

**(1999) 03 AP CK 0034**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 12581 of 1997**

Abdul Sattar and another

APPELLANT

Vs

District Collector, Nizamabad and another

RESPONDENT

**Date of Decision : 22-03-1999**

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Land Acquisition Act, 1894 — Section 11, 13, 4(1)

**Citation :** (1999) 5 ALD 82 : (1999) 3 ALT 227

**Hon'ble Judges :** B. Sudershan Reddy, J

**Bench :** Single Bench

**Advocate :** Mr. V. Tulasi Reddy, for the Appellant; Government Pleader for Land Acquisition, for the Respondent

## **Judgement**

1. The land belonging to the petitioners in Sy.No.205/2 situated at Hasgul Village of Bichkunda Mandal of Nizamabad District were acquired along with other lands under the provisions of the Land Acquisition Act, 1894 (for short the Act") for a public purpose for formation of road from Bichkunda to Dongli village. The notification u/s 4(1) of the Act was published in the Official Gazette on 4-4-1994. The Land Acquisition Officer passed a common award vide proceedings dated 6-6-1996 fixing the market value of the acquired land at Rs.10,500/- (not clear) per acre and a solatium at 30% and additional market value in accordance with Section 23(1-A) of the Act. The Land Acquisition Officer also awarded interest at 6% per annum on the compensation and solatium from the date of taking advance possession till the date of passing of the award and at 9% per annum for one year and 15% per annum thereafter on the market value and solatium. The award has been passed for a total sum of Rs.14,55,515/- in respect of the entire extent of Ac.26-04 guntas, but only a sum of Rs.2,39,154/- has been paid proportionately as first instalment due to lack of funds. The petitioners and other claimants have received the amount to lack of funds. The petitioners and other claimants have received the amount under protest and sought for a reference u/s 18 of the Act. The Land Acquisition Officer has referred the matter to the Civil

Court and the same is stated to be pending in O.P.No.43 of 1996 on the file of the learned Senior Civil Judge, Bodhan.

2. The petitioners were constrained to file Writ Petition No.13985 of 1996, as the respondents failed to deposit the balance of compensation under the award passed by the Land Acquisition Officer. The said writ petition was disposed of by this Court by an order dated 19-9-1996 directing the respondents to deposit the compensation and accordingly the balance amount has been deposited on 13-3-1997. The second respondent is stated to have disbursed only a sum of Rs.7,60,471/- and kept the remaining amount unpaid without any intimation whatsoever. The petitioners got issued a legal notice on 2-4-1997 calling upon the second respondent herein to make the payment of balance amount also. However, there was no response whatsoever from the respondent.

3. However, the petitioners have learnt that the second respondent reviewed the award resulting in certain modification with regard to payment of rate of interest and also interest on solatium. The Land Acquisition Officer accordingly modified the award refusing to grant any interest on the solatium and also awarding interest at the rate of 7 1/2% per annum from the date of advance possession taken to the date of the award. The Land Acquisition Officer accordingly withheld a sum of Rs.4,55,890/- being the amount granted towards interest at the rate specified in the award including the interest on solatium. It is the said review of the award which is under challenge in this writ petition.

4. Sri F. Tulasi Reddy, learned Counsel for the petitioners strenuously contends that the Land Acquisition Officer has no jurisdiction whatsoever to review his own award for whatsoever reason. The Act does not confer any such jurisdiction upon the Land Acquisition Officer to review the award once passed. It is further urged by the learned Counsel that the Land Acquisition Officer at the most could correct the arithmetical or typographical error in exercise of the power u/s 13-A of the Act. The learned Counsel submits that in the instant case, the Land Acquisition Officer reviewed the whole award relating to the award of interest. Learned Government Pleader for Land Acquisition Sri P. Rajagopal Rao submits that the Land Acquisition Officer has committed serious irregularity in awarding interest on solatium and also 9% per annum from the date of advance possession instead of awarding interest at 7 1/2% per annum. It is further urged by the learned Government Pleader that the Court should not interfere with the order of review even if it suffers from any legal infirmity, as such interference would amount to upholding an illegal award of the Land Acquisition Officer. Interference by this Court would amount to reviving an illegal award.

5. I do not find any difficulty whatsoever in upholding the submission made by the learned Counsel for the petitioner that the Land Acquisition Officer has no authority in law to review his own award. There is no such power conferred upon the Land Acquisition Officer. In Santosh Kumar and Others Vs. Central Warehousing Corporation and Another, , the Apex Court held that the amount of compensation awarded by the Collector u/s 11 of the Act may not be questioned

in any proceedings either by the Government or by the company or local authority at whose instance the acquisition is made, except on the ground of fraud, corruption or collusion. It is held by the Apex Court that it is not permissible for the company or the local authority even to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India to challenge the amount of compensation awarded by the Collector and to have it reduced. It is thus clear that an award passed by the Land Acquisition Officer cannot be challenged even under the proceedings under Article 226 of the Constitution of India. The award is an offer made by the Land Acquisition Officer on behalf of the Government. Even the reference Court u/s 18 of the Act is expressly prohibited from reducing the amount of compensation awarded by the Land Acquisition Officer. In *Bhera Ram Vs. State of Rajasthan*, , a Division Bench of Rajasthan High Court held that once an award is passed and filed in the Collector's Office, it becomes final and thereafter the Land Acquisition Officer cannot review the award by making a second award. In *Dhanraj and Another Vs. State of Rajasthan and Others*, , it is held that review is a creature of Statute and the Land Acquisition Act does not authorise the Land Acquisition Officer to review his order except correcting the clerical or arithmetical mistake u/s 13-A of the Act. I do not find any difficulty whatsoever to agree with the submission made by the learned Counsel for the petitioner that the Land Acquisition Officer has no authority in law to review his own award except to correct typographical or arithmetical mistake in exercise of the power conferred upon him u/s 13-A of the Land Acquisition Act.

6. But the question that would immediately arises for consideration is as to whether this Court should interfere in exercise of its jurisdiction under Article 226 of the Constitution of India to quash the order of review dated 30-3-1997.

7. In *I.D.L. Chemicals Ltd., Balanagar, Hyderabad Vs. K. Viswanadham and Another*, a Full Bench of this Court in unequivocal terms declared that the claimants are not entitled to interest u/s 28 of the Act on solatium payable under sub-section (2) of Section 23 and the additional amount payable under sub-section (1-A) of Section 23. There is no dispute whatsoever in this case that the Land acquisition Officer could not have awarded interest on solatium. The decision of the Supreme Court in Civil Appeal Nos.11398 and 11399 dated 29-11-1995 reported in *Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others*, , clearly lays down the law in this regard and the Land acquisition Officer could not have ignored the law declared by the Supreme Court. The award to that extent passed by the Land Acquisition Officer on 6-6-1996 suffers from incurable infirmity.

8. It is obvious that any interference by this Court setting aside the order of review would amount to resurrecting that part in the award which is evidently an illegal one. It is settled law that no writ could be issued quashing an illegal order to give effect to or reviving another illegal order (See: *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , *Jagan Singh Vs. State Transport*

Appellate Tribunal, Rajasthan and Another, and Kalasagaram (Regd.) Secunderabad Cultural Association Vs. State of Andhra Pradesh and Others, . The order of review by the Land Acquisition Officer, though without jurisdiction, has not resulted in failure of justice. The Court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law (See Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another, .

9. For the aforesaid reasons, I find it difficult to interfere in the matter and set aside the impugned order of review. No relief could be granted to the petitioners.

10. The writ petition fails and shall stand accordingly dismissed. No order as to costs.