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**(1993) 11 AP CK 0015**  
**In the Andhra Pradesh High Court**  
**Case No : Writ Petition No. 11190 of 1993**

Kasani Subbamma

APPELLANT

Vs

The Government of A.P. and Others

RESPONDENT

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**Date of Decision :** 18-11-1993

**Acts Referred:**

Constitution of India, 1950 — Article 12, 226, 300A, 31

**Citation :** (1994) 1 ALT 149 : (1994) 1 APLJ 117

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

**Bench :** Single Bench

**Advocate :** G. Krishna Murthy and D.G. Naidu, for the Appellant; G.P. for Land Acquisition, for the Respondent

**Final Decision :** Allowed

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## Judgement

B. Subhashan Reddy, J.—Having regard to the facts and circumstances of the case, absolutely, I do not see any justification for the respondents in not honouring the decree dated 1-7-1982 rendered by the Court of Subordinate Judge, Kovvur in O.P.No. 45 of 1980 which admittedly, had become final and executable. The petitioner is aged 55 years. Even though the decree was passed more than 11 years back, the same had not been honoured yet. The action of the State in acquiring the property of subject and not paying the compensation for this length of time is highly arbitrary, and atrocious. By this gross inaction of the State to honour the decree which had become final as the decree pertains to payment of compensation in lieu of deprivation of property of the petitioner, the constitutional guarantee under Article 300-A of the Constitution of India is violated. The State should move faster and pay compensation expeditiously.

2. The learned Government Pleader resists the grant of relief in the writ petition on the ground that the decree is executable. It is true, that the decree is executable, and in fact, after O.P.No. 45 of 1980, a reference application was answered enhancing the compensation by its judgment dated 1-7-1982 and the same having been carried in appeal in A.S.No. 639/86 was dismissed on

10-4-1989. Then E.P.No. 130/90 was filed by the petitioner on the file of the executing Court i.e., the Court of the Subordinate Judge, Kovvur. But, so far the same has not been honoured.

3. There are no constitutional fetters placed on the High Court in exercise of jurisdiction under Article 226 of the Constitution of India that merely because an alternative remedy exists, the writ jurisdiction should not be exercised. The exercise of writ jurisdiction is a constituent power conferred under the Constitution to a constitutional Court like High Court to issue writs or directions under Article 226 of the Constitution of India. There cannot be any hard and fast rule that in each and every case where there is an alternative remedy, that the Writ Petition should not be entertained. In appropriate cases, the High Court, being the constitutional Court should rise to the occasion to provide effective and speedy remedy, more so, in cases of deprivation of property of a person. In the instant case, the draft notification u/s 4(1) of the Land Acquisition Act was published on 23-2-1978 and the possession was taken over in the said year. A meagre compensation at the rate of Rs. 2,000/- per acre was paid to the petitioner on 31-3-1979 under the Award passed by the Land Acquisition Officer. The entire holding of the petitioner is only Ac. 1-71 cents which has been acquired for foreshore submersion of Errakalva reservoir scheme. In fact, as on this day, Article 31 relating to fundamental right was there, but by 44th Constitution amendment brought forth into effect somewhere in the month of May, 1979, the same was removed. As such, this case is covered by Article 31 of Indian Constitution which was a fundamental right and that will govern this case. Whenever the fundamental right is infringed, alternative remedy is no bar at all and that is the settled law. Even though the land of the petitioner was acquired by invoking the provisions of the Land Acquisition Act, 1894 conforming to the fundamental right guaranteed under Article 31 of Indian Constitution and when the land was compulsorily taken over for a public purpose as the Land Acquisition Act, 1894 is compulsory in nature, there is always a corresponding obligation to pay the compensation immediately and in any case, not beyond unreasonable period and more so, in cases where the State acquires the property of a citizen under urgency clause. When the State feels that acquisition under urgency clause is necessary, it shall also feel that there is a corresponding obligation on it to pay the compensation to the citizen who is deprived of his property with the same speed. If this is not done, then certainly, the fundamental right is infringed as the compensation which is payable on time, if delayed and paid years and decades later, is not a true compensation paid because of the rapid inflation rocking the nation. Can it be said that with the amount due and payable in the year 1979 or 1982, the same extent of land similarly situated can be purchased for the same compensation amount in the year 1993? The answer is certainly "NO". If that is the situation, certainly the fundamental right guaranteed under Article 31 is infringed. That apart, even under Article 300-A of the Constitution which was enacted under 44th Constitution Amendment Act transforming the fundamental right into a constitutional guarantee retaining the same words

verbatim on the same considerations mentioned above, the constitutional guarantee would be violated if the compensation is not paid on time. The dates mentioned supra makes it abundantly clear that there is unjust and unreasonable delay in payment of compensation to the petitioner and thus, the fundamental right of the petitioner which was guaranteed under Article 31 of the Indian Constitution and even if it is Article 300-A, the same is also violated for this unjust, unreasonable and callous delay in payment of compensation to the petitioner. Be it under Article 31 or 300-A of the Indian Constitution, no person can be deprived of his property, save by authority of law and the authority of law being the Land Acquisition Act, there is a duty cast on the land acquisition authorities to pay the compensation speedily so that the party aggrieved should be able to recompensate his loss of property by proper means, but he will be deprived of the same, if the compensation is paid after a prolonged time by which certainly, there is a deprivation of property unjustly, thus, violating the very object and intendment of the Land Acquisition Act which aims at not only acquiring the property of a person for public purpose, but also compensating the deprived person in a very reasonable time. By not doing so, the authorities in the instant case have certainly violated the fundamental right of the petitioner under Article 31 of the Constitution which is available to her in the instant case as her land was acquired when the fundamental right was in the book of Constitution at the relevant point of time. Even if it is Article 330-A of the Constitution, then also the same measure is applicable. As such, this Court is not debarred from issuing appropriate writ or direction for payment of the compensation which the petitioner has fought for and got determined and which determination attained finality. Coming to execution proceedings, even the same are pending for more than 3 years and could not be executed. The reasons are obvious. The executing Courts are very lenient in executing the decrees against the Government. This is often the experience and in fact this is the general trend while there may be very few exceptions. When the execution is carried out, what is available are rickety furniture in the office of the Land Acquisition Officer like chairs, tables, almyrahs which will already be subjected for several attachments in several executions. What useful purpose will be served, if the execution proceedings go on like that and the executing Court is not able to realise the decretal amount and pay it over to the decree holder thereby frustrating the very effect of the decree. More often, the decrees pertaining to the land acquisition proceedings have found to be not efficacious because of the prolonged process and lenient view taken by the Court depending upon the mercy of the judgment-debtor to deposit the amounts for which again, there will be a scramble by pairavikars to get the priority from the Government in depositing the decretal amounts. I do not think that the Constitution makers have visualised this situation. As such, I hold that as and when it is brought to the notice of this Court that any decree passed against the Government or governmental authorities or any authority which is a State under Article 12 of the Constitution is not honoured and if it is found that execution under CPC is inefficacious because of the delay involved, nothing prohibits this Court to exercise its jurisdiction under Article 226 of the Constitution of India for

enforcement of the decree to be in consonance of the fundamental right or the constitutional guarantee as the case may be.

4. For the reasons mentioned supra, I repel the argument of the learned Government Pleader that this Writ Petition should not be entertained because of the alternative remedy. In the circumstances, I direct the respondents to deposit the compensation amount finally determined in O.P.No. 45/80 on the file of the Court of the Subordinate Judge, Kovvur in the said Court positively within a period of two months from the date of the receipt of this order.

5. The Writ Petition is allowed with costs. The costs payable to the petitioner are quantified at Rs. 1,000/-.