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**(2004) 02 AP CK 0043**  
**In the Andhra Pradesh High Court**  
**Case No : CRP No. 6327 of 2003**

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| Special Deputy Collector, Land Acquisition, Srisailam Project | APPELLANT  |
| Vs                                                            |            |
| P. Ch. Hussainaiah                                            | RESPONDENT |

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**Date of Decision :** 09-02-2004

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 47  
Land Acquisition Act, 1984 — Section 23(1A), 30(1)

**Citation :** (2004) 3 ALD 101 : (2004) 2 ALT 699

**Hon'ble Judges :** D.S.R. Varma, J

**Bench :** Single Bench

**Advocate :** Government Pleader for Arbitration, for the Appellant; P. Ganga Rami Reddy, for the Respondent

**Final Decision :** Allowed

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## Judgement

D.S.R. Varma, J.—Heard both sides.

2. This civil revision petition is directed against the order, dated 26-11-2003, passed by the Additional Senior Civil Judge at Kurnool, dismissing the application in E.A. No. 260 of 2003; in E.P. No. 57 of 1996 in O.P. No. 2349 of 1980, filed under Sections 151 and 47 of the CPC to dismiss the E.P. No. 57 of 1996 in O.P. No. 2349 of 1980 as not maintainable u/s 23(1-A) of the Land Acquisition (Amendment) Act, 1984 (for short "the Act") since the Award was passed prior to 30-4-1982.

3. The petitioner is the judgment-debtor and the respondent is the decree-holder.

4. For the sake of convenience, the petitioner and the respondent will be referred to as "the judgment-debtor and decree-holder" respectively.

5. The facts, in brief, are that the Land Acquisition Officer has passed an Award on 3-11-1978 fixing certain amount as compensation for the lands acquired. At the instance of the decree-holder, the matter was referred to the Additional Senior Civil Judge at Kurnool, which was numbered as O.P. No. 2349 of 1980 and

eventually judgment and decree, dated 18-7-1988, were passed in the said O.P., enhancing the compensation, additional market value and solatium and also interest on additional market value and solatium against which an appeal had been preferred by the judgment-debtor in A.S.(SR). No. 15845 of 1992 along with an application in C.M.P. No. 9430 of 1992 on 20-11-1992 to condone the delay in preferring the said appeal and the said application was dismissed. After a considerable time, the decree-holder has filed E.P. No. 57 of 1996 for realisation of the amount though an amount of Rs. 2,59,608/-had already been paid by the judgment-debtor on 28-9-1986.

6. The judgment-debtor filed an application in E.A. No. 260 of 2003 under Sections 151 and 47 of the CPC seeking dismissal of the said E.P., inter alia contending that an Award was passed by the Land Acquisition Officer on 3-11-1978 i.e., prior to 30-4-1982 and further contending that in view of the judgment rendered by the Supreme Court in K.S. Paripoornan Vs. State of Kerala and Others, , the land owners would not be entitled to additional amount u/s 23(1-A) of the Land Acquisition Act where an Award was passed by the Land Acquisition Officer prior to 30-4-1982 and that the benefits u/s 23(1-A) of the Act cannot be accorded to the claimants if the acquisition is prior to 30-4-1982.

7. The Court below having considered the said aspects, basing on the judgments of this Court as well as the Supreme Court in Urban Improvement Trust, Jodhpur Vs. Gokul Narain and another, , S.Rangareddy v. Land Acquisition Officer 1988 (4) ALT 515, and State of Gujarath v. Rama Rana and Ors. 1997 (1) CCC 66 (SC), dismissed the said E.A., filed by the judgment-debtor, as not maintainable. Hence, the present civil revision petition.

8. The points to be considered in this revision are two fold; firstly whether the benefits u/s 23(1-A) of the Act can be awarded to the claimants whose cases were pending as on the date on which the Amendment Act 68 of 1984 came into force i.e., from 30-4-1982 and secondly whether such an objection can be raised under Section-47 of the CPC in an execution proceeding.

9. Point No. I; For better appreciation of the case on hand, it is necessary to extract the relevant observations of the Supreme Court in Paripoornan"s case (supra), which are as under:

The provisions contained in Sub-section (1) of Section 30 of the amending Act have to be treated as categorical parts of the amending provision in the Principal Act to which they relate.

Section 23(1-A) and Section 30(1) are so interconnected with for considering Sub-section (1-A) of Section 23 of the Act, which is not possible to ignore the provisions of Section 30(1) of the amending Act."

10. It was further held by the Supreme Court that Section 23(1-A) read with subsection (1) of Section-30 of the amending Act is made applicable by virtue of subsections (1)(a)(9) of Section 30 of the Land Acquisition Amending Act, 1984

(Act 68 of 1984).

11. In *Union of India and Others Vs. Filip Tiago De Gama of Vedem Vasco De Gama*, the Supreme Court held that the pendency of the acquisition proceedings on April 30, 1982, before the Collector is essential for attracting Section 30(1). It was further held that the date of award by the Court in appeal against the award of Collector was not relevant.

12. In *Nagpur Improvement Trust Vs. Vasantrao and Others and Jaswantibai and Others*, , the Supreme Court held thus:

"In the appeals and special leave petitions before us relating to acquisitions under the Punjab Act, the High Court has granted to the claimants the benefits of additional amount payable u/s 23(1-A) of the Land Acquisition Act. We find from, the record placed before us that the Awards of the Collector in all these cases were made much before 30th April, 1982 and, therefore, there was no proceeding for acquisition of land pending on 30th April, 1982 since the Collector had made his Awards much earlier. Such being the factual position, the claimants will not be entitled to the benefit of additional amount payable u/s 23(1-A) of the Land Acquisition Act and the judgments and orders of the High Court on this aspect of the matter must be set aside.

In CA. Nos. 9260-9261 of 1995 the appellant has claimed benefit of additional amount payable u/s 23(1-A) of the Land Acquisition Act. In these cases as well the Collector had made his Award much before 30th April, 1982 and, therefore, the appellant's claim for additional amount u/s 23(1-A) must be rejected."

13. In *Ghaziabad Development Authority Vs. Anoop Singh and Another*, , the Supreme Court, while scanning the whole situation on this subject, held thus:

"Section 23(1-A) is not applicable where Award had been made by the Collector before 30-4-1982."

14. The view taken by the Supreme Court in *Urban Improvement Trust v. Gokul Narain* (supra) is also the same.

15. From all the abovementioned judgments, the position is abundantly clear to the effect that the benefits accorded u/s 23(1-A) of the Act are not applicable to the cases where the awards were passed by the Collector before 30-4-1982. The date of order and decree of the reference Court is not crucial for the purpose of application of Section 23(1-A) of the Act. In other words, it is only the date of award passed by the Collector as envisaged under Sub-section (1) of Section 30 of the amending Act 68 of 1984 that is crucial. Therefore, there cannot be any dispute on this subject. There is any amount of consistency in various decisions rendered by the Supreme Court except one rendered in *Union of India (UOI) and Another Vs. Zora Singh and Others*, , which has not been accepted by the Supreme Court in its decision rendered in *Ghaziabad Development Authority v. Anoop Singh* (supra).

16. Therefore, in view of the above position, Point No. 1 is held in favour of the petitioner.

17. Point No. 2: In this connection, it is necessary to fall back upon the decision of the Supreme Court in *Urban Improvement Trust v. Gokul Narain* (supra), wherein it was held thus:

"In. *Jaipur Development Authority Vs. Radhey Shyam and Others*, , this Court had upheld the same objection raised u/s 47 CPC when the decree awarding allotment of land in addition to compensation was held to be a nullity. That objection was allowed to be raised in execution and was upheld. *Hiralal Moolchand Doshi Vs. Barot Raman Lal Ranchhoddas (Dead) by L.Rs.*, , relied on by the respondents is of no avail. In that case though nullity of a decree on the basis of a compromise for eviction of a tenant governed by the provisions of the Rent Act was passed for acceptance, this Court had held that the party cannot be permitted to lead fresh evidence as to the existence of that ground for eviction. On the facts in that case, it was held that the tenant impliedly admitted existence of statutory ground for eviction. Therefore, the decree was held to be not a nullity. As regards the nullity or lack of inherent jurisdiction, this Court observed that the decree can be said to be a nullity if it is passed by a Court having no inherent jurisdiction. Erroneous decree cannot be said to be a nullity; nor can a decree based on an error be a nullity. Nullity has to be understood in the sense that it is ultra vires the power of the Court passing the decree and not merely avoidable decree. As stated earlier, if the decree strikes at the jurisdiction of the Court or the Court lacks jurisdiction it strikes at the very root of the authority to pass the order or the decree. As seen, the Amendment Act 68 of 1984 has no application to the lands acquired under the Act. It was amended only with effect from 1-8-1987 and it was made applicable only to the pending proceedings. It would, therefore, be clear that the order awarding additional benefits is clearly without jurisdiction and thereby it is a nullity. Its nullity can be assailed at any stage including at the execution or in a collateral proceedings since it strikes at the very jurisdiction and authority of the Court."

18. The learned Counsel appearing on behalf of the decree-holder relies on a judgment of learned Single Judge of this Court in *N. Chandramouleswara Reddy Vs. Special Deputy Collector, Land Acquisition, Srisailam Project and Kurnool District*, , wherein it was held thus:

"Admittedly the award was passed by the reference Court in the present case on 14th December, 1988, long after the amendment Act came into force. In view of the above, there is no scope for the Executing Court either to go into the merits whether the claimant is entitled for additional market value u/s 23(1-A) or not. Even if there is a change in the legal position by virtue of a subsequent judgment of the Apex Court, it is not for the Executing Court to correct the decree and it is only an appellate Court or the Court, which passed the decree, may pass appropriate orders in appropriate proceedings."

19. It is to be seen that the decision of the Supreme Court in Paripoornan's case (supra) was referred to by the learned Single Judge of this Court in N. Chandramouleswara Reddy v. Spl, Deputy Collector (LA) (supra), but unfortunately the subsequent decisions rendered by the Supreme Court in Nagpur Improvement Trust v. Vasantrao and Ors. (supra) and Ghaziabad Development Authority v. Anoop Singh (supra) were not brought to the notice of the said learned Single Judge. The ratio laid down by the Supreme Court in Nagpur Improvement Trust v. Vasantrao and Ors. (supra) and Ghaziabad Development Authority v. Anoop Singh (supra) was not effectively brought to the notice of the learned Judge. In view of the said fact, the judgment of the learned Single Judge has to be treated as per incurium. However, in view of the decisions rendered by the Supreme Court in Nagpur Improvement Trust v. Vasantrao and Ors. (supra) and Ghaziabad Development Authority v. Anoop Singh (supra), the issue involved is no longer res integra

20. Further, as pointed out by the Supreme Court in Urban Improvement Trust v. Gokul Narain (supra), the benefit u/s 23(1-A) of the Act has no application to the cases prior to 30-4-1982 and any decision, contrary to this view, taken by the reference Court is nullity for want of jurisdiction, and such a vital issue as regards nullity of the judgment can certainly be challenged before the Executing Court u/s 47 of the Code of Civil Procedure.

21. Having regard to the above-mentioned judgments of the Supreme Court, this issue is also answered in favour of the judgment-debtor in view of the opening discussion. However, the only and irresistible conclusion that can be arrived at is that the impugned order passed by the Court below is totally irregular, illegal and suffers from lack of jurisdiction.

22. For the foregoing reasons, the impugned order is liable to be set aside and accordingly the same is set aside.

23. In the result, the civil revision petition is allowed, at the stage of admission. However, there shall be no order as to costs.