafter construction agreement was concluded between the two parties on 03.01.2020.

12 Reverting back to the order dated 27.04.2018 it is stated that after receipt of a copy of the same on 15.06.2018, the matter was taken up with the higher authority. Also appellant at that point of time was engaged in executing the new contract

after cancelling the previous contract. This process took about 600 days.

13 While executing the work, it came to be noticed that the road alignment appeared a little bit different from what was being contended. It was at that stage a decision was taken on 04.12.2019 to file review petition for review of order dated 27.04.2018. Finally, the review petition was filed on 18.02.2020. As already noticed above, by order dated 15.11.2021, the review petition came to be dismissed.

14 It is submitted that at the time of filing the review petition, there was already a delay of about 640 days, which was considered by the learned Single Judge while entertaining the review petition. During the pendency of the review petition before this Court till it was finally disposed of (dismissed on 15.11.2021), a further delay of about 695 days had occurred. Thus, the delay is primarily on account of filing of the review petition and the time consumed in hearing the review petition. Only after the review petition was dismissed on 15.11.2021, the two writ appeals came to be filed – one against the order dated 15.11.2021 by which the review petition was dismissed and the other against the order dated 24.07.2018 by which the writ

petition was disposed of. While there is no delay in filing the appeal against order dated 15.11.2021, there is, however, delay of 1371 days in filing the appeal against the order dated 27.04.2018.

15 Respondents (writ petitioners) have objected to the prayer made for condonation of delay. While denying the explanation furnished for condoning the delay, it is contended that there is no sufficient cause to explain the huge delay in filing the writ appeal.

16 After hearing learned counsel for the parties at considerable length and after considering the pleadings and materials on record, Court is of the view that it would be in the interest of justice if the delay in filing W.A.No.124 of 2022 is condoned. Otherwise, it will lead to an anomalous situation. While the writ appeal against order dated 15.11.2021 whereby the review petition was dismissed, is within time, the other writ appeal against order dated 27.04.2018 whereby the writ petition was disposed of is barred by limitation. Substantial part of the delay was consumed because of pendency of the review petition before the Court. While the delay prior to the filing of the review petition can be condoned inasmuch as the review court had

entertained the review petition overlooking the delay; after the review petition was entertained by this Court and till its disposal, a further delay had taken place which can be explained on the ground of pendency of the review petition before this Court from 18.02.2020 till 15.11.2021.

17 The law relating to condonation of delay has undergone a change. Each day's delay is not required to be explained. If overall there are good reasons and there is merit in the related appeal, the Court would be justified in condoning the delay, even if the delay is substantial. Writ appeal is an extension of writ proceeding under Article 226 of the Constitution of India. High Court is not bound by any strict rule of limitation under Article 226 of the Constitution of India. If substantial issues of public importance arise, delayed approach to reach the Court will not stand in the way of exercising writ jurisdiction. This is more so in the case of government or governmental bodies like the appellant having regard to the nature of functioning of government departments or bodies.

18 Therefore, on a totality of the facts and circumstances of the case, we are of the view that it would be just and proper if

the delay in filing W.A.No.124 of 2022 is condoned. Accordingly, the delay is condoned.

19 This brings us to the two writ appeals. Though the review petition ended in dismissal, in the ultimate analysis subject matter of the two writ appeals is the order dated 27.04.2018 whereby Writ Petition No.7374 of 2017 was disposed of. We have already adverted to and extracted the relevant portion of the order dated 27.04.2018. From a reading of the order dated 27.04.2018, it would appear that the said order was passed on a consensus. The plan which was placed on record was allegedly accepted by the competent authority of the appellant and was acceptable to the writ petitioners as they did not have any objection. Therefore, on that basis, the writ petition came to be disposed of.

20 In the above context, let us refer to the counter affidavit filed by the appellant (respondent No.2) in W.P.No.7374 of 2017. After referring to various provisions of the National Highways Authority of India Act, 1988, it was stated that pursuant to the letter dated 14.09.2016 of the Ministry of Road Transport and Highways, four laning of N.H.161 of the stretch from Sangareddy-Nanded-Akola was transferred from State PWD to

National Highways Authority of India whereafter the said project has been taken up for public purpose. Various private lands affected by the four laning were acquired or were being acquired in accordance with the National Highways Act, 1956.

20.1 It was stated that State PWD (R&B), N.H.Wing, Government of Telangana, had appointed an expert consultant for preparation of DPR on 21.09.2015. After considering various aspects, such as, feasibility, realignment, environmental and social impact assessment etc., the expert consultant had proposed a bypass road from Kandi village to Fasalvadi village to avoid huge demolition of residential, commercial and industrial structures in Sangareddy town. Finally the project as well as DPR was transferred to the appellant following tripartite agreement dated 19.08.2016.

20.2 Appellant thereafter initiated steps for acquisition of land. Initially gazette notification under Section 3 of National Highways Act, 1956 was issued on 12.01.2017. Thereafter, notification under Section 3A was issued calling for objection. It is stated that writ petitioners did not submit any objection at that stage.

20.3 After disposal of whatever objections, were received, notification under Section 3B was issued on 22.12.2017 on and from which date land covered by the said notification stood vested with the Central Government free from all encumbrances. Thereafter, an award enquiry notification under Section 3 G (3) was published on 11.01.2018.

20.4 Another gazette notification under Section 3A was issued on 05.12.2017 for acquisition of various lands including the land of the writ petitioners in Sy.No.445.

20.5 According to respondent No.2 (appellant) the sketch filed by the writ petitioners in support of their contention was not as per plans furnished in the DPR. Contention that as per the sketch it was proposed to acquire land on both sides of the existing road was factually incorrect.

20.6 Elaborating on the project it was stated that four laning of Sangareddy-Nanded-Akola section of NH 161 commences from existing NH 65 (old N.H.9) at Kilometre 498.250. A grade separator has to be constructed when two national highways merges on safety consideration. Therefore, in the present case, no direct access from existing highway to new highway was provided. A trumpet access was introduced as a

safety norm for safe entry and exit of traffic from existing highway to new highway to avoid accidents. The starting entry of the road of the proposed highway was finalised after taking into consideration the trumpet access.

20.7 In view of technical and design requirement of the proposed trumpet, its entry, exit and its location, the land acquisition plans and land acquisition schedules of the land to be acquired were furnished by the DPR expert to the appellant.

20.8 In the above circumstances, respondent No.2 (appellant) contended that the grievance expressed by the writ petitioners were baseless and sought dismissal of the writ petition.

21 From the stand of respondent No.2 (appellant) as is discernible from the counter affidavit, no conclusion can be reached about respondent No.2 agreeing to the contention of the writ petitioners. Therefore, the present is not a case of any concession or agreement made by respondent No.2 (appellant).

22 It may be mentioned that after disposal of W.P.No.7374 of 2017, writ petitioners again filed another writ petition before this Court being W.P.No.31518 of 2017 against State of Telangana

and revenue officials of Sangareddy district. It was contended that contrary to the order of this Court in W.P.No.7374 of 2017, respondents were attempting to lay the road by taking the entire land from the possession of the writ petitioners without any notice. In that writ petition Revenue Divisional Officer of Sangareddy district filed counter affidavit. After referring to provisions of the National Highways Act, 1956 and the steps taken thereunder for acquisition of land, it was stated that the writ petitioners had filed objection to the notification issued under Section 3A, dated 05.12.2017 on 20.01.2018. The objections were considered but rejected vide endorsement dated 08.03.2018 taking into consideration the plan submitted by the DPR expert. After disposal of objection, notification under Section 3D was issued on 20.11.2018. Thus, on issuance of declaration under Section 3D of the National Highways Act, 1956, the land of the writ petitioners stood vested absolutely with the Central Government free from all encumbrances.

22.1 In paragraph No.16 of the said affidavit, it was stated that writ petitioners had relied upon a sketch in Writ Petition No.7374 of 2017. It was clarified that the sketch filed by the writ

petitioners was not the correct plan and not as per the DPR prepared by the expert.

23 Thus, from the above, we find that basic objection of the writ petitioners was to the acquisition of their land under the National Highways Act, 1956. According to the petitioners, their land was not required to be acquired and other land should have been acquired in equal proportion from both sides. There was deviation from the original plan i.e., the sketch relied upon.

24 We are afraid we can examine or adjudicate on such grievance raised by the writ petitioners. The National Highways Act, 1956 lays down the procedure for acquisition of land for laying of national highways including award of compensation. Writ petitioners have their remedy thereunder. In the facts and circumstances of the case, we are of the view that there was no occasion for any consensus amongst the parties to the writ petition. Since acquisition of land is for the purpose of four laning of national highway, which is of public interest, interference by the High Court under Article 226 of the Constitution of India would not be justified.

25 That apart, there are hardly any materials placed on record by the writ petitioners to prove that execution of the four

laning of N.H.161 project is actuated by *mala fides* to oust the writ petitioners from their land. On pleaded facts and the materials on record this Court cannot come to any such sweeping conclusion.

26 It is for the technical experts to determine alignment of a road. Courts are not equipped to instruct the authorities how to go about laying of roads or national highways; or which lands should be acquired and which should not be acquired for such purpose. In case of national highways, a statutory framework is in place with inbuilt remedial provisions for those affected by land acquisition for construction of such road.

27 Sounding a note of caution, Supreme Court in **Union of India Vs. Kushala Shetty**¹ has mentioned that National Highways Authority of India (NHAI) is a professionally managed statutory body having expertise in the field of development and maintenance of national highways. The projects involving construction of new highways and widening and development of the existing highways, which are vital for the development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge

¹ (2011) 12 SCC 69

and expertise in the field of highway development and maintenance. NHAI prepares and implements projects relating to development and maintenance of national highways after thorough study by experts in different fields. Detailed project reports are prepared keeping in view the relative factors including intensity of heavy vehicular traffic and larger public interest. Courts are not at all equipped to decide upon the viability and feasibility of a particular project and whether a particular alignment would subserve the larger public interest. In such matters, scope of judicial review is very limited.

28 That being the position, the Writ Court was not justified in disposing of the writ petition in the manner in which it was done and the Review Court also fell in error in dismissing the review petition.

29 Before parting with the record, we make it clear that if the lands of the writ petitioners have been acquired under the National Highways Act, 1956, they would be entitled to suitable compensation in terms of the aforesaid Act.

30 Subject to the above, both the writ appeals are allowed. Consequently, W.P.No.7374 of 2017 would stand dismissed. However, there shall be no order as to costs.

31 Miscellaneous petitions, if any, pending in these two writ appeals shall stand closed.

UJJAL BHUYAN, J

SUREPALLI NANDA, J

Date:22.04.2022

L.R. Copy be marked

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