

(2011) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 10668, 11476, 12938, 12979, 17736, 15221, 15180 of 2007, 18266, 17263 and 20288 of 2008

Smt. Gorantla Jhansi Lakshmi

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 5A

Citation : (2011) 5 ALD 242 : (2011) 6 ALT 205

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Kanakamedala Ravindra Kumar, for the Appellant; Special AGP for Roads and Buildings, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This batch of Writ Petitions pertains to alignment of approach road connecting the new bridge over River Godavari to NH5 and the acquisition of the lands in connection therewith.

2. W.P. Nos. 10668, 17736, 12938, 11476, 12979 and 15221 of 2007 have been filed by the owners of the lands, through which the alignment of the approach road is fixed.

3. W.P. No. 18266 of 2008 is filed questioning both the alignment and the acquisition of the lands.

4. W.P. Nos. 20288 and 17263 of 2008 have been filed questioning the land acquisition proceedings.

5. It may be pointed out that the Petitioners in the first set of the Writ Petitions referred to above, which are filed questioning the alignment of the approach road, are covered by one or the other of the three later Writ Petitions viz., W.P. Nos. 18266, 20288 and 17263 of 2008. The grievance of the Petitioners in these

Writ Petitions can be broadly divided into two parts viz., (1) the correctness of the alignment of the approach road and; (2) the failure of the Respondents to follow proper procedure in holding enquiry u/s 5-A of the Land Acquisition Act, 1894 (for short "the Act"). Before proceeding to discuss the issues arising in these Writ Petitions, it needs to be noted that the land acquisition proceedings have already got concluded with the passing of the award.

6. On 02-06-2006, a foundation stone was laid by the Hon'ble Chief Minister for construction of a high level bridge across River Godavari. This bridge was proposed to be connected with the National Highway(NH-5). Therefore, proposal for laying an approach road between these two points was also mooted. It is not in dispute that the approach road is a part of the whole project pertaining to the construction of the high level bridge across the river Godavari. The Respondents have availed the consultancy services of an agency viz., AARVEE Associates for preparation of detailed project report including design of bridge and approaches. On the basis of the investigations conducted and report submitted by the said agency, the alignment of approach road was fixed and the same was communicated by Respondent No. 4-Chief Engineer (Roads and Buildings) and Managing Director of A.P. Road Development Corporation to the consultant vide his letter, dated 23-03-2006. Proceedings for acquiring the lands were, thereafter, initiated in accordance with the alignment so fixed. In anticipation of the acquisition proceedings, the first set of Writ Petitions was filed questioning the fixation of alignment. During the pendency of these Writ Petitions, notifications were issued u/s 4(1) of the Act, challenging which the later set of the Writ Petitions have been filed.

7. Counter-affidavits have been filed by Respondent Nos. 2 and 4 i.e., Superintending Engineer, Roads & Buildings Department, and the Managing Director, A.P. Road Development Corporation, respectively. At the hearing, Sri Kanakamedala Ravindra Kumar, learned Counsel appearing for the Petitioners in some of the Writ Petitions, who led the arguments, advanced the following contentions:

(1) The Respondents have changed the alignment of the approach road on as many as four occasions, as a result of which the Petitioners are being deprived of their valuable lands.

(2) The Respondents failed to follow the mandatory guidelines published by the Indian Road Congress while fixing the alignment. (The learned Counsel placed reliance on guideline Nos. 3 and 4 to substantiate this submission) and;

(3) The land Acquisition Officer failed to follow fair procedure in holding enquiry u/s 5-A of the Act and therefore, the entire acquisition proceedings are vitiated by the procedural illegality and impropriety.

8. Sri N. Siva Reddy and Sri K. Ramesh Babu, learned Counsel appearing for the Petitioners in the other Writ Petitions, have supported the submissions of Sri Kanakamedala Ravindra Kumar.

9. Sri N. Sridhar Reddy, learned Special Government Pleader appearing for the Respondents, submitted that the alignment fixed adopting site plan No. 2 (Option 1) and communicated on 23-03-2006 to the consultant was never changed. He further submitted that the consultant has conducted a detailed survey strictly and has scrupulously followed the guidelines framed by the Indian Road Congress (IRC). He further submitted that the Land Acquisition Officer has followed the procedure prescribed under the provisions of the Act and given sufficient opportunity to the Petitioners to put forth their objections and therefore, the procedure followed by the Respondents does not suffer from any illegality or infirmity warranting interference of this Court. The learned Special Government Pleader placed reliance on Order, dated 15-06-2010, of this Court, in W.P. Nos. 18657 and 18671 of 2009 and submitted that this Court has already examined the procedure followed by the Respondents in fixing the alignment and upheld the fixation of alignment and therefore, these Writ Petitions are liable to be dismissed.

10. I have carefully considered the submissions of the learned Counsel for the Petitioners and perused the record.

11. In order to substantiate the first contention of the learned Counsel for the Petitioners, he has placed reliance on letter, dated 23.03.2006, of the Chief Engineer (R&B) and Managing Director of Respondent No. 4 addressed to M/s. Aarvee Associates, the consultants, the brochure prepared on the eve of laying foundation stone for the high level bridge across river Godavari, a copy of the Google map and one of the maps which contains the superimposition of the final alignment supplied by the Chief Engineer and Managing Director of Respondent No. 4 to the husband of the Petitioner in Writ Petition No. 10668 of 2007.

12. Let me examine each one of these documents. In letter dated 23.03.2006, the Chief Engineer and Managing Director of Respondent No. 4 informed the consultant that the alignment proposed in site plan 2 is approved. The learned Special Government Pleader produced before the Court the original record. Volume 5 from pages 1345 to 1549 contains letter, dated 03.03.2006 of the consultant, addressed to the Chief Engineer and Managing Director of Respondent No. 4, wherein while enclosing two numbers of proposed alignment drawings, the former informed that the various Geometric alignment options were examined on the proposed alignment and it is submitting the most feasible alignment for further course of action. The proposed alignment drawings are enclosed to the said letter, which are at pages 1439 and 1441. A perusal of these two drawings shows that they are described as site plan 1 and site plan 2 respectively. It is while responding to the said letter, dated 03.03.2006, that the Chief Engineer and Managing Director of Respondent No. 4 has addressed letter, dated 23.03.2006, to the consultant informing that the alignment proposed in site plan 2 is approved.

13. According to the learned Counsel for the Petitioners, site plan 2 mentioned in the said letter is referable to option 2 of the Google map, while it is the case of

the Respondents that site plan 2 is referable to option 1. The learned Counsel for the Petitioners, however, has not disputed, after referring to these documents, that site plan 1 and option 1 are correlated to each other. The submission of the learned Counsel for the Petitioners, referred to above, was obviously made on the premise that the expressions "site plan 2" and "option 2" are interchangeably used while a close examination of the two site plans with reference to which Respondent No. 4 has given his approval on 23.03.2006 and the Google map would clearly establish that the words "site plan" and "options" are referred independently and what is approved by the Chief Engineer and Managing Director of Respondent No. 4 is option 1, as shown in the Google map, which is referable to site plan 2 submitted by the consultant. Therefore, the very assumption on which the Petitioners have pleaded that the Respondents have changed the alignment has no basis.

14. With reference to the brochure, it is the submission of the learned Counsel for the Petitioners that a photograph printed in the brochure shows that the Respondents have proposed a road over bridge across NH-5 and that contrary to the said proposal, the impugned alignment is fixed. The learned Government Pleader submitted that the brochure was brought out by the consultant and the photograph published in the said brochure has no relation with the actual alignment, which was already fixed nearly 2 1/2 months prior to the printing of the brochure. It is not in dispute that the road over bridge, which was shown to be crossing NH-5, has never materialised. This obviously appears to be the fanciful imagination of the consultant. The learned Counsel for the Petitioners, who was permitted to peruse the entire record, is unable to state that at any point of time either the road over bridge, which was shown in the brochure, or the alignment of connecting road in accordance therewith was proposed or discussed through intra or inter-departmental correspondence of the Respondents. It is the specific case of the Respondents, as reflected in the counter affidavit of Respondent No. 4, that at no point of time, the alignment was changed. In paragraph 9 of the counter affidavit of Respondent No. 4, it is inter alia stated that it has engaged the services of M/s. Aarvee Associates, Hyderabad and directed the consultancy agency to submit three options along with detailed survey and investigation in the entire project. The consulting agency has submitted three alternative alignment/options vide their letter No. Aarvee/RJY-BR/498/2005-06/6750, dated 15.02.2006, that on receipt of the said three alternative alignment/options, Respondent No. 4 has requested vide letter dated 28.02.2006 to examine the possibility of improving option No. 1 by smoothening the curve and refining the alignment to have a straight alignment with least hindrance, for approving the option as per the agreement conditions and that accordingly the consultancy examined the various geometrical options on the proposed alignment and submitted the most feasible alignment vide their letter dated 03.03.2006. It is further averred that the tentative alignment of option No. 1 furnished by the consultant was cleared, as the same was found to be more feasible and less costlier than the other options. Respondent No. 4 has

given the following three reasons for choosing the said alignment:

- a) The affected houses/habitation are almost nil in the approved alignment.
- b) The length of the approach for option 1 is 10.33 Kms, whereas, it is 12.80 Kms for options 2 and 3 respectively.
- c) The approved alignment passes through uninhabited areas and is at an adequate distance from the centre of the town.

15. It is also averred that option No. 1 alignment was preferred as the same was prepared as per IRC guidelines, which are as follows:

- a) The length of the alignment shall be minimum in order to keep the project cost minimum as well as to reduce the recurring expenses of its management and maintenance.
- b) The R&R (Rehabilitation and Resettlement) issues shall be minimum as far as possible.
- c) The religious edifices and structures and educational institutions shall be avoided.
- d) In order to follow strictly the IRC guidelines the shortest alignment will be considered for approval and also only minimum number of houses are affected minimizing the R&R issues. The whole alignment is about 15 Kms covering 5 villages in which only minimum houses are affected.
- e) The entire alignment starts at Kovvur runs straight upto Konthamuru village for a length of 9 Kms and changes its direction at Konthamuru village between two irrigation tanks and again runs in a straight stretch takes small curve to avoid educational institution to join NH5 at Diwancheruvu in another curve which became inevitable to merge with the National Highway at Diwancheruvu (Palacherla revenue village limits). This way the entire 15 Kms length of alignment is designed to run through two straight lines which is a fair alignment. Joining this alignment with the existing roads at the beginning and at the end is inevitable and IRC guidelines provide the norms for such joining, therefore two curves have been introduced at Kovvur end and at Diwancheruvu end. The third curve having a radius of 1500m has been designed and introduced at Konthamuru village to join both straight stretches. The IRC guidelines specifies a minimum radius of 300m only whereas in the instant case 1500m radius, which is almost flat, has been introduced with proper design eliminating touching both the irrigation tanks and fourth one a small curve is provided to avoid educational institution.

16. In the light of the material referred to above, I have no doubt in my mind that the photograph shown in the brochure cannot be taken as a basis to accept the Petitioners' plea that the Respondents have changed the alignments.

17. The last of the submissions of the learned Counsel for the Petitioners in this

regard is based on the superimposed plan supplied by Respondent No. 4 to the husband of Petitioner No. 1. In letter dated 04.07.2007 along with which the said plan was supplied by Respondent No. 4, it is stated that copy of the topographical plan containing three alignment option plans (preliminary survey stage), approved plan and plan containing the three alternative alignment options superimposing the approved plan are enclosed.

18. The learned Special Government Pleader submitted that the final alignment was shown in the said plan with the pink line superimposing on the map and that this, by no means, can be construed as change of alignment. Except referring to this plan, the learned Counsel for the Petitioners is unable to substantiate as to how this constitutes a change in the alignment. It is the consistent case of the Respondents that out of the three options submitted by the consultant, Respondent No. 4 requested it to examine the two options, namely; options 1 and 2 by reducing the curve making it wider and accordingly after modifying the alignment, proposals were submitted with two site plans, namely; site plan 1 and site plan 2. Finally, Respondent No. 4 has selected site plan 2, which represents option 1. No material is furnished by the Petitioners to prove this stand of the Respondents as wrong. On a careful examination of the relevant record with reference to the pleadings, I have no hesitation to hold that the alignment, which was finally fixed on 23.03.2006, was not changed on any subsequent point of time and that the same alignment was holding the field even when the foundation stone was laid.

19. For the abovementioned reasons, I do not find any merit in the first contention of the learned Counsel for the Petitioners.

20. With respect to the submission of the learned Counsel for the Petitioners that the Respondents failed to follow the mandatory guidelines published by IRC while fixing the alignment, I have carefully examined the guidelines and the record. The learned Counsel for the Petitioners placed reliance on guideline Nos. 3.1 and 4.1, which read as under:

3.1. Broadly, the stages involved in the preparation and sanction of project are:

1 Pre-feasibility study.

2 Feasibility study/preliminary project report preparation

3 Detailed engineering and plan of construction.

4.1. The fundamental principle of route selection and alignment improvement is to achieve the least overall cost on transportation, having regard to the costs of initial construction of the highway facility, its maintenance, and road user cost, while at the same time, satisfying the social and environmental requirements. To achieve this objective, it will be necessary to make a detailed investigation before the location is finally decided. Factors that should be kept in view in the process are listed in Appendix-I and in Fig.4.1. It should be understood that all these factors may not be applicable to each and every highway project and some of

them, even if applicable, may not be feasible in many circumstances. For each case, the Engineer-in-charge has to exercise his own judgment to reach an optimum compromise solution in the light of the fundamental principle of minimum transportation cost enunciated earlier.

21. As noted above, in para 10 of the counter affidavit of Respondent No. 4, it is categorically averred that the alignment was prepared as per IRC guidelines, a reference to which was also made therein, which was reproduced hereinabove. The record produced by the Respondents shows that the consultant has submitted as many as 11 volumes of reports prepared after carrying out investigations at different stages. A random examination of this record would show that the inspection report prepared in December 2005 made a reference to the proposed new bridge and also the approach roads on the Rajahmundry and Kovvur sides in paragraph 1.1 General under the "introduction" caption. Under para 1.2 "Objective", it is stated as under:

The main objective of the consultancy services consist of the following:

- 1 Investigation of the feasible alignment.
- 2 Detailed preliminary soil investigation in river portion and approach portion.
- 3 Preparation of designs and drawings for the road and bridge portions, based on soil investigation report.
- 4 Preparation of detailed project cost based on designs.
- 5 Submission of detailed project report.

22. Clause 1.2 also fixed four different stages for submission of reports, namely; (i) Inspection Report (ii) Project Interim Report (iii) Draft Final Project Report and (iv) Final Project Report. In para 3 of the interim report, the consultant under the heading "conclusions and remarks" inter alia stated as under:

On studying the three options of alignments, Option-1 is feasible because of less disturbance of habitation and saving in length of approach and bridge portion.

23. Thereafter, the final report with 7 volumes, which appeared to have dealt with all the relevant aspects, required to be examined in accordance with the guidelines framed by IRC was submitted by the consultant. Except stating that the Respondents have not followed the guidelines prescribed by IRC, the Petitioners failed to point out the area with reference to which the guidelines have not been followed or have been violated.

24. For the abovementioned reasons, I am of the opinion that the Petitioners failed to substantiate their plea that the Respondents failed to follow the mandatory guidelines published by IRC while fixing the alignment.

25. Even though the learned Counsel for the Petitioners submitted that the Respondents have not taken several aspects into consideration, such as, the congestion that is likely to take place if the proposed road is joined before

Diwancheruvu Village, that if option No. 1 is chosen, there is a likelihood of accidents taking place because of the two curves etc, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not expected to examine these technical aspects and substitute its own opinion over the opinion of the experts in the field. The law is well settled that while exercising its jurisdiction under Article 226 of the Constitution of India, this Court is only concerned with the decision making process and not with the merits of the decision.

26. While dealing with the scope of judicial review of administrative action, the Supreme Court in *Tata Cellular Vs. Union of India*, inter alia held as under:

The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1 Whether a decision-making authority exceeded its powers?
- 2 committed an error of law,
- 3 committed a breach of the rules of natural justice,
- 4 reached a decision which no reasonable tribunal would have reached or,
- 5 abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) **Irrationality, namely, Wednesbury unreasonableness.** It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. The decision is such that no authority properly directing itself on the relevant law and acting reasonably could have reached it.

(iii) **Procedural impropriety.**

27. In *Beant Singh Vs. Union of India (UOI) and Others*, the Supreme Court held thus:

It is true that the High Court does not sit as a Court of appeal to substitute its own judgment for that of the authorities which are empowered to give their decisions in such cases. Apart from jurisdictional errors, the High Court may correct errors apparent on the face of the record. An error to be apparent must, according to a rough test laid down by this Court in *Satyanarayan Laxminarayan*

Hegde and Others Vs. Millikarjun Bhavanappa Tirumale, be one which does not take prolonged arguments to bring it to the surface. These propositions are quite well established.

28. This Court has already found that the Respondents have followed the procedure prescribed by IRC and finalised the alignment in consonance with the guidelines contained therein. Therefore, it is neither the function nor the forte of this Court to further examine as if it is sitting in appeal over the decision of the experts in the field in order to interfere with the alignment already fixed. Even if the Petitioners may feel aggrieved by the prospects of losing their land that by itself cannot be a ground for this Court to undertake a roving enquiry into the minute aspects relating to fixation of alignment. As the project is undertaken in public interest and for public purpose, public interest will outweigh the hardship that may be caused to the private individuals.

29. With respect to the submission of the learned Counsel for the Petitioners that the land acquisition officer failed to follow the fair procedure in holding enquiry u/s 5A of the Act, in normal course, this aspect would have received a serious attention of this Court. The learned Counsel for the Petitioners fairly conceded to the extent that even in the enquiry u/s 5A, the same issues, which have been raised before this Court relating to the fixation of alignment, would have been pressed into service. Even though the Respondents have seriously denied the various allegations of lack of opportunity to the Petitioners in the Section 5A enquiry and asserted that proper opportunity was given in the enquiry, the necessity for giving a conclusive finding on this aspect is obviated for the reason that this Court has examined the grievances of the Petitioners regarding the alignment and has rejected the same. Even if the Petitioners' plea that they were not given sufficient opportunity in the Section 5A enquiry is accepted, no purpose will be served by directing the Respondents to hold an enquiry afresh, in the face of the findings rendered by this Court that the final alignment fixed by the Respondents is not liable for interference. Once the alignment cannot be interfered with, the acquisition proceedings cannot be set at nought on any other ground. Therefore, it would be an empty formality if a fresh Section 5A enquiry is directed to be held on the facts of this case even if the Petitioners' plea on the alleged lack of proper opportunity in the enquiry is accepted.

30. In Writ Petition Nos. 18657 and 18671 of 2009, which were filed questioning the alignment and notification, dated 20.10.2008, published u/s 4(1) of the Act, whereunder the lands for laying the approach road on the Kovvur side were proposed to be acquired, this Court upheld the acquisition and also the alignment of the approach road. In his order, the learned Judge has observed as under:

A perusal of the record discloses that the alignment of the proposed link road has never been changed and that it remains the same from the beginning. The Respondents have categorically stated that, even now, the link road touches the Kovvur road at 82.4 K.M. The record submitted by them, supports this. Therefore, there is no truth in the allegation of the Petitioners that the alignment

of the link road was changed, to protect the interest of certain land owners
(Emphasis added)

31. For the abovementioned reasons, I do not find any merit in the Writ Petitions and the same are accordingly dismissed.

32. As a sequel to dismissal of these Writ Petitions, interim order of status quo granted on 18.05.2007 is vacated and all the miscellaneous applications filed and pending in this batch of writ petitions are also dismissed.