

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
THE HON'BLE SRI JUSTICE NINALA JAYASURYA
WRIT PETITION NOs.5664, 35081, 42024 & 42025 of 2022

W.P.No.5664 of 2022:

Between:-

G.Krishna Reddy	...	Petitioner
And		
Government of Andhra Pradesh, represented by its Principal Secretary, Roads & Buildings & 4 others	...	Respondents

W.P.No.35081 of 2022:

Between:-

G.Munirathnam Reddy	...	Petitioner
And		
Government of Andhra Pradesh, represented by its Principal Secretary, Roads & Buildings & 4 others	...	Respondents

W.P.No.42024 of 2022:

Between:-

G.Munirathnam Reddy	...	Petitioner
And		
Government of Andhra Pradesh, represented by its Principal Secretary, Roads & Buildings & 5 others	...	Respondents

W.P.No.42025 of 2022:

Between:-

G.Krishna Reddy

And

...

Petitioner

Government of Andhra Pradesh,
represented by its Principal Secretary,
Roads & Buildings & 5 others

...

Respondents

Counsel for the Petitioner/s : M/s. V.R. Reddy Kovvuri

Counsel for the Respondents : Learned Government Pleader
for R & B

Learned Government Pleader
for Revenue

Learned Government Pleader
for Land Acquisition

Mr.S.S.Varma, Learned Standing
Counsel for N.H.A.I.,

COMMON ORDER:

As the issues involved in these Writ Petitions are similar,
the same are disposed of by this Common Order.

2. The petitioner one Mr.G.Krishna Reddy in W.P.Nos.5664 of 2022
and 42024 of 2022 is the owner of land of an extent of Ac.0.50 cents in
Sy.Nos.77/1E-2B & 77/1D-2C of Kothapallayam Village fields,
Renigunta Mandal, Chittoor District. The petitioner in W.P.Nos.35081 &
42025 of 2022 is the owner of land of an extent of Ac.0.21 cents in

Sy.No.194/5B/2 of R.Mallavaram Village fields, Renigunta Mandal, Tirupathi District. Their grievance is with regard to laying of road through the above extents of lands by the respondent authorities even though said extents are not notified under Section 3A of National Highways Act, 1956 (for short "**N.H. Act**") or published under Section 3D of N.H. Act issued through Notification and Publication dated 18.6.2018 and 20.12.2018, and accordingly seeks a declaration that action of the respondents as arbitrary, illegal etc., and for a consequential direction not to lay/form road through the above said extents of lands, without initiation of the proceedings under the provisions of the N.H. Act.

3. In the other two Writ Petitions, they seek to declare the public notice in Roc.No.G3/473/2022, dated 20.12.2022 issued under Section 3G (3) and (4) of N.H. Act calling upon the petitioners to appear before the respondent authorities on 28.12.2012 without there being any Notification under Section 3A and Publication under Section 3D of N.H. Act for acquisition of the above extents of lands, as arbitrary, illegal, contrary to the provisions of the N.H. Act and to consequently set aside the same.

4. It is the case of the petitioners as per the pleadings in the Writ Petitions that the 5th respondent issued a Notification under Section

3A of the N.H. Act dated 18.6.2018 for N.H-71 for six (6) lanes Highway from Kilometers Kms.128.2 to Kms.163.4 (Sub-Collector's Office, Air-Bypass Road, Tirupathi) and as the subject matter lands herein are not required, the same are not notified in the said notification. Even in the subsequent Publication under Section 3D of the Act, the subject matter lands are not notified. However, the respondents with a view to protect the interest of others adjacent land owners, whose lands are already notified through the above said notification dated 18.6.2018 resorted to lay road through the subject matter lands, without adhering to the due procedure of Law. It is also pleaded that if the respondents are allowed to lay road through the subject matter lands, without following the procedure envisaged under the provisions of the Act, the petitioners will suffer grave and irreparable loss.

5. In addition to the above said contentions, in the other two Writ Petitions they pleaded that as neither a Notification under Section 3A nor Publication under Section 3D of the Act was issued in respect of the subject matter lands, the issuance of Notice under Section 3G(3) and (4) of the Act are not sustainable, that as no notification was issued under Section 3A of the Act, the petitioners lost the opportunity of submitting their objections under Section 3C of the Act to the proposed

acquisition of land and challenge the decision taken for publication with regard to acquisition of subject matter lands.

6. The petitioners have also filed miscellaneous petitions to amend the main prayer in the Writ Petition Nos.42024 and 42025 of 2022 seeking to declare the Gazette Notification No.4905 in S.O.No.5124 (E), dated 03.11.2022 and 3D Gazette Notification No.5624 in S.O.No.5860 (E), dated 15.12.2022 and the Public Notice in Roc.No.G3/473/2022 dated 20.12.2022 issued by the respondent No.4 under Section 3G (3) and (4) of the National Highways Act, calling upon the petitioner to appear before the respondent No.6 on 28.12.2022 without there being any notification under Section 3-A and the publication under Section 3-D of National Highways Act, 1956 and pass such other order or orders. In the Affidavit filed in support of the I.A seeking amendment of the main prayer, while referring to the Notification under Section 3A of the Act dated 3.11.2022 and 3D publication dated 15.12.2022, it is pleaded that the respondents 2 to 4 with a view to protect the land of the adjacent owners, issued the notification and publication in a surreptitious manner and published the same in daily local newspaper, which is of minimal circulation and without adhering to the procedure envisaged under the provisions of the Act. It is also pleaded that when the land was already notified for the purpose of laying road as long

back in the year 2018, the question of notifying the land once again for the same purpose would not arise at all.

7. The respondent authorities filed separate Counter-affidavits in W.P.Nos.42024 of 2022 and 42025 of 2022, though no Counter-Affidavits were filed in W.P.Nos.5664 of 2022 and 35081 of 2022. In the Counter Affidavit, it is *inter alia* stated that prior to issuance of Notification under Section 3G dated 20.12.2012, the National Highway authority has followed the procedure contemplated under the N.H. Act for acquisition of the subject matter lands and the Notification under Section 3A and Publication under Section 3D were published *vide* Gazette Notification No.4905 in S.O.No.5124 (E), dated 03.11.2022 and Gazette Notification No.5624 in S.O.No.5860 (E), dated 15.12.2022 respectively. It is also stated that the substance of 3A Notification was also published in Praja Sakthi (Telugu) and Hindu (English) News Papers on 6.12.2012 and the petitioners did not file any objections in response to Section 3A Notification. It is also stated that after publishing Notification in the Gazette, the Public Notice as per the Section 3G(3) of the N.H. Act was also published in Praja Sakthi and the Hindu newspapers on 22.12.2012 and that the due procedure as laid down under the Act was also followed. It is also stated that the

acquisition of the subject matter lands is for the public purpose i.e., for widening of the National Highway. No reply affidavits are filed.

8. On the basis of the above said pleadings, the Learned Counsel on both sides advanced their arguments.

9. Mr.V.R.Reddy Kovvuri, Learned Counsel for the petitioners mainly contended that acquisition of the petitioners' lands without following the due procedure contemplated under Law is not sustainable. He contends that in fact there is no requirement of acquisition of lands in question and the authorities concerned only with a view to protect the interest of the petitioners' adjacent land owners whose lands are already notified are proposing to lay road through the petitioners' lands. The Learned Counsel also submits that as no Counters were filed in W.P.Nos.5664 of 2022 & 35081 of 2022, the allegations made in the said Writ Petitions attributing *mala fides* are deemed to have been accepted. He further contends that as Sec.3A Notification dated 3.11.2022 was published in a Telugu newspaper- Praja Sakthi, which has low circulation in the area, the petitioners are deprived of filing objections to the same. In this regard, the Learned Counsel also states that the earlier Notification dated 18.6.2018 was published in Sakshi daily newspaper, which has a wide circulation, therefore publication of the Notification dated 3.11.2022, which is

under challenge in Praja Sakthi daily newspaper would not suffice. He submits that as the due procedure contemplated under the provisions of the N.H. Act is not complied with, the Notification dated 3.11.2022 and the subsequent Declaration under Section 3D of the Act are not sustainable in Law. In support of the his contentions, the Learned Counsel places reliance on the decisions of the Hon'ble Supreme Court in **State of Punjab and another vs. Gurdial Singh and others**¹ and **Uddar Gagan Properties Limited vs. Sant Singh and others**². Making the said submissions, the Learned Counsel seeks the reliefs as prayed for.

10. On the other hand, Mr.S.S.Varma, Learned Standing Counsel made his submissions with reference to the provisions of the N.H. Act and the averments in the Counter Affidavit. He submits that W.P.Nos.5664 of 2022 and 35081 of 2022 have practically become infructuous in view of the Notification issued under Section 3A of the Act dated 3.11.2022. He also submits that by virtue of Section 3D Publication on 15.12.2012, the subject matter lands vested with the Central Government and therefore the authorities concerned have issued the Notice under Section 3G (3) of the Act. While firmly denying the allegations that the subject matter lands are sought to be acquired

¹ (1980) 2 SCC 471

² (2016) 11 SCC 378

in the interest of the petitioners' neighbouring land owners, he asserts that the lands in question are required for the public purpose. He submits that the contention with reference to publication of Notification in the vernacular language under Section 3A merits no acceptance.

11. In elaboration, he contends that Section 3A(3) of the Act contemplates that the substance of the Notification under Section 3(A)(1) of the Act has to be published in two local newspapers and the same has been complied with in the present case and therefore there is no infraction of Law as sought to be projected. The Learned Counsel while relying on the decisions of the Hon'ble Supreme Court in **Union of India vs. Kushala Shetty and others**³, urges for dismissal of the writ petitions.

12. The Learned Assistant Government Pleader for Land Acquisition referring to the detailed Counter Affidavit filed by the respondent No.5 made submissions in support of the contentions advanced on behalf of the National Highway authorities. She submits that the procedure as contemplated under the N.H. Act has strictly been adhered to and the acquisition of lands in question is for the public purpose i.e., for widening of National Highway. She submits that the petitioners having failed to submit their objections to the

³ (2011) 12 SCC 69

3A Notification filed the present Writ Petitions only with a view to pre-empt the authorities from proceeding with the works of widening the National Highway without any justification. She seeks to dismiss the Writ Petitions as the same are devoid of merits

13. On an appreciation of the rival contentions, the following points arise for consideration by this Court:-

1) Whether the Notifications under challenge are not sustainable on the premise that the procedure contemplated under the provisions of the Act is not complied with?

2) Whether the land in question was sought to be acquired with a mala fide intention and the Notifications in question are vitiated for the said reason?

14. **Point No.1:-** In so far as the validity or otherwise of the notification dated 3.11.2022 under Section 3A of the N.H. Act is concerned, it is the contention of the Learned Counsel for the petitioners that the same was published in a newspaper, which is having minimal subscribers/very less circulation in the area. In this regard, it may be pertinent to refer to the relevant provisions of Law, which deals with publication of Notification under the N.H. Act.

15. Section 3A of the Act provides for power to acquire land etc., Sub-Section (1) of Section 3A of the Act contemplates that upon satisfaction of the Central Government that a land is required for

building, maintenance, management or operation of National Highway or part thereof for public purpose, a notification declaring its intention to acquire such land has to be published in the Official Gazette. Sub-Section (2) of Section 3A of the Act envisages that every notification under Section 3A(1) of the Act shall give a brief description of the land. Sub-Section (3) of Section 3A of the Act envisages that the competent authority shall cause substance of the notification to be published in two local newspapers, one of which to be in a vernacular language.

16. A reading of the above statutory provision viz., Section 3A(3) of the Act would go to show that the substance of Notification under Section 3A of the Act has to be published in two local newspapers, one of which should be in vernacular language. In the present case, the said requirement of Law has been complied with by publishing the substance of the Notification in 'Praja Sakthi', a Telugu newspaper in vernacular language and in Hindu (English language).

17. It is not the case of the petitioners that the said requirement has not been complied with, since 'Praja Sakthi' newspaper is not a local newspaper. Therefore, the contention that the said newspaper has minimum circulation etc., or that the earlier Notification dated 3.11.2018 was published in 'Sakshi' newspaper is of no consequence nor would it amount to statutory infraction to render the Notification in

question as invalid. Therefore, the contentions advanced in this regard are rejected and the point is accordingly answered against the petitioners.

18. **Point No.2:-** In so far as the contention to the effect that the subject matter lands are sought to be acquired only to protect the interest of the adjacent land owners of the petitioners though there is no requirement of the same, it is to be noted that except making vague and bald allegations, the petitioners did not choose to implead the neighbouring land owners against whom random allegations are made. No plea of collusion was raised and the officers concerned have not been made *eo nomine* parties to the Writ Petitions. In the absence of specific pleadings and the supporting material, the case of the petitioners attributing *mala fides* in the considered opinion of this Court, merits no appreciation.

19. At this juncture, it may be pertinent to refer to the decision relied on by the Learned Counsel for the petitioners. In **Gurdial Singh's** case, the Hon'ble Supreme Court was dealing with a matter with regard to acquisition of land for the purpose of a '*grain market*'. Initially, a piece of land having been selected as the best suitable place for building a '*Mandi*', Notification under Section 4 of the Land Acquisition Act and the Declaration under Section 6 of the Land

Acquisition Act were issued and even foundation stone of the building was laid. But, the very next year the proceedings were de-notified and instead notifications for acquiring the land of the respondents 1 to 21 therein were issued. Aggrieved by the same, a Writ Petition was filed before the High Court of Punjab & Haryana alleging *mala fides* on the ground that the fresh notifications were issued as a result of influence wielded by a Minister (respondent No.22 therein), who was related to owner of the land, which was initially sought to be acquired. The High Court impeached the impugned notifications on the ground of *mala fides*.

20. In the Appeal filed against the said orders, the Hon'ble Supreme Court while dismissing the same *inter alia* held that "*In the absence of any denial of the allegations made by the respondents Nos. 1 to 21 in the writ petition by a person having personal and direct knowledge in the matter, and having regard to the entire history of the case, it is difficult to resist the conclusion that the averments in the writ petition alleging mala fides must be accepted.*"

21. As seen from the said Judgment, it would appear that specific allegations were made against the respondents therein including the concerned Minister and in the attending facts and circumstances of the case, the Hon'ble Supreme Court opined that in the absence of denial of the same, the averments regarding *mala fides* have to be accepted.

22. In **Uddar Gagan Properties Limited's** case, the Hon'ble Supreme Court *inter alia* held that "*Mala fides can be inferred from undisputed facts even without naming a particular officer and even without positive evidence*". In the said case, the Hon'ble Supreme Court was dealing with an issue as to whether power of the State to acquire a land for public purpose has been used to facilitate transfer of Title of land of original owners to a private builder to advance business interest of the said builder, which is not legally permissible. The Hon'ble Supreme Court held that the High Court had rightly observed that the notification for public purpose was valid, but the subsequent events resulted in illegality.

23. The said Judgments are not much help to the petitioners, in the instant cases, more particularly, in view of the decision in **Kushala Shetty's** case under the provisions of the National Highways Act. In the said case, a plea was taken to the effect that the alignment of widening of National Highway was manipulated to suit vested interest. At Para 25 of the said Judgment, the Hon'ble Supreme Court *inter alia* held as follows:-

"The plea of the respondents that alignment of the proposed widening of National Highways was manipulated to suit the vested interests sounds attractive but lacks substance and merits rejection because except making a bald assertion, the respondents have neither given particulars of the persons sought to be favoured nor placed any material to prima facie prove that the execution of the project of widening the

National Highways is actuated by mala fides and, in the absence of proper pleadings and material, neither the High Court could nor this Court can make a roving enquiry to fish out some material and draw a dubious conclusion that the decision and actions of the appellants are tainted by mala fides."

24. In **Ratnagiri Gas and Power Private Limited vs. RDS Projects Limited and others**⁴, the Hon'ble Supreme Court at Para 25, held that *"the Law casts a heavy burden on the person alleging mala fides to prove the same on the basis of facts that are either admitted or satisfactorily established and/or logical inferences deducible from the same. This is particularly so when the petitioner alleges malice in fact in which event it is obligatory for the person making any such allegation to furnish particulars that would prove mala fides on the part of the decision-maker. Vague and general allegations unsupported by the requisite particulars do not provide a sound basis for the Court to conduct an inquiry into their veracity."*

25. Further, at Para 27 of the said Judgment, the Hon'ble Supreme Court *inter alia* held as follows:-

"There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a

⁴ (2013) 1 SCC 524

judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. Courts have, therefore, to be slow in drawing conclusions when it comes to holding allegations of mala fides to be proved and only in cases where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of mala fides that the Court should record a finding in the process ensuring that while it does so, it also hears the person who was likely to be affected by such a finding."

26. In **Ajit Kumar Nag vs. Indian Oil Corporation Ltd.**,⁵ the Hon'ble Supreme Court held that *"the allegations of mala fides need proof of high degree and that an administrative action is presumed to be bonafide unless the contrary is satisfactorily established."*

27. In **State of Madhya Pradesh vs. Nandlal Jaiswal**⁶ the Hon'ble Supreme Court in categorical terms held that *"wherever allegations of mala fides are made, it is necessary to give full particulars of such allegations and to set out material facts specifying the particular person against whom such allegations are made so that he may have an opportunity to controvert such allegations."*

In the light of the above stated Legal position, the contentions advanced on behalf of the petitioners merits no acceptance and the same are accordingly rejected. Point No.2 is answered accordingly.

⁵ (2005) 7 SCC 764

⁶ (1986) 4 SCC 566

28. Further, though it is the case of the petitioners that the subject matter lands are sought to be acquired to benefit/in the interest of the petitioners' neighbouring land owners, it was categorically asserted in the counter-affidavit that the same are required for public purpose, to which, the petitioners did not chose to file any reply and thus the said averments remained un-rebutted. Be that as it may. As per the respondents, the subject matter lands are required for the public purpose i.e., widening of National Highway and it is settled Law that the Courts should be loath to interfere in such matters.

29. In **Kushala Shetty's** case, the Hon'ble Supreme Court at Para 28 of the Judgment held as follows:-

“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 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.”

30. It is also settled Law that the interest of the public at large prevail over private interest. [See: Dr.Abraham Patani of Mumbai & Another v. State of Maharashtra(reported in 2022 SCC OnLine SC 1143)].

31. In the light of afore going conclusions, the petitioners are not entitled for the reliefs sought for and accordingly the Writ Petitions are dismissed.

JUSTICE NINALA JAYASURYA

Date: 04.11.2023

IS

THE HON'BLE SRI JUSTICE NINALA JAYASURYA

WRIT PETITION NOS.5664, 35081, 42024 & 42025 of 2022

Date: 04.11.2023

IS