

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.44108 OF 2022

Between:

Babu @ Babu Rao Kadam

... **Petitioner**

And

Land Acquisition Officer-Special Dy.Collector
Gaddenna Vagu Project at Nirmal & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.44108 OF 2022****% 03.06.2024****Between:**

Babu @ Babu Rao Kadam

... Petitioner**And**\$ Land Acquisition Officer-Special Dy.Collector
Gaddenna Vagu Project at Nirmal & others**... Respondents**

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> Head Note:

! Counsel for the Petitioner : Mr.K.Sarala Mahender
Reddy**^ Counsel for Respondents** : Government Pleader
for Land Acquisition

? Cases Referred:

(1) (2013) 5 SCC 470:2013) 3 SCC (Civ) 153)

(2) (2022) 2 SCC 25

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P. No.44108 OF 2022****ORDER:**

Heard Mr.K.Sarala Mahender Reddy, the learned counsel appearing on behalf of petitioner, and learned Government Pleader for Land Acquisition appearing on behalf of respondent Nos.1 to 3.

PRAYER:

2. **The Petitioner approached the Court seeking prayer as under :**

"...to issue an appropriate Writ, order or direction particularly one in the nature of Writ of Mandamus challenging the illegal actions of respondents in passing ex-parte Award Rc No. C/23/2006, dt.01-05-2011 without hearing, enquiry based on old DN, DD dt.03.04.2006, 04.04.2006 as if we agreed for said consent Award, is contrary to orders dt.11.03.2011 passed in W.P.33295/2010 as earlier Award dt.28-03-2007 No. C/23/2006 was set aside to pass fresh Award, but no fresh Draft notification, Declaration published for, a) H.No: 1-9, 1-9/1, extent 357 Sq.Mts with House, Hut constructed area 104 Sq.Mts & open space 253 Sq.mts, b) H.No1-34/1, 1-34/2 extent 2325.8 Sq.Mts towards petitioner ½ share, situated at Vill. Chichund, (M) Bhainsa, now Dist Nirmal and took possession for Gaddennavagu project in 2007-08, is illegal, contrary to law and made to live like beggar for losing properties being land lord and call for records and set aside

the Award Rc No.C/23/2006, dt. 01-05-2011 by issuing consequential directions: a) to acquire four properties afresh with all statutory benefits, b) to pay damages, rents @ Rs 15,000/ per acre per annum, with interest @ 15% PA, to till realisation for utilising petitioner's properties illegally from 2007, alternatively the respondents may be directed to provide the same extent of properties with similar potentiality, Market value with structures on the plots, to end this litigation without insisting for refund of the compensation already paid to the petitioner and award exemplary costs and pass such other orders as deemed fit and proper by this Hon'ble Court in the circumstances of case, otherwise it will result in grave miscarriage of Justice.

Further, it is prayed that this Hon'ble Court may be pleased to direct the respondents to initiate fresh land acquisition proceedings to petitioner's 4 properties a) H.No:1-9, 1-9/1, 357 Sq.Mts with House, Hut constructed area 104 Sq.Mts & open space 253 Sq.Mts b) H.No.1-34/1, 1-34/2, extent 2325.8 Sq.Mts towards his ½ share, situated at Vill. Chichund (M) Bhainsa, now Dist Nirmal, pending disposal of WP and pass such other orders..."

3. PERUSED THE RECORD.

A) Counter affidavit filed by the 1st Respondent, in particular, at paras 3 and 4, read as under:

"3. It is to state that, the petitioner filed WP No.33295/2010 challenging the award. The Hon'ble High Court, A.P., Hyderabad disposed the W.P.No.33295/2010 on 11-03-2011 as follows.

"The writ petition is allowed and the award Dated: 28-3-2007, in so far as it pertains to the property of the petitioner in H.No.1-9 and 1-9/1 of Chichund village is set aside The 2nd respondent (SDC GVP) is directed to pass fresh award in respect of those two items of property as well as those in H.No.1-34/1 and 1-34/2 within three months from today".

As per the Orders of the Hon'ble High Court, AP, Hyderabad in W.P.No.33295/10, Dated: 11-03-2011 the Special Deputy Collector, GVP has passed fresh Award duly conducting fresh enquiry in respect of H.No.1-9, 1-9/1, and an open area in H.No.1-34/1 and 1-34/2 situated at Chichund village. During the award enquiry the petitioner and one Kadam Tulasi Bai executed the agreement agreeing for the market value under Form-III and Form-IV in respect of the house property in presence of the witnesses.

As per the consent of the petitioner, the Supplementary Award U/s 11 (2) was passed vide Award Proc. No.C/23/2006, Dated: 1-5-2011, for Rs. 9,38,958- 00 in favour of K. Babu Rao S/o Gangaram and Smt. Tulasi Bai W/o Dathuram as per their shares.

After receipt of the budget under Land Acquisition vide Pay & Accounts Officer, Nirmal through Lr.No.PAO/N/W-II/U-1/2011-12/97, Dated: 26-8- 2011, the Form-9, 12 (2) notices has been issued on 30-8-2011 and served on Sri. Babu @ Babu Rao Kadam S/o Gangaram Kadam and Smt. Tulasi bai

W/o Dutturam R/o Chichund village through Tahsildar, Bhainsa on 08-09-2011 to receive compensation. But they have not attended the Office for receiving compensation awarded as per Orders of the Hon'ble High Court.

Hence, the case is referred to the Senior Civil Judge Court, Nirmal U/s 30/31 (2) of LA Act vide Ref.No.C/23/2006, Dated: 24-9-11 and an amount of Rs. 938958/- deposited in the Senior Civil Judge, Court through Banker Cheque No.454758, date: 23-09-2011 and the same was informed to the petitioner.

4. In reply to averments made in Para 3 & 4, it is submitted that, Sri. K. Babu Rao S/o Gangaram has filed Contempt case in C.C.No.1816/2011 in WP.No.33295/2010/DKM/LA/HC, Dated 04-01-2012 against the Special Deputy Collector (GVP), Nirmal and District Collector, Adilabad and prayed the Hon'ble High Court may be pleased to punish the Respondents herein U/s 10 to 12 of Contempt Case Act, for will full disobedience committed intentionally, deliberately with malafide motive, by showing total disrespect to the orders date: 11-3-2011 passed in WP.No.33295/2010 and pass consequential orders by directing the 1st Respondent - LAO, Nirmal to issue fresh DN, DD U/s 4 (1) and 6 of LA Act for acquisition of H.No.1-9, 1-9/1, extent 357 Sq Mrs. H.No.1- 34/1,1-34/2 extent 2325.8 Sq.Mtrs. as per measurements to be made in presence of petitioner, situated at Chichund village. The LAO must pay the

compensation i.e., 7,83,168/- + Rs.32,932/- total Rs.8,16,100/- under protest, pending disposal of Contempt case. The said contempt case was closed negating the prayer for issuance of fresh notification."

B) Reply affidavit filed on behalf of the Petitioner, in particular, at Paras 3 and 5, read as under :

"3. I submit that the allegations made in para 2 to 5 of the counter of LAO are totally false, incorrect, contrary to records. I was read over the counter and denying the allegations until and unless they are specifically admitted hereunder. The LAO not denied all the allegations specifically with records, hence they may be deemed as admitted. The ex-parte Award No. Rc No C/23/2006, dt 01-05-2011 was passed without notice by taking our signatures on some blank papers when we visited LAO office is not specifically denied, hence may be deemed as true and correct. The LAO misused our signed papers as if we agreed for a consent Award dated 01-05- 2011 while litigations are going on, is totally illegal. If we accept LAO contentions, we could not file these cases, hence there is no truth in the allegations. The LAO suppressed all true facts to deny just compensation.

5. I submit that originally the Executive Engineer prepared valuation of structures of my H.No.1-9, 1-9/1, for Rs.23,90,861-00 which was struck off by showing

Rs.4,50,495/ only, in collusion with my rivals, hence entire record may be called particularly the valuation fixed by the then Executive Engineers which was duly signed by them and there are no signatures on over-writing/ struck off portion which shows a clear cut manipulations and bribery done in collusion with my rivals of the village as I refused the bribes."

C) Supplementary draft award U/s.11(2) vide Rc.No.C/23/2006, dated 01.05.2011 of the Special Deputy Collector (LA) Gaddennavagu Project, Nirmal – Relevant paragraph pertaining to Award enquiry reads as under :

AWARD ENQUIRY :

"As per order of Hon'ble High Court A.P.Hyderabad in W.P.No. 33295/2010 dated 11-3-2011 and ordered that "The writ petition is allowed and the award dated 28.3.2007, in so far as it pertains to the property of the petitioner in H.No. 1-9 and 1-9/1 of Chichund village, is set aside. The 2nd respondent is directed to pass fresh award in respect of those two items of property as well as those in H.Nos. 1-34/1/1 and 1-34/1/2, within three months from today". In turn general notices U/s 9 (1) & (10) were issued on 16-4-2011 and displayed on the notice board of Gram Panchayath Chichund village on 17-4-2011 and the same were sent to Tahsil Office Bhainsa and M.P.D.O. Office Bhainsa for published in the notice board. Individual notices U/s 9 (3) & 10 of Land

Acquisition Act have been issued on 16-4-2011 fixing Award enquiry date on 30-4-2011 and after giving 15 days clear time. The Award enquiry was conducted and completed on 30-4-2011. No claims with regard to measurement and valuations are filed at the time of Award enquiry, **all the Awardees i.e. Sri Babu @ Babu Rao Kadam S/o Gangaram Kadam and Smt. Tulsi Bai W/o Datharam have agreed for consent Award for one time settlement under package deal on valuations furnished by the Executive Engineer, Gaddennavagu Project Bhainsa, and other additional benefits U/s 23(2) and 23(1A) i.e., 30% solatium and 12% Add. Market value."**

4. **The case of the Petitioner, in brief, as per the averments made by the petitioner in the affidavit filed in support of the present writ petition, are as follows:**

i) **The Petitioner had on an earlier occasion approached this Court by filing W.P.No.33295/2010 with prayer as under :**

"by declaring the actions of the respondents in not paying the Compensation of petitioner ancestral properties of H.No. 19, 19/1 and 2 H.No.134/1/1 134/1/2 on par with other villagers situated at Village Chichund, Mandal Bhainsa, Dist., Adilabad which are under Submergence of Gaddennavagu Project Bhainsa Dist. Adilabad, A.P. by issuing

fresh Draft Notification Draft Declaration under Land Acquisition Act is totally illegal, arbitrary, unjust, discriminatory, unreasonable without jurisdiction and opposed to public policy and also violative of principles of natural justice apart from the violation of Fundamental and property Rights guaranteed under Art 14, 21, 300A of Constitution of India and issue consequential directions (a) to Acquire Properties H. No. 19, 19/1 and 2, 134/1/2, of petitioner as per Land Acquisition Act afresh, (b) To set aside the Award No C/ 23/2006, dt.28.03.2007 in respect of petitioner market value, (c) impose exemplary costs upon 4th respondent for denying the just and reasonable compensation since 2007 2008 for the sake of bribes and award costs”.

The said writ petition filed by the Petitioner was allowed vide Order of the Court dated 11.03.2011 observing as under :

“Hence, the writ petition is allowed and the Award dated 28.03.2007 in so far as it pertains to the property of the Petitioner is set aside. The 2nd Respondent is directed to pass fresh Award in respect of those two items of the property i.e., H.Nos.1-34/1 and 1-34/2 within 3 months from the date of order”.

Aggrieved by the same the Petitioner herein filed W.A.No.1189/2013 and the same was disposed of vide order dated 21.06.2022 observing as under :

“In the considered opinion of this Court, once the writ petition was allowed directing the respondents to pass a fresh award, the question of challenging the same order does not arise. However, it is made clear that in case the appellant/writ petitioner is still aggrieved by the award, he shall certainly be free to take recourse to the remedies available under law by filing a fresh writ petition. No case is made out for interference in the present writ appeal”.

The Writ Appeal stands disposed of.

ii) **It is further the case of the Petitioner that when the said order dated 11.03.2011 passed in W.P.No.33295/2010 had not been implemented, Petitioner approached the Court by filing Contempt Case No. 1816 of 2011 seeking prayer as under :**

“To punish the Respondents herein U/s 10 to 12 of Contempt of Courts Act for willful disobedience committed intentionally deliberately with malafide motive by showing total disrespect to the orders dt. 11.03.2011 passed in W.P. No. 33295/2010 by this Honble Court and pass consequential

orders by directing the 1st Respondent LAO Nirmal to issue fresh D.N.D.D. U/s 4(1) and 6 of L.A. Act for Acquisition of H.No.19-19/1 extent 357 Sq. Mts., H.No. 134/1134/2 extent 2325.8 Sq. Mts., as per measurements to be made in presence of petitioner situated at village Chichund, Bhainsa Mandal, Dist., Adilabad in compliance of orders passed in W.P.No. 33295/2010, dated 11.03.2011”.

iii) The said C.C.No.1816/2011 was closed vide order dated 13.02.2012 which is extracted hereunder :

ORDER:

“The petitioner filed W.P.No.33295 of 2010 alleging that though he holds four properties in Chichund Village, Bhainsa Mandal, Adilabad District which were submerged under the Irrigation Project, award was passed in respect of two items viz., H.Nos. 1-9 and 1-9/1. The writ petition was allowed on 11.03.2011 setting aside the award in respect of the said two items of property and directing the respondents to pass fresh award in respect of four items owned by the petitioner. This contempt case is filed stating that the respondents passed an award on 01.05.2011 without making the funds available and that they referred the matter to the Civil Court under Section 30 of the Land Acquisition Act, 1894 (for short “the Act”) though no dispute exists as such.

The first respondent filed a counter affidavit admitting the fact that the award was passed though the funds were not available. He further stated that he has been corresponding with the concerned department for making the funds available. He also stated that the reference under Section 30 of the Act was made on account of the fact that the stepmother of the petitioner herein raised a dispute as regards the apportionment of the compensation.

Learned counsel for the petitioner submits that the respondents were under the obligation to issue draft notification and declaration under Sections 4(1) and 6 of the Act respectively in respect of the two items of the properties which were excluded from the proceedings on earlier occasion. He further submits that the first respondent took signatures of the petitioner on certain blank papers and a consent award was brought into existence. The learned counsel further submits that necessity to refer the matter under Section 30 of the Act did not arise once the award was pronounced.

Learned Government Pleader, on the other hand, submits that the respondents made every effort to pass the award within the time stipulated by this Court, but on account of non-cooperation by the concerned department, the funds were not available and that the consent award was passed on the basis of agreement and approval of the petitioner. According to him, the necessity to refer the matter under

Section 30 of the Act arose on account of the claim submitted by the stepmother of the petitioner. He further submits that the cheques for payment of compensation in accordance with the award are ready and if the petitioner is agreeable, he can take the same.

The grievance of the petitioner was about total exclusion of two items and determining inadequate compensation for two other items. The grievance is genuine and the writ petition was allowed with the following direction:

“The second respondent is directed to pass fresh award in respect of those two items of property as well as those in H.Nos.1-34/1 and 1-34/2, within three months from today.”

The contention of the learned counsel for the petitioner that the first respondent was under an obligation to issue fresh notification and declaration in respect of the properties in H.Nos.1-34/1 and 1-34/2 is totally untenable. Further, in case, the petitioner felt aggrieved, or not satisfied with the order passed by this Court, he ought to have pursued the remedy of appeal. Once he has permitted the order to become final, he cannot be permitted to contend what was not contained in it.

There was default on the part of the first respondent in passing the award without ensuring that the amount of compensation is ready to be paid.

Obviously because the time stipulated by this Court is running out, the award was passed without making the funds available. Further, whatever may have been the justification to refer the matter to the Civil Court in the event of there being any dispute, once the award is passed, the first respondent does not have the right to refer the matter under Section 30 of the Act. The reference in this case was made after the award was proclaimed.

Hence, the contempt case is closed. It shall be open to the petitioner to approach the first respondent to receive the cheques for the compensation awarded in his favour. The first respondent shall issue the cheques as and when the petitioner approaches him. If the petitioner receives the compensation from the first respondent within fifteen days from today, the first respondent shall be entitled to withdraw the reference made by him to the Civil Court. There shall be no order as to costs.

iv) It is further the case of the Petitioner that the LAO did not conduct any enquiry as per Act and instead created a false story as if Petitioner agreed for new consent *ex parte* award dated 01.05.2011. Main grievance of the Petitioner is that the LAO did not publish fresh DN, DD but passed Award basing on old DN, DD dated

03.04.2006, aggrieved by the same Petitioner filed the present writ petition.

5. The learned counsel appearing on behalf of the Petitioner mainly puts-forth the following submissions :

- a) The LAO failed to determine the market value of 2011 year while passing ex-parte Award dated 01.05.2011.
- b) The LAO ought not have passed Award dated 01.05.2011 basing upon old DN, DD, dated 03.04.2006, 04.04.2006 as the earlier Award dated 28.03.2007 was set aside.
- c) The LAO had not published fresh DN, DD for 2 properties i.e., H.Nos.1-34/1, 1-34/2 and the same is totally contrary to law since these properties were not included in the Award dated 28.03.2007.
- d) Ex-parte Award dated 01.05.2011 is ex-facie illegal which cannot be passed without publishing fresh DN, DD as the earlier Award dated 28.03.2007 was set aside directing to pass fresh Award in W.P.No.33295/2010, dated 11.03.2011.
- e) The LAO created a false story as if the Petitioners agreed for consent ex-parte award dated 01.05.2011,

f) The LAO has not served notices as per Sec.12 of the Act after passing Award dated 01.05.2011.

Basing on the aforesaid submissions the learned counsel for the Petitioner contended that the writ petition has to be allowed as prayed for.

6. The learned Government Pleader appearing on behalf of the Respondents placing reliance on the averments made in the counter affidavit filed on behalf of the Respondents mainly puts-forth the following submissions :

a) In pursuance to the orders of the High Court dated 11.03.2011 passed in W.P.No.33295/2010, the Special Deputy Collector, GVP had passed fresh Award duly conducting fresh enquiry in respect of H.No.1-9. 1-9/1, and an open area in H.No.1-34/1 and 1-34/2 situated at Chichund Village **and during the Award enquiry the Petitioner and one Kadam Tulasi Bai executed the agreement agreeing for the market value under Form-III and Form-IV in respect of the house property in the presence of the witnesses.**

b) As per the consent of the Petitioner, the supplementary award under Sec.11(2) was passed vide Award proceedings No.C/23/2006, dated 01.05.2011 for Rs.9,38,958/- in favour of K. Babu Rao, S/o. Gangaram

i.e., the Petitioner herein and Smt. Tulasi Bai W/o. Dathuram, as per their shares, but however, they had not attended the office for receiving the compensation awarded as per the orders of the High Court though they received the Notice in Form IX dated 26.08.2011 and 12(2) Notices dated 30.08.2011 which had been served on the Petitioner and Smt. Tulasi Bai on 08.09.2011. Hence the case had been referred to Senior Civil Judge, Nirmal U/s.30/31 (2) of L.A. Act, vide Ref. No.C/23/2006, dated 24.09.2011 and an amount of Rs.9,38,958/- deposited in the Senior Civil Judge Court through Bankers Cheque No.454758, dated 23.09.2011 and the same was informed to the Petitioner.

c) The prayer of the Petitioner for issuance of fresh notification was negated in C.C.No.1816/2011 vide order of this Court dated 13.02.2022 and hence the Petitioner cannot urge the same pleas in the present writ petition.

d) Petitioner has signed U/Form-IV and thus consent award was passed U/s.11(1) vide order dated 01.05.2011 and after giving consent the Petitioner cannot turn back and challenge the Award.

Basing on the aforesaid submissions the learned Government Pleader contends that the writ petition needs to be dismissed in limini.

DISCUSSION AND CONCLUSION:

7. A bare perusal of the averments made in the counter affidavit filed by the Respondent No.1 and the material documents enclosed along with the counter affidavit indicate the presence of the Petitioner on 30.04.2011 in presence of 2 witnesses before the concerned Revenue Divisional Officer, Bainsa and indicates an amount of Rs.8,73,097/- as the total compensation payable under package deal as per the agreement reached in negotiations committee as compensation to be paid for the house under acquisition giving details of the said houses as H.Nos.1-9 and 1-9/1 and the name of the Petitioner, Babu @ Babu Rao Kadam S/o. Gangaram Kadam as interested person/land owner i.e., Material Document enclosed at page 36 of the counter filed by the Respondent.

8. It is specifically stated at para 3 of the counter filed by the 1st Respondent that at the subject award enquiry the Petitioner and one Kadam Tulasi Bai executed the Agreement agreeing for the market value under Form-III and Form-IV in respect of the house property in the presence of the witnesses and that supplementary

award under 11(2) was passed vide Award Proceedings No.C/23/2006, dated 01.05.2011 for Rs.9,38,938/- in favour of K. Babu Rao, S/o. Gangaram, and Smt. Tulasi Bai, W/o. Dathuram as per their source. But however since the Petitioner did not attend the office for receiving the compensation awarded as per the orders of the High Court, though notice under Form-IX and 12(2), dated 26.08.2011 and 30.08.2011 respectively had been served on the Petitioner on 08.09.2011.

9. Though reply affidavit has been filed by the Petitioner disputing the averments made in the counter affidavit filed on behalf of the 1st Respondent and a specific plea is taken at para 3 of the reply affidavit to the counter affidavit filed on behalf of Respondent No.1 that LAO misused Petitioner's signed papers as if Petitioner agreed for a consent award dated 01.05.2011 and further the plea of manipulations in the record by the concerned had been pointed out at para 5 of the reply affidavit filed by the Petitioner, this Court opines that the said disputed questions of fact cannot be enquired into or gone into under writ jurisdiction.

10. A bare perusal of the copy of the supplementary draft award dated 01.05.2011 vide Rc.No.C/23/2006 of the Special Deputy Collector (L.A.) Gaddennavagu Project, Nirmal, however, clearly indicates that the Petitioner appeared and deposed in the Award Enquiry that the Petitioner is the owner and occupant of H.No.1-9 and 1-9/1 and had requested to pay the compensation to the Petitioner as per the preliminary valuations stating that he had no objection to the measurement of the plinth area and open area of the structure and hence an Award had been passed in favour of the Petitioner ordering payment of compensation of Rs.8,73,097/- and further the copy of the supplementary award dated 01.05.2011 referring to H.No.1-34/1/1 and 1-34/1/2 indicates that the Petitioner and one Smt. Tulasi Bai, W/o. Datharam had appeared during the Award Enquiry and submitted that they have no objection to the measurement of the open area of the subject houses i.e., 2325.80 sq. mtrs., and that further they had stated that the compensation may be paid to them equally as per the preliminary valuations and accordingly award had been passed for an amount of Rs.65,861/- to be paid in 2 equal shares in favour of

the Petitioner and Smt. Tulasi Bai in respect of the H.No.1-34/1, 1-34/1/2.

11. The Apex Court on the principle of Approbate and Reprobate in its 2 judgments observed as under :

(1) The Supreme Court in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. reported in [(2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153] , made an observation that a party cannot be permitted to “blow hot and cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

(2) In Union of India and Others v. N. Murugesan and Others, reported in (2022) 2 SCC 25, observed as under :

“Approbate and reprobate - These phrases are borrowed from the Scots law. They would only mean

that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party".

12. Taking into consideration:

- (i) the specific averments made at paras 3 and 4 of the counter affidavit filed on behalf of Respondent No.1;

(ii) duly taking into consideration the observations of the Apex Court in its 2 judgments on the principles of Approbate and Reprobate reported in i.e.,

(a) (2013) 5 SCC 470 : 2013) 3 SCC (Civ) 153) in "Rajasthan State Industrial Development & Investment Corpn. V. Diamond & Gem Developemnt Corpn. Ltd., and

(b) (2022) 2 SCC 25 in Union of India and others v. N.Murugesan and others" (referred to and extracted above),

(iii) duly taking into consideration the observations of this Court in its order dt. 13.02.2022 in C.C.No.1816/2011 (referred to and extracted above) and also the material enclosed along with the counter affidavit filed on behalf of the 1st Respondent.

(iv) and in the light of discussion and conclusion as arrived at as above at paras 7, 8, 9, 10 of the present Judgment (referred to and extracted above),

This Court opines that the Petitioner is not entitled for the relief as prayed for in the present writ petition since the Petitioner having had given his consent for passing of the Consent Award U/s.11 (1) cannot turn back and challenge the same. Hence the writ petition is dismissed since the same is devoid of merits. However there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

SUREPALLI NANDA, J

Date: 03.06.2024

Note : L.R. Copy to be marked.
B/o. *Yvkr/Ktm*