

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NOs.5187 AND 13025 OF 2023

1. WRIT PETITION NO.5187 OF 2023

Between:

1. B.Sridhar Reddy, S/o.Venkat Reddy and Eleven others.

...Petitioners

AND

1. Union of India, rep.by its Secretary, Ministry of Roads, Transport and High Ways, Pariwahan Bhava, 1 Sansad Marg, New Delhi – 110001 and Five others.

...Respondents

2. WRIT PETITION NO.13025 OF 2023

Between:

1. Sriram Thirupathi, S/o.Mallaiah and Eighteen others.

...Petitioners

AND

1. Union of India, rep.by its Principal Secretary, Ministry of Roads, Transport and High Ways, Central Secretariat, New Delhi and Four others.

...Respondents

JUDGMENT PRONOUNCED ON: 26.09.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

MUMMINENI SUDHEER KUMAR, J

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

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! Counsel for Petitioners : Mr. Ch. Ravi Kumar (WP.No.5187 of 2023

Mr. Bura Ramesh (WP.No.13025 of 2023)

^ Counsel for Respondent Nos.1 to 4 : Gadi Praveen Kumar,
Dy.Solicitor General

P.Harinath Gupta

Alladi Ravinder

< GIST :

> HEAD NOTE :

? Cases referred :

1. 2020 SCC Online SC 1005
2. (2011)12 SCC 69

THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMARWRIT PETITION NOs.5187 AND 13025 OF 2023**COMMON ORDER:**

In these two Writ Petitions, the petitioners question the acquisition proceedings initiated by the respondents for the purpose of building (widening/four-laning/lining etc.), maintenance, management and operation of NH-163G on the stretch of land from KM.88.418 to KM.111.762 (Parkal) in the district of Hanamkonda in the State of Telangana initiated under the provisions of the National Highways Act, 1956 ("the Act, 1956" for brevity) and sought for setting aside of the notifications issued under Section 3A and 3D of the Act, 1956. The main ground on which these Writ Petitions were filed is that the respondents have not obtained the environmental clearance, which is a mandatory requirement for initiating the acquisition proceedings in respect of the subject lands in terms of the law laid down by the Hon'ble Apex Court in **Project Director, Project Implementation Unit v. P.V.Krishnamoorthy**¹.

2. This Court, having taken note of the judgment of the Hon'ble Apex Court in **Project Director, Project**

¹ 2020 SCC Online SC 1005

Implementation Unit v. P.V.Krishnamoorthy (1 supra),

passed the following interim order on 27.02.2023:-

“Notice before admission.

Mr. Gadi Praveen Kumar, learned Deputy Solicitor General, takes notice on behalf of R-1 and R-6. Mr. Padmarao Lakkaraju, learned Standing Counsel, takes notice on behalf of R-2 and R-3. Learned Government Pleader for Land Acquisition takes notice on behalf of R-4 and R-5.

Admittedly, there is no environmental clearance obtained by the respondents as on date. In terms of the law laid down by the Hon’ble Apex Court in **Project Director, Project Implementation Unit v. P.V. Krishnamoorthy and Others** {2020 SCC OnLine SC 1005}, the environmental clearance is a pre-condition for acquisition proceedings under the National Highways Act, 1956.

In the circumstances, pending further orders, there shall be interim direction to the respondents from passing any award and dispossessing the petitioners from the subject land for a period of eight (8) weeks.

Post on **10.04.2023.**”

The said interim order has been extended from time to time.

3. The respondents 3 and 4 filed a counter affidavit on 10.07.2023 and an additional counter affidavit on 25.09.2023.

In the additional counter affidavit filed by the respondents 3 and 4, it is stated that the required environmental clearance was granted by the sixth respondent on 05.07.2023 for construction of the project in question and a copy of the same is also placed before this Court. With regard to the other objections/grounds that are raised by the petitioners against the impugned acquisition proceedings, they were also answered by the respondents in the counter affidavits referred to above. No reply affidavit is filed by the petitioners in response to the

averments made in the counter affidavits of the respondents 3 and 4.

4. Heard Sri Ch. Ravi Kumar, learned counsel for the petitioner in W.P.No.5187 of 2023 and Sri Bura Ramesh, learned counsel for the petitioners in W.P.No.13025 of 2023, who adopted the arguments of Sri Ch. Ravi Kumar and Sri Alladi Ravinder, learned Senior Counsel appearing for the respondents 3 and 4.

5. Though several grounds were raised in the affidavits filed in support of the Writ Petitions, learned counsel for the petitioners have argued only on the ground of non-obtaining of environmental clearance prior to initiation of the impugned acquisition proceedings by placing reliance on the judgment of the Hon'ble Apex Court in **Project Director, Project Implementation Unit v. P.V.Krishnamoorthy** (1 supra). Learned counsel for the petitioner has drawn the attention of this Court to the conclusive paragraphs of the judgment of the Hon'ble Apex Court, which reads as under:-

“Considering the interplay of provisions empowering the Central Government coupled with the purport of the notification/Office Memorandum issued by the MOEF dated 14.9.2006 and 7.10.2014 respectively, it will be paradoxical to countenance the argument that the Central Government is obliged to seek prior approval/permission of the competent authorities under the environment/forest laws, as the case may be, even before issuing notification under Section 2(2) or for that matter, Section 3A of the 1956 Act.

RE: DEEMED LAPSING AND THE WAY FORWARD

Reverting to the dictum of this Court in *Karnataka Industrial Areas Development Board v. C. Kenchappa* {(2006)6 SCC 371}, it must be understood to mean that the declaration under Section 3D regarding acquisition of notified land, be made only after environmental/forest clearance qua the specific land is granted. To put it differently, the necessity of prior environmental/forest clearance would arise only if finally, the land in question (site specific) is to be notified under Section 3D, as being acquired for the purposes of building, maintenance, management or operation of the national highway or part thereof. Such interpretation would further the cause and objective of environment and forest laws, as also not impede the timeline specified for building, maintenance, management or operation of the national highway or part thereof, which undeniably is a public purpose and of national importance. This would also assuage the concerns of the land owners that even if eventually no environment permission or forest clearance is accorded, the land cannot be reverted to the original owner as it had de jure vested in the Central Government upon issue of notification under Section 3D of the 1956 Act and no power is bestowed on the Central Government under this Act to withdraw from acquisition.”

By placing reliance on the above paragraphs, learned counsel for the petitioners submitted that it is mandatory for the respondents to obtain environmental clearance prior to issuance of notification under Section 3D of the Act, 1956, as the land would stand vested with the Union of India once the notification under Section 3D of the Act, 1956 was issued. He further submitted that there is no limitation prescribed within which a notification under Section 3D of the Act, 1956 is required to be issued and therefore, there is no justification for the respondents to issue a notification under Section 3D of the Act, 1956 even before obtaining the environmental clearance, which is a mandatory requirement.

6. On the other hand, Sri Alladi Ravinder, learned Senior Counsel appearing for the respondents 3 and 4, contended that the environmental clearance is already granted by the sixth respondent, as early as on 05.07.2023 and therefore, the defect that is pointed out by the petitioners is no more existing and therefore, the Writ Petition is liable to be dismissed. He further contended that the judgment of the Hon'ble Apex Court in **Project Director, Project Implementation Unit v. P.V.Krishnamoorthy** (1 supra) cannot be read as a statute and the said judgment is to be understood in the facts and circumstances of the particular case and cannot be applied as a statute to the case on hand. He also submitted that the land in question is sought to be acquired for the purpose of forming a Green Field National Highway which is of national importance and any amount of delay in concluding the acquisition proceedings will result in great prejudice, as the acquisition proceedings in respect of other lands for the same project were already concluded and it is only because the stay was granted by this Court, the acquisition in respect of the lands in question could not be proceeded further and thereby, the entire work of national highway is being hampered and further submitted that any delay would result in incurring additional expenditure. He

further submitted that the respondents have been strictly following the procedure that is required to be followed for acquiring the subject lands and they would follow the mandatory procedure and would pay compensation to the petitioners. He also submitted that it would suffice if environmental clearance is obtained prior to handing over of the subject land to the executing agency and in the instant case, no award is passed and environmental clearance is already obtained and it is only after the award is passed, the possession of the land would be taken by the respondents and the same would be handed over to the executing agency under Section 5 of the Act, 1956.

7. There is no dispute that the Hon'ble Apex Court in **Project Director, Project Implementation Unit v. P.V.Krishnamoorthy** (1 supra) held that the environmental clearance is required to be obtained before issuing a notification under Section 3D of the Act, 1956. It was held so because the land proposed for acquisition would stand vested with the Union of India on issuing a notification under Section 3D of the Act, 1956 and there is no provision provided under the said Act and for reverting the land once vested with the Union of India to the land owners in the event of non-grant of environmental

clearance even if the same was issued subsequent to issuance of the notification under Section 3D of the Act, 1956. There cannot be any quarrel about the law laid down by the Hon'ble Apex Court but in the instant case, admittedly, the environmental clearance was granted on 05.07.2023 and there is no dispute about the same. Whatever the difficulty that was pointed out by the petitioners against the acquisition proceedings on the ground of non-obtaining environmental clearance stood rectified on obtaining the environmental clearance on 05.07.2023. Therefore, the only question that arises for consideration before this Court is whether it is required to put back the clock and require the respondents to redo the entire exercise of issuing a notification under Section 3D of the Act, 1956 by setting aside the impugned notification or the respondent should be permitted to proceed with the further acquisition proceedings pursuant to the impugned notification or not.

8. No doubt, the Hon'ble Apex Court in **Project Director, Project Implementation Unit v. P.V.Krishnamoorthy** (1 supra), having noticed the vacuum in the law, considered the necessity of obtaining environmental clearance prior to initiation of the acquisition proceedings and held that the environmental

clearance be obtained prior to publication of notification under Section 3D of the Act, 1956. As already noted above, the difficulty or the circumstances that weighed with the Hon'ble Apex Court i.e. in the event of failure to obtain environmental clearance is not available in the case on hand. Even if the impugned notification under Section 3D of the Act, 1956 is set aside on the ground of not obtaining environmental clearance prior to the issuance of notification under Section 3D of the Act, 1956, that would only result in issuing a fresh notification now as the environmental clearance was already obtained by the respondents. In all probabilities, the respondents ought to have awaited obtaining environmental clearance instead of issuing notification under Section 3D of the Act, 1956. By merely setting aside the said notification on the ground of not obtaining the environmental clearance, as mandated by the Hon'ble Apex Court, the same would only result in redoing the entire exercise, which is an empty formality.

9. In this regard, it is necessary to refer to the decision of the Hon'ble Apex Court in **Union of India v. Kushala Shetty**², wherein it was held as under:-

“Here, it will be apposite to mention that NHAI is a professionally managed statutory body having expertise in the field of development and maintenance of National Highways. The

² (2011)12 SCC 69

projects involving construction of new highways and widening and development of the existing highways, which are vital for development of infrastructure in the country, are entrusted to experts in the field of highways. It comprises of persons having vast knowledge 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. The Courts are not at all equipped to decide upon the viability and feasibility of the particular project and whether the particular alignment would subserve the larger public interest. In such matters, the scope of judicial review is very limited. The Court can nullify the acquisition of land and, in rarest of rare cases, the particular project, if it is found to be ex-facie contrary to the mandate of law or tainted due to mala fides. In the case in hand, neither any violation of mandate of the 1956 Act has been established nor the charge of malice in fact has been proved. Therefore, the order under challenge cannot be sustained.”

10. If the acquisition proceedings are allowed to be continued taking into consideration the fact that environmental clearance was already obtained, no prejudice would be caused to the petitioners herein. As the subject land is sought to be acquired for the purpose of the Green Field National Highway, which is admittedly a public purpose and hence, this Court is not inclined to exercise its discretionary jurisdiction under Section 226 of the Constitution of India and accordingly, both the Writ Petitions are dismissed.

There shall be no order as to costs. Miscellaneous applications, if any, pending shall stand dismissed.

(MUMMINENI SUDHEER KUMAR, J)