

(2021) 11 TEL CK 0026
In the Telangana High Court
Case No : Writ Petition No. 3479 Of 2021

Jawaharlal Nehru Technological Universityvs State Of Telangana

Date of Decision : 08-11-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 21, 300A
National Highways Act, 1956 — Section 3A, 3(1)(A), 3(1)(C), 3(1)(D), 3B, 3C, 3C(2),
3D, 3E, 3F, 3G, 3G(2), 3G(3), 3G(4), 3G(5), 3G(7)

Citation : (2021) 11 TEL CK 0026

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Mr. V. Ramchander Goud, learned Standing Counsel for the petitioners, Mr. Laxminarayana Alishetty, learned Standing Counsel for respondent No.4, and learned Government Pleader for Land Acquisition.

2. This Writ Petition is filed to declare the action of respondent No.4 in issuing notice dated 24.12.2020 to demolish the compound wall of petitioner No.2 College and notice dated 02.01.2020 as arbitrary, illegal, and for a consequential direction to the respondents to pass an Award in favour of the petitioners in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short 'Act, 2013') with all other statutory benefits, such as total market value, factor, value of the structure (compound wall) and solatium and interest in respect of the proposed acquisition of the land of petitioner No.2 including compound wall.

3. After filing the counter by respondent No.4, the petitioners herein filed I.A. No.6 of 2021 seeking to amend the prayer by adding paragraph Nos.14 to 16 in the writ affidavit. The prayer which sought to be amended is as follows:

"..... pleased to grant a Writ, Order or Direction, more particularly in the nature of Writ of Mandamus, by declaring the action of the Respondent No.2 in passing the unilateral Award No.B/NH-161/2613/18-3 dated 05.01.2019 in respect of the Compound Wall of the Petitioner No.2 property as well as the Notice issued by

the Respondent No.4 dated 24.12.2020 to demolish the compound wall of Petitioner No.2 College and Notice dated 02.01.2020 in arbitrarily computing insufficient compensation as violative of Principles of Natural Justice, illegal, arbitrary, nonest in the eye of law being violative of Article 300A, 14 and 21 of the Constitution of India and not in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, by setting aside the same and consequently direct the Respondent No.2 to pass an Award in favour of the Petitioners in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 with all other statutory benefits such as total market value + factor + value of the structure (Compound Wall) + solatium + interest in respect of the proposed acquisition of the land of the Petitioner No.2 including compound wall or in the alternative direct the Respondent No.2 to 4 herein to construct the compound wall on par with the existing compound wall in the premises of the Petitioner No.2 college before demolition of the existing compound wall and pass such...."

4. CONTENTIONS OF THE PETITIONERS:

- i) Petitioner No.1 is a University while petitioner No.2 is its College.
- ii) Respondent No.2 had issued proceedings dated 04.04.2018 and passed an Award behind the back of the petitioners in respect of the land admeasuring 59,780 square meters in Sultanpur Village for the purpose of National Highway, and calculated the compensation @ Rs.3,12,500/-per acre or Rs.77.21 ps. per square meters, wherein the land admeasuring 485 square meters of petitioner No.2 College was also mentioned, in which a compensation of Rs.1,16,083/- was sanctioned to the petitioners.
- iii) Respondent No.2 had passed a second award dated 11.06.2018, wherein they have followed similar procedure as followed in the first award dated 04.04.2018 and identified the land admeasuring 1336 square meters in Sy.No.40, and 1821 square meters in Sy.No.41 belonged to the petitioners and prescribed a compensation of Rs.3,15,392/- for the land admeasuring 1336 square meters in Sy.No.40 and Rs.4,29,888/- for the land admeasuring 1821 square meters in Sy.No.41.
- iv) Respondent No.2 vide award dated 11.06.2018 had acquired the land admeasuring 29,337 square meters in Sarafpally Village and handed over its possession to the National Highway Authority of India and calculated the compensation @ Rs.12,10,000/- per acre or Rs.298.98 paise per square meter, wherein the land admeasuring 202 square meters in Sy.No.361 and 2630 square meters in Sy.No.362 of petitioner No.2 College was acquired, for which a compensation of Rs.1,84,657/- for the land admeasuring 202 square meters in Sy.No.361 and Rs.24,04,192/- for 2630 square meters in Sy.No.362 was sanctioned. Even the Award was intimated to the petitioners on 21.03.2019. No notice or any Notification/ Proposal were served on the petitioners.

v) The land admeasuring 6474 square meters, a compound wall with approximate dimensions of 340 meters in length, 0.30 meters width and 3.66 meters height is falling under the proposed road widening / 4 - Lane of National Highway No.161. As such, petitioner No.2 vide letter dated 10.12.2020 intimated petitioner No.1 that to construct a new compound wall, it would cost Rs.80,00,000/-, the details of which are mentioned in detail, and informed the same to respondent No.4.

vi) Respondent No.4 had issued notice dated 24.12.2020 to petitioner No.2 asking it to demolish the said compound wall. Respondent No.2 further issued a notice dated 02.01.2020 informing petitioner No.2 that the compensation of Rs.4,19,911/- is being sanctioned. Petitioner No.2 informed petitioner No.1 vide letter dated 07.01.2021 that respondent No.2 has awarded a compensation of Rs.4,19,911/- for the compound wall. Petitioner No.1 had also addressed a letter to respondent No.3 vide letter dated 11.01.2021 to enhance the compensation for the proposed construction of the compound wall as the said amount of Rs.4,19,911/- is not sufficient as per the estimation of the actual cost of construction. The said representation was not considered. Therefore, the petitioners herein have filed the present writ petition.

5. Respondent No.4 has filed counter affidavit denying the allegations made in the writ affidavit. Respondent Nos.1 to 3 adopted the contents of the counter affidavit filed by respondent No.4.

6. CONTENTIONS OF RESPONDENT No.4:

i) National Highways Authority of India has been constituted under the National Highways Authority of India Act, 1988 with an objective to develop, maintain and manage the National Highways in the Country.

ii) The procedure for acquisition of the land and the matters connected thereto are elaborately spelt out in the National Highways Act, 1956 (for short 'Act, 1956').

iii) Pursuant to the policy of Central Government, four laning projects of the National Highway No.161 in Sangareddy District in the State of Telangana was entrusted to the National Highways Authority of India for implementation and maintenance, thereafter in line with the objectives of the National Highways Act. Respondent No.4 has taken up the four-laning maintenance, management and operation of the National Highway No.161 connecting Sangareddy - Nanded Akola Section from 0.000 to K.M. 39.980 for public purpose.

iv) The Revenue Divisional Officer - cum - Competent Authority for Land Acquisition, Sangareddy District has been appointed for undertaking acquisition of lands in terms of Section - 3A of Act, 1956. Notification under Section - 3A was issued on 01.06.2017, wherein the petitioners' land at Sulthanpur Village to an extent of 485.86 square meters in Survey No.362 and the land situated in Sarafpally Village in Sy.No.362 to an extent of 2713.99 square meters has been

notified. The Notification was published in two Daily News Papers viz., The Hindu (English) and Namaste Telangana (Telugu) on 16.06.2017.

v) The second notification under Section - 3A was issued on 19.12.2017 for acquisition of additional land situated at Sulthanpur Village to an extent of 1336 square meters in Sy.No.40 and an extent of 1821 square meters in Sy.No.41, and the land to an extent of 202 square meters in Survey No.361 of Sarafpally Village, and the said notification was published in two Newspapers viz., The Hindu (English) and Sakshi (Telugu) on 03.01.2018.

vi) In all the said notifications, objections were called from the persons interested in the said lands including the petitioners herein within 21 days from the date of publication of notification. 30 objection petitions were received under Section - 3C and the same were disposed of by hearing on 17.07.2017. The petitioners herein have not filed any objection petition.

vii) The first notification under Section - 3D of the Act, 1956 was issued on 20.11.2017 with regard to the Sulthanpur Village. On publication of Notification under Section - 3D, the lands shall vest absolutely in the Central Government free from all encumbrances.

viii) Notification under Section - 3G of the Act, 1956 was published in the Hans India (English) and Andhra Prabha (Telugu) Daily Newspapers dated 27.12.2017 intimating the land losers to be present on 05.01.2018 at Revenue Divisional Office, Sangareddy, along with documents.

ix) The second notification under Section - 3D was issued on 09.02.2018 with regard to the acquisition of additional lands in Sulthanpur Village and Sarafpally Village.

x) The Notification under Section - 3G of the Act, 1956 was published in The Hans India (English) and Andhra Prabha (Telugu) Daily Newspapers on 22.02.2018, with a similar request.

xi) The possession of the lands was taken over by the Department after serving notice under Section - 3E of the Act, 1956. Various private lands that were affected under 4-laning of the National Highway were acquired in accordance with the provisions of the Act, 1956 by following the procedure contained in Section - 3A to 3G.

xii) After conducting due enquiry, respondent No.2 by duly following the procedure laid down in the Act, 1956 and applicable provisions of the Act, 2013, passed an Award dated 04.01.2018 fixing compensation at Rs.1,16,083/- which was paid to petitioner No.2 vide cheque No.534, dated 26.03.2020. Like-wise, respondent No.2 has passed Award dated 11.06.2018 fixing the compensation at Rs.3,15,392/- for Sy.No.40 and Rs.4,59,888/- for Sy.No.41 of Sulthanpur Village and the same was paid to petitioner No.2 vide Cheque No.535, dated 26.03.2020. Respondent No.2 had also passed an Award dated 11.06.2018 in respect of Sy.Nos.361 and 362 of Sarafpally Village fixing the compensation at

Rs.1,84,657/- and Rs.24,04,192/- for Sy.No.41 and the same was paid to petitioner No.2 vide Cheque No.538.

xiii) Respondent No.2 also passed an Award dated 05.01.2019 in respect of structure / compound wall of petitioners in Sulthanpur Village and awarded compensation of Rs.4,66,568/- as per the valuation report submitted by the Executive Engineer, R&B, Sangareddy. That apart, respondent No.2 had also awarded multiplication factor, 100% solatium and 12% additional market value as per the Act, 2013 and also gave 25% weightage in lieu of revision of market value.

xiv) Respondent No.2 has also relied upon a decision in Narmali Anjaiah v. State of Telangana 2019 (6) ALT 257 (TS).

xv) With the aforesaid submissions, respondent No.2 sought to dismiss the writ petition.

7. ANALYSIS AND FINDING OF THE COURT:

i) In view of the above rival contentions, according to the petitioners, respondent No.2 has passed the Award dated 05.01.2019 without serving any notice and without giving opportunity to the petitioners in respect of the compound wall of the petitioner No.2. Respondent No.4 has issued notice dated 24.12.2020 requesting the petitioners to demolish the compound wall of petitioner No.2 college and notice dated 02.01.2020 arbitrarily computing insufficient compensation which is illegal and, therefore, they sought a direction to respondent No.2 to pass an Award in their favour, or alternative direction to construct the compound wall on par with the existing compound wall in the premises of petitioner No.2. Whereas, according to respondent No.4, they have followed the entire procedure laid down under the Act, 1956 and that there was no violation of principles of natural justice as alleged by the petitioners.

ii) In view of the above submissions, it is apt to refer to Section -3G of the Act, 1956, which is as under:

"3G. Determination of amount payable as compensation.- (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of publication of the notification under section 3A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change."

iii) As per Section - 3G (3) of the Act, 1956, before proceeding to determine the amount under Sub-Section (1) or Sub-Section (2), the Competent Authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired. As per Section - 3G (4), such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in Sub-Section (2) of Section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land. Therefore as per the said Section, respondent No.2 i.e., Revenue Divisional Officer - cum- Competent Authority for Land Acquisition, Sangareddy District, appointed under Section - 3 (a) of the Act, 1956, had issued notices under Section - 3G (iii) of the Act in two Daily Newspapers viz., the Hans India (English) and Andhra Prabha (Telugu) on 22.02.2018. Thus, respondent No.2 has published one notice in local daily newspaper i.e., the Hans India (English) and the other one in vernacular language i.e., Andhra Prabha (Telugu). As per the said provision, there is no obligation on the part of respondent No.2 to serve notice on the petitioners

separately. What all the said provision mandates is to publish a notice in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired. In the case on hand, respondent No.2 has complied with the said mandatory provision. In view of the same, the contention of the petitioners that the award dated 05.01.2019 was passed by respondent No.2 without serving any notice and without giving any opportunity to the petitioners is unsustainable. Petitioner No.1 being a University and petitioner No.2 being College cannot plead ignorance.

iv) It is also relevant to note that the petitioners herein have not submitted any objections to the Notifications, dated 01.06.2017, 19.12.2017 and 03.01.2018 issued under Section - 3A of the Act, 1956. Section - 3C of the Act mandates submission of objections by any interested person in the land within twenty-one days from the date of publication of the notification. Thereafter, the Competent Authority has to pass declaration under Section - 3D. Section- 3E deals with power to take possession. Section - 3F deals with right to enter into the land where land was vested in the Central Government. Thus, the petitioners have not submitted any objections.

v) It is also relevant to note that in the writ affidavit itself, the petitioners herein have specifically mentioned that the Awards were intimated on 21.03.2019. In view of the same, the petitioners herein cannot contend that respondent No.2 has not served any notice and not given any opportunity to them before passing awards.

vi) The other grievance of the petitioners is that, respondent No.2 has not computed the compensation by following the principle laid down under the Act, 2013 with all other statutory benefits such as total market value + factor + value of the structure (compound wall) + solatium + interest in respect of the proposed acquisition of the land of petitioner No.2 including compound wall. The petitioners have also sought an alternative direction to respondent Nos.2 to 4 to construct the compound wall on par with the existing compound wall in the premises of petitioner No.2 College before demolition of the existing compound wall.

vii) It is the specific contention of respondent No.4 that after conducting enquiry and after following due procedure laid down under law, respondent No.2 has passed the above said awards including the award dated 05.01.2019 in respect of the structure /compound wall of the petitioner in Sulthanpur Village and awarded an amount of Rs.4,66,568/-towards compensation. Respondent No.2 has awarded the said compensation for structures as per the valuation report submitted by the Executive Engineer, R&B, Sangareddy. Respondent No.2 has also awarded multiplication factor, 100% solatium and 12% additional market value as per the Act, 2013 and also gave 25% weightage in lieu of revision of market value. The conclusion of respondent No.2 on the fixation of the market value of the lands and structure affected is as per law and based on cogent reasons. The award passed by respondent NO.2 is a well-reasoned Award and

was passed after considering all the aspects and evidence on record. The valuation of permanent structures / compound wall are valued by the Executive Engineer (R&B), N.H Division and the Executive Engineer (RWS) has furnished valuation of bore-wells and open wells in the lands coming under acquisition. Respondent No.2 had fixed the compensation for the structure existing on the lands acquired by taking into consideration of valuation of such structures as per the valuation reports furnished by the Executive Engineer, R&B Department and the compensation awarded by respondent No.2 is just, proper and reasonable . The valuation of permanent structures was done by the concerned experts in the said fields by duly following the procedure. The compensation for the structure being affected under the road widening project is determined taking into consideration of all the parameters, such as age of the structure, material used, quality of the construction etc., and depreciation according to the age of the building will also be applied, and as such, valuation of the structures is technical in nature and is being done by the experts in the field. The compensation is for the structures affected under acquisition and not for reconstruction of new structure i.e., new compound wall in the present case, cannot be paid and there is no such requirement or any stipulation under law.

viii) A perusal of the impugned award dated 05.01.2019 would reveal that respondent No.2 has specifically mentioned the fixation of value of the open wells, bore wells in the tabular form. He has also considered the valuation report submitted by the Executive Engineer, R&B Division, Sangareddy, dated 24.12.2018 and the Executive Engineer, RWS Division, Sangareddy, dated 22.12.2018. The compensation details of the Village are also specifically mentioned. The award statement sheet annexed to the award dated 05.01.2019 would reveal the said fact.

ix) It is also apt to refer herein that as per Section - 3G (2) of the Act, 1956, where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority, and as per Section - 3G (3), where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent. of the amount determined under sub-section (1), for that land.

x) In view of the above, according to respondent No.4, he had calculated and fixed the compensation by considering the valuation of permanent structures which are valued by the Executive Engineer, R&B Division and the Executive Engineer, RWS Division. Thus, this Court is of the opinion that there is no violation of the procedure laid down under the Act, 1956 by respondent No.2.

xi) However, it is relevant to note that as per Section - 3G (5) of the Act, if the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be

appointed by the Central Government. Section - 3G(6) envisages that subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under the Act, 1956. As per Section - 3G (7), the competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take certain facts into consideration while passing an award. According to respondent No.4, respondent No.3 - District Collector is the competent / proper authority appointed under Section - 3G (5) of the Act, and if the petitioners are having any grievance with regard to the compensation, they have to avail such alternative remedy by way of initiation of proceedings under the Arbitration and Conciliation Act, 1996. Instead of initiation of such alternative proceedings, the petitioners have filed the present writ petition.

xii) As stated above, Section - 3G (5) of the Act contemplates the procedure for determination of award. Though the petitioners herein have contended that respondent No.2 has not considered several aspects while passing the award 05.01.2019, but without availing the said alternative remedy under Section - 3G (5), filed the present writ petition.

xiii) In *Nerajala Nageswara Rao v. Union of India* 2017 (5) ALD 575, this Court had an occasion to deal with the entire procedure laid down under Act, 1956 and referring to various provisions held that there is nothing contemplated of mentioning any names of land owners or persons being affected in the Section - 3 (1) (A) notification or Section - 3 (1) (D) declaration or in the paper publications but for by public notice from notifications and paper publications, no personal notices are contemplated. If to the Section - 3 (1) (A) Gazette Notification and paper publications, no objections received are within 21 days there-from to enquire under Section - 3 (1) (C), the declaration under Section - 3 (1)

(D) shall follow by Gazette Notification and paper publications and consequent to it the lands vest statutorily with the Central Government by diversity of all rights of owners or other persons having interest on the lands. But for to claim just compensation no objection to the Government or the other authorized to enter and lay roads etc. by taking possession on payment or deposit of compensation and none can obstruct. It was further held that once it is the intention, it is inviting the public by mentioning the description of the land only and not even who are the persons interested or names of the persons with reference to revenue record or otherwise. It is only the substance of said notification to be published in the two local newspapers, one of which must be in the vernacular language. It was further held that whatever the objections they can raise for the entitlement of fair compensation, they are entitled to raise before the Collector by filing arbitration application as contemplated by Section - 3 (G) (5) of the Act, 1956 and the Collector is bound to consider the same.

8. CONCLUSION:

i) As discussed supra, the respondent authority have followed the procedure laid down under the Act, 1956 for acquisition of the land; and the compensation was determined by respondent No.2 and he has passed the award dated 05.01.2019 by following the due procedure. If the petitioners are not satisfied with the said compensation, they have to file an application under Section - 3G (5) of the Act before respondent No.3. Instead of doing so, the petitioners herein have filed the present writ petition. Thus, the petitioners herein failed to make out any case to interfere with the award dated 05.01.2019 passed by respondent No.2 in respect of the structure / compound wall as sought by the petitioners in the present writ petition. Thereafter the petitioners are not entitled for the said relief. There is no procedure laid down in any law including the Act, 1956 to construct a compound wall on par with the existing compound wall in the premises of petitioner No.2 before demolition of the existing compound wall. The said relief sought by the petitioners is untenable. As rightly contended by respondent No.4 that the stoppage of work would only result in escalation of project costs apart from depriving the benefits of execution of the projects to the public at large. The said principle was also held in Narmali Anjaiah¹. Thus, the writ petition fails and the same is liable to be dismissed.

ii) The present writ petition is accordingly dismissed. However, liberty is granted to the petitioners to avail alternative remedy under Section - 3G (5) of the Act, 1956.

iii) The interim order dated 19.02.2021 granted by this Court stands vacated.

iv) In the circumstances of the case, there shall be no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.