

(2000) 12 AP CK 0025

In the Andhra Pradesh High Court

Case No : WA No. 1417 of 2000 and Batch

Govt. of A.P. and others

APPELLANT

Vs

N. Rami Reddy

RESPONDENT

Date of Decision : 21-12-2000

Acts Referred:

Constitution of India, 1950 — Article 31
Land Acquisition (Andhra Pradesh Amendment) Act, 1948 — Section 1, 17, 23
Land Acquisition Act, 1894 — Section 11, 18, 4, 8, 9
Nagarjuna Sagar Project (Acquisition of Land) Act, 1956 — Section 3, 3

Citation : AIR 2001 AP 226 : (2001) 1 ALD 443 : (2001) 1 ALT 438

Hon'ble Judges : S.B. Sinha, C.J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : A.G, for the Appellant; Mr. S. Laxma Reddy, Mr. Jalli Kanakaiah, Mr. Raj Kumar Rudra, Mr. K. Ravinder Goud, Mr. K. Ramesh, for the Respondent

Judgement

S.B. Sinha, CJ

1. Several questions of some importance have been raised in these appeals and connected writ appeals. Having regard to the questions involved in these matters, it is not necessary to state the fact of the matter in details. But, suffice it to say that for the purpose of construction of Nagarjuna Sagar Project, the State enacted Nagarjuna Sagar (Acquisition of Land) Act, 1956 (A.P. Act No.XXXII of 1956) (hereinafter called and referred for the sake of brevity as "the said Act"). The said Act came into force with effect from 8-11-1956. Sections 3 and 3-A of the said Act read thus:

"3. Acquisition of lands in Nagarjunasagar Project area :--The Government may acquire any land in the project area for a project purpose.

(2) The acquisition shall be made in accordance with the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter in this section referred as the said Act), subject to the following modifications :

(i) For Section 11 of the said Act, the following Section shall be substituted, namely:

11. Enquiry and award by Collector :-- On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections, if any, which any person interested has stated pursuant to a notice given u/s 9 to the measurements made u/s 8, into the market value of the land on the 1st July, 1953 and the value of any improvements to the land effected after that date and before the date of the publication of the notification under sub-section (1) of Section 4, into the value of the land at the date of the publication of the notification under subsection (1) of Section 4, and into the respective interests of the persons claiming the compensation and shall make an award under his hand of--

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the appointment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

(ii) after sub-clause (ii) of clause (b) of sub-section (2) of Section 17 of the said, Act as amended by the Land Acquisition (Andhra Pradesh Amendment) Act, 1948 (Act XXI of 1948), the following shall be added, namely:-

or

(iii) for any purpose connected with the Nagarjunasagar Project in the area to which the Nagarjunasagar Project (Acquisition of Land) Act, 1956, extends];

(iii) in sub-section (1) of Section 23 of the said Act, for clause first, the following clause shall be substituted, namely:-

first, the market-value of the land on the 1st July 1953 and the value of any improvements to the land effected after that date and before the date of the publication of the notification under sub-section (1) of Section 4 or the market-value of the land on the date of the publication of the said notification, whichever is less;

Explanation :--The Government may, on the request of the landowner, agree to give in exchange any Government land the cost of which is, in their opinion, equal to the cost of the land acquired, or agree to pay the cost of a portion of the land acquired and for the remaining portion give Government land the cost of which is in their opinion equal to the amount due".

"3-A. Application of Central Act I of 1894 for acquisition of land in certain project areas :--(1) In this section,--

(a) "Central Act" means the Land Acquisition Act, 1894, (Central Act 1 of 1894), with the subsequent statutory modifications thereto as in force at the

commencement of this Act in the territories of the State of the Andhra Pradesh which, immediately before the 1st of November, 1956, were comprised in the State of Andhra;

(b) "Hyderabad Act" means the Land Acquisition Act (Hyderabad Act IX of 1309-F).

(2) Notwithstanding anything contained in sub-section (2) of Section 1 of the Central Act and in Section 1 of the Hyderabad Act as amended by Section 3 shall, and the Hyderabad Act shall not, apply to the acquisition of lands for project purposes in the districts of Nalgonda and Khammam".

2. The constitutionality of the said Act came up for consideration before a Division Bench of this Court in Veligati Lakshminarayana and Others Vs. The State of Andhra Pradesh and Another, . The Division Bench held that the said Act is intra vires Articles 14, 19, 31 and 31(2) of the Constitution of India as acquisitions were being made for public purpose.

3. Subsequently again in Kamikacherla Rangaiah and Others Vs. Government of Andhra Pradesh and Others, , the matter came up for consideration and Kuppu Swamy, J., speaking for the Division Bench, on the basis of a decision of the Apex Court in Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, , held thus:

"In Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, , it was observed by the Supreme Court that Art. 31-A carves out an exception to the applicability of Articles 31, 14 and 19 and immunizes certain categories of agrarian reform legislation from attack on the ground that they violate any of these three articles. Then follows the second proviso which says that even where a law falls within Article 31A it would not qualify for immunity if it seeks to acquire any portion of the land held by a person under his personal cultivation which is within the ceiling limit applicable to him under any law for the time being in force and such a law in order to be valid would have to provide for payment of compensation at a rate which shall not be less than the market value of the land sought to be acquired. This provision is also couched in negative language like clauses (1) and (2) of Article 31 and it imposes a fetter on the exercise of the legislative power of the State by providing that the State shall not be entitled to make a law authorising acquisition of land held by a person under his personal cultivation within the ceiling limit applicable to him, unless the law provides for payment of compensation at a rate not less than the market value. This limitation on the legislative power of the State is the measure of the fundamental right conferred on the owner of the land".

5. The aforementioned decision in Rangaiah (supra) still holds the field but for completion of narration of facts, we may notice that the aforementioned decision has been followed by a Division Bench of this Court in Kollutla Obi Reddy and others v. Government A.P. and others, in WA Nos.4712 and 4725 of 1997 disposed of on 14th March, 1997, wherein, this Court held:

"The Apex Court in Nasiruzzaman's case (1996 LACC 633) clarified that where possession has been taken over and the land vested in the Government free from all encumbrances, there could be no question of divesting of land from the Government revesting it in the owner, and as such, in such a case Section 11-A would have no application. The facts of the present case squarely apply to the facts in Nasiruzzama's case (supra). It is however, the submission of the learned Counsel for the petitioners that the Government itself has regarded the notifications to have lapsed and issued fresh notifications, and therefore the compensation should be determined from the date of the second notification. We are afraid, we cannot agree to such a conclusion in view of the judgment of the Supreme Court in Nasiruzzaman's case clarifying the position. Merely because subsequent notifications were published erroneously those should not cease the operation of the earlier notifications. The property having been vested in the Government would not get divested only because new notifications were published in 1991. If the conceded position of law is that the property was never divested from the Government, the question of publication of notification afresh would in no way alter the position. In that view of the matter, we must accept the submission of the learned Government Pleader for Land Acquisition".

6. In another writ petition being marked as WP No.24365 of 1999 (between Challa Narsaiah v. Govt of A.P., disposed of on 1st August, 2000), a Division Bench of this Court, which was presided over by one of us, namely B. Subhashan Reddy, J., following the aforementioned decisions held:

"No order is placed by the learned Government Pleader reversing or suspending the above Judgment. Hence, following the said judgment, the award passed in the instant case is set aside and there shall be a direction that the compensation be paid with reference to the notification u/s 4(1) of the Land Acquisition Act, 1894. The entire process of passing of the award and payment of compensation shall be completed within a period of six months from the date of receipt of a copy of this order".

7. The State filed an application under Article 136 of the Constitution of India against the judgment of this Court in WP Nos.4712 and 4725 of 1997, which is marked as SLP (C) No.15177 of 2000 in CC Nos.6083-6084 of 2000 and by an order dated 27-9-2000 while issuing notice on the application for consideration of delay as well as on the special leave petition, an interim order has been passed by the Supreme Court staying the operation of the order of the High Court.

8. Mr. Ramesh Ranganatham, learned Additional Advocate-General appearing on behalf of the State, inter alia, submitted that having regard to the aforementioned interim order of stay dated 27-9-2000, this Court will consider the constitutionality of the said Act once again by determining the question as to whether the same is ultra vires the Second Proviso to Article 31A of the Constitution of India or not. According to the learned Counsel, the Apex Court in an order passed on 8th July, 1996, refused to go into the aforementioned constitutional question in Civil Appeal No.1220-42 of 1982 while disposing the

Special Leave Petitions against several orders passed by this Court, holding:

"These bunch appeals are directed against the respective judgments of the High Court whereunder the substituted Section 23(1) of the Land Acquisition Act as amended by the Visakhapatnam Steel Project (Acquisition of Lands) Act No.XX of 1972) and similar provisions of another enactment were struck down. It is not disputed that the Notification u/s 4(1) of the Land Acquisition Act in respect of the lands in dispute was issued some time in the year 1980 or near-about whereas under the impugned provisions, the prices of the lands were pegged down from retrospective dates. We are of the view that substantial justice has been done by the Judgments of the High Court. The respondents are small land-owners, most of them having less than one acre of land.

In this view of the matter, we are not inclined to go into the Constitutional question and dismiss these appeals. No costs".

9. Mr. Ranganathan would urge that in the aforementioned situation, the doctrine of merger would come into play. In support whereof, strong reliance has been placed upon a recent decision of the Apex Court reported in *Kunhayammed and Others Vs. State of Kerala and Another*, . The learned Counsel would submit that by reason of the order of stay passed by the Apex Court, the Judgments of this Court stand nullified till the said appeals are disposed of and in support of the said contention, strong reliance has been placed on a Division Bench decision of this Court in *K. Yella Reddy Vs. The Registrar, Andhra Pradesh Administrative Tribunal and Others*, . The learned Counsel would contend that in any event the learned single Judge as also this Court should not exercise its jurisdiction having regard to the fact that the petitioners had approached this Court after a long time and without filing any application before the Collector for making a reference in terms of Section 18 of the Land Acquisition Act, 1894. The learned Additional Advocate-General urged that an invalid order, although void, need not be set aside by this Court. Reliance in this connection has been placed on *State of Rajasthan and Others Vs. D.R. Laxmi and Others*, and *D.G. Mahajan v. State of Maharashtra* (supra).

10. The learned Counsel appearing on behalf of the writ petitioners-respondents, on the other hand urges, that the Division Bench decision of this Court in *Rangaiah* (supra) having been rendered following the Supreme Court decision in *D.G. Mahajan v. State of Maharashtra* (supra), the same holds the field. It is contended that the Land Acquisition Collector, upon consideration of the factual matrix of each case, has arrived at a finding of fact that the lands sought to be acquired were within the ceiling limit as also the same were in personal cultivation of the owners and in that view of the matter, the Second Proviso appended to Article 31A of the Constitution of India would squarely be attracted. Our attention has further been drawn to the fact that the Land Acquisition Collector in various cases categorically came to the finding that the last date of the publication of Notification u/s 4(1) of the Land Acquisition Act was 15-7-1992. Our attention is also drawn to the fact that even the Land Acquisition Collector

had calculated the amount of compensation both in terms of cut-off date as set out under the said Act as also in terms of Section 4(1) of the Land Acquisition Act.

11. The main question which, thus, arises for consideration is as to whether having regard to the aforementioned interim order of stay passed by the Apex Court on 27-9-2000 in SLP (C) No.15177 of 2000, the ratio of the judgment has been wiped out or not.

12. It is now a well settled principle of law that the ratio of a judgment is the reasons assigned in support thereof. While a Court of appeal stays the operation of the judgment, it stays the further implementation, as between the parties, of the operative portion thereof, and thereby the ratio of the decision cannot be said to be wiped off. Further more, a distinction must be borne in mind that the appeal Court may, in a given situation, also suspend the operation of the said decision. Suspension of operation of a judgment and staying the operation of the order, in our view, connotes two different situations. In *K. Yella Reddy V. Registrar, APAT* (supra), a Division Bench of this Court considered the decision of the Apex Court in *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, holding:

"It is admitted by the learned Counsel for the petitioner that the judgment of the Full Bench of this Court has been stayed and the operation of the judgment had been suspended by the Supreme Court. But the argument is advanced placing reliance on the decision in *Koduru Venkata Reddy Vs. Land Acquisition Officer*, , that the effect of suspension of the judgment of the High Court is only that the judgment shall not be implemented but the dicta decided in the judgment remains operative and is binding on the single Judges and Division Benches until the judgment is set aside by the Supreme Court. Though we do not agree with the statement of law and feel the principle to have been very widely stated yet ordinarily the matter to have been placed before a Larger Bench in giving the judgment has not taken into consideration the decision of *Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another*, ."

13, A bare perusal of the aforementioned decision would clearly show that in *Indira Gandhi* (supra); the operation of the judgment and order of the High Court was suspended. In that case, the election of *Smt. Indira Gandhi* was set aside. The Apex Court suspended the operation of the said Judgment; as a result whereof, the status of the appellant as an elected Member of Parliament and consequently her right to hold the office of the Prime Minister of India stood revived. But, when a question of law is decided, as indicated hereinbefore, its ratio thereof cannot be said to be wiped out only because the operation of the said order is stayed. This aspect of the matter has been considered by a Division Bench of this Court in *Koduru Venkata Reddy Vs. Land Acquisition Officer*, holding:

"We are of the view that when a judgment of the High Court is the subject-matter of an appeal and the said judgment is suspended, the only effect of such

suspension is that judgment cannot be executed or implemented. But so long as the Full Bench judgment stands, the dicta laid down therein is binding on all Courts including single Judges and Division Benches of this Court. The dicta laid down therein cannot be ignored unless the Court after hearing a particular case doubts the correctness of the dicta and thinks it appropriate that it should be reconsidered. We, however, do not feel any such doubt that insofar as the acquisition of the land of a person, whose holding is less than the ceiling area and is personally cultivating the same, is concerned, he is entitled to the payment of market value in lump sum. Payment of compensation in instalments is violative of the provisions of clause (2) of Article 31A of the Constitution."

14. This aspect of the matter is no longer *res Integra* in view of the decision of a Three-Judge Bench of the Apex Court in *Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*, wherein the Apex Court has laid down the law in the following terms:

"The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 12, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority".

15. There cannot be any doubt whatsoever that the decision rendered by a Division Bench of this Court is binding upon another Division Bench. The decision

of this Court in *Rangaiah* (supra), as indicated hereinbefore, has been followed by this Court in many cases.

16. It may be that at one point of time, the Apex Court expressed its disinclination to enter into the question of constitutionality of the provisions of the said Act or the matter is still pending before the Apex Court, but having regard to the aforementioned authoritative pronouncements of the Supreme Court, there cannot be any doubt whatsoever that the ratio rendered by this Court in *Rangaiah* (supra) still holds the field and this Bench is bound thereby.

17. Further more, although Article 31 has been deleted from Part-III of the Constitution, in its place and instead Article 300A was inserted. The said provision reads thus:

"300-A. Persons not to be deprived of property save by the authority of law :--No person shall be deprived of his property save by authority of law".

18. In terms of Article 300A, no person can be deprived of his right to property except in accordance with law. A law within the meaning of the aforementioned provision must be one which stands the test of Article 31 of the Constitution of India. Further more, despite insertion of Article 300-A, the doctrine of "eminent domain" still subsists, In *Jilubhai Nanbhai Khachar, etc. etc. Vs. State of Gujarat and another, etc. etc.*, , the Apex Court referring to a larger number of decisions, inter alia, held that :

"The word "law" used in Article 300-A must be an Act of Parliament or of State Legislature, a rule or statutory order having force of law. The deprivation of the property shall be only by authority of law, be it an Act of Parliament or State Legislature, but not by executive fiat or an order. Deprivation of property is by acquisition or requisition or taken possession of for a public purpose". It further held that:

"The word "property" used in Article 300-A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and expropriated the property. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase "deprivation of the property of a person" must equally be considered in the fact situation of a case. Deprivation connotes different concepts. Article 300-A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by the Parliament or of a State Legislature, a rule of a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. Prima facie, State would be the Judge to decide whether a purpose is a public purpose. But it is not the sole Judge. This will be subject to judicial review and it is the duty of the Court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. But every public purpose does not fall under Article 300-A nor exercise of eminent domain

an acquisition or taking possession under Article 300-A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300-A. It would be by exercise of the police power of the State, In other words, Article 300-A only limits the power of the State that no person shall be deprived of his property save by authority of law. There is no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300-A."

19. We are, therefore, unable to subscribe the view sought to be propounded by the learned Additional Advocate-General that the decision in Rangaiah (supra) does not constitute any binding precedent. We, therefore, feel bound thereby and have no reason, particularly having regard to the fact that the matter is pending before the Apex Court, to refer the matter to a Larger Bench. Keeping in view the fact that Rangaiah (supra) was decided relying on the basis of the decision of the Apex Court in D.G. Mahajan v. State of Maharashtra, (supra), and furthermore, having regard to the decision of Apex Court in Jilubhai Nanbhai Kachar v. State of Gujarat, (supra), we do not find any reason to differ therefrom. We have expressed the aforementioned view, having regard to the doctrine of stare decisis, as the said decision has constantly been followed by this Court since 1980.

20. So far as the second contention raised by the learned Additional Advocate-General, namely, the writ petitions should not have been entertained having regard to the gross delay and laches on the part of the writ petitioners is concerned, we are of the view that it is not such a case where the writ petitioners should be deprived of their legitimate dues by enforcing their constitutional rights only on the ground of delay and laches. In Jilubhai Nanbhai Khachar v. State of Gujarat, (supra), it has been held that where a statute is declared ultra vires, the same is non-est in the eye of law. It is not a case where any executive decision is sought to be challenged by the petitioners. Though, as indicated hereinbefore, they have approached this Court only on the ground that despite the fact that the Land Acquisition Collector had calculated the amount of compensation both in terms of the said Act as also the Land Acquisition Act, lesser amount of compensation envisaged under the said Act was fixed in defiance of the dicta of this Court in Rangaiah (supra). Further more, the petitioners had filed several representations before the appropriate authority, which, for reasons best known to them, had not been disposed of.

21. It is true that the Court in exercise of its jurisdiction under Article 226 of the Constitution need not set aside an order only because it would be lawful to do so. But the Court, in our considered opinion, would make all endeavours to uphold the right of the persons similarly situated by invoking the doctrine of equality. By

reason of the provisions of the said Act, a citizen is deprived of his right of property which is beyond any castle of doubt that such legislation must be strictly considered. Further more, the Court normally would grant the same relief to one person, which has been granted to the persons similarly situated. The scheme of granting similar compensation, also finds reflection from Section 28-A, which was inserted by Amending Act 68 of 1984. In any event, the very purpose of insertion of the second Proviso appended to Article 31-A, which is also a part of the agrarian reform, will be set at naught if the petitioners are to be deprived of their due compensation despite the fact that they fulfil all the conditions therefor. For the reasons aforementioned, we are of the opinion that the decisions of the apex Court in *State of Rajasthan v. D.R. Laxmi* (supra) and *State of Rajasthan Vs. Dinesh Kumar Bharti*, , are not applicable to the fact situation in the present case.

22. For the reasons aforementioned, we do not find any merit in the contentions raised by the learned Advocate-General. The writ appeals are dismissed, directing the respective Land Acquisition Collector and Deputy Collector, as the case may be, to grant compensation to the claimants in terms of the provisions of the Land Acquisition Act, 1894 on the basis of the market value as existing on the date of publication of Notification u/s 4(1) of the Land Acquisition Act.

23. There cannot, however, be any doubt whatsoever that the amount which has already been paid in terms of the said Act shall be adjusted while paying amount of compensation in terms of the Land Acquisition Act, 1894. There shall be no order as to costs.