

SUPREME COURT OF INDIA

Mootha Venkateswara Rao (Dead) Tr. Lrs.

Vs.

Godhavari Co-op Milk P. Union Ltd.

Special Leave Petition (C.) No. 5983 of 2007

(Altamas Kabir and Markandey Katju)

03.12.2008

JUDGMENT

Altamas Kabir, J.

1. Leave granted.

2. Pursuant to a notification under Section 4 (1) of the *Land Acquisition Act, 1894* dated 8th June, 1978, the Government of Andhra Pradesh acquired 5 acres of land in Survey No.212/1B of Ramanayyapeta in Kakinada Municipality for the purpose of construction of a mini-dairy. The appellant herein was the claimant before the Land Acquisition Officer, who passed an award fixing the market value of the land at Rs.28,750/- per acre. Possession of the lands was taken on 31st August, 1978. The appellant, herein, challenged the acquisition itself by way of a Writ Petition No.4082 of 1979, which was dismissed on 9th July, 1984. The appeal, which was preferred from the judgment of the learned Single Judge, being Writ Appeal No. 670 of 1985, was allowed on 7th February, 1991. The matter was carried to this Court by the respondents herein in SLP (C) No.19302 of 1991, which ultimately ended in a compromise. The Special Leave Petition was disposed of on 1st September, 1992, in pursuance of the Memorandum of Settlement filed by the parties, wherein it was agreed that the date of Notification would be treated as 7th February, 1991, for all purposes, and, accordingly, the market value of the lands as prevailing on the said date was to be taken for determination of compensation.

3. Subsequent to the said order passed by this Court, the matter was again taken up by the Reference Court. After taking into consideration further evidence which was led and the materials on record, the Reference Court fixed the market value at Rs.800/- per square yard and aggrieved by the same the respondents herein preferred an appeal to the High Court, being First Appeal No. 836 of 2003. During the hearing of the appeal, the Memorandum of Settlement arrived at between the parties was referred to and while on behalf of the respondents herein, it was contended that the Reference Court had wrongly fixed the market value of the acquired lands at Rs.800/- per square yard, on behalf of the

appellant herein, particular emphasis was laid on the fourth paragraph of the Memorandum of Settlement, which reads as follows:-

"The compensation determined by the learned Subordinate Judge, Kakinada will have to be paid to the respondent within a period of eight weeks thereafter. In default, the Acquisition will stand set aside the rights and liabilities of the parties will be determined in accordance with law."

4. The High Court was, however, of the view that despite the fact that payment had not been made in terms of the Memorandum of Settlement, since the main appeal was being heard, the entire acquisition as such could not be washed away, which would be detrimental to both the parties. It is on such note that the appeal was taken up for final decision though ultimately, the same was dismissed.

5. This appeal has been filed by the heirs of the original claimant, who had died in the meantime, mainly on the question as to whether the High Court had erred in not setting aside the acquisition proceedings in terms of the compromise which had been arrived at between the parties and recorded in the order dated 1st September, 1992 passed in SLP(C) No.19302 of 1991. The other ground, which had been taken by the appellant, is whether the High Court acted correctly in directing the respondents to pay the compensation amount, which amounted to extending the time for making such deposit which was contrary to the terms of the Memorandum of Settlement.

6. Appearing for the appellants, Mr R. Nariman, learned Senior Advocate, confined his submissions to the two points indicated hereinabove. Learned counsel urged that once a compromise had been arrived at between the parties, the terms whereof had been reduced to writing in the form of a Memorandum of Settlement, it was not open to the High Court to ignore the terms and conditions contained therein upon observing that since the main appeal was being heard, the acquisition proceedings could not be washed away. Mr. Nariman submitted that the approach of the High Court was entirely wrong since by operation of law the acquisition proceedings stood set aside on the failure of the respondents to comply with the terms of the Memorandum of Settlement.

7. Mr. Nariman urged that in accordance with the terms of the Memorandum of Settlement the learned Subordinate Judge, Kakinada, was directed to determine the compensation payable to the appellant herein for the land acquired, in accordance with the provisions of the *Land Acquisition Act, 1894*. Certain other benefits to which the appellant was entitled was also indicated in the said order. However, what was of utmost importance was the condition that the compensation which was to be determined by the learned Subordinate Judge, Kakinada, would have to be paid to the appellant within a period of 8 weeks thereafter, in default the acquisition would stand set aside and the rights and liabilities of the parties would be determined in accordance with law. Mr. Nariman submitted that in accordance with the terms of the Memorandum of Settlement the learned Subordinate Judge determined the compensation payable to the appellant on 23.1.2003 and payment of the compensation amount, as per the determination of the value of the acquired lands by the

Subordinate Judge, was to be made on or before 23.3.2003. However, even when the Special Leave Petition was filed on 2.3.2007, no deposit had been made in terms of the Memorandum of Settlement.

8. Mr. Nariman submitted that since the acquisition itself stood set aside in terms of the Memorandum of Settlement, the only course left open to the respondents was to issue a fresh Notification for acquisition of the lands in question and to proceed in accordance with law, thereafter, in computing the compensation payable for the land on account of such acquisition. Mr. Nariman also submitted that the High Court had acted beyond its jurisdiction and authority in unilaterally extending the time for depositing the compensation amount, since according to the terms of the same Memorandum of Settlement the acquisition proceedings had been set aside.

9. On the other hand, Mr. L. Nageshwar Rao, learned Senior Advocate, submitted that attempts had been made to deposit the compensation amount with the Divisional Officer, Kakinada, by sending Demand Drafts for amounts of Rs.2,13,87,500/-and Rs.11,14,34,033. An application was also moved on behalf of the respondent State before the Second Additional Senior Civil Judge, Kakinada, seeking permission to deposit the said amount, but such prayer was rejected on 22.8.2007, on the ground that the Special Leave Petition was pending before this Court. A Civil Revision Petition filed against the said order is still pending decision in the High Court. Mr. Rao submitted that ultimately by an order dated 11.10.2007 the High Court granted leave to the State authorities to deposit the decretal amount before the Second Additional Senior Civil Judge, Kakinada, without prejudice to the rights and contentions of the parties. Pursuant thereto, the amount was said to have been deposited on 22.10.2007.

10. It was submitted that admittedly there was a delay in making the deposit in terms of the Memorandum of Settlement which formed the basis of the order dated 1.9.1992 passed by this Court in Civil Appeal No. 3476 of 1992 filed by the Andhra Pradesh Dairy Development Corporation, but such delay was not intentional as various proceedings intervened in the meantime. Mr. Rao submitted that in the appeal, being F.A. No.836 of 2003, filed by Andhra Pradesh Dairy Development Corporation, the respondent No.2 herein, an interim order was passed by the High Court on 23rd April, 2003, staying the operation of the Order dated 23rd January, 2003, passed by the Principal Senior Civil Judge, Kakinada, fixing the market value of the acquired land at Rs.800/-per square yard as on 7.2.1991, which continued to be operative till the appeal itself was dismissed by the High Court on 9.6.2006. It was also submitted that immediately after the pronouncement of the Judgment by the High Court steps were taken to deposit the compensation amount as per the Memorandum of Settlement by making an application before the Second Additional Senior Civil Judge, Kakinada, praying for leave to make such deposit in the execution proceedings which had been commenced in the meantime. While granting such prayer, the High Court directed that stay of the execution would be subject to the condition of the respondent herein depositing 1/4th of the enhanced compensation in two equal instalments within four months from the date of the order, failing which the said petition would stand dismissed. Since the respondents were unable to deposit the said amount they filed an application before the High Court seeking

extension of time to make such deposit. On the other hand, the appellant herein filed Writ Petition No.6832 of 2003 for restitution of the possession of the acquired land. However, the High Court by its order dated 30.4.2003 dismissed the Writ Petition and granted the respondents a further period of two months for making payment of Rs.2 crores in installments within a period of two months and stayed further proceedings pursuant to the order dated 23.1.2003 passed by the Principal Senior Civil Judge, Kakinada.

11. Mr. Rao submitted that in view of the aforesaid proceedings and the interim order staying the execution proceedings, the respondents were unable to keep to the timing in making the deposit. Mr. Rao submitted that keeping in mind all the aforesaid facts, the High Court had rightly not bound itself to the time period stipulated in the Memorandum of Settlement for depositing the compensation amount. Mr. Rao urged that if the submission made on behalf of the appellant was to be accepted, the only effect will be that a fresh Notification under Section 4(1) of the 1894 Act would have to be issued and the date for calculation of the compensation amount would have to be taken from the fresh date of publication, which was likely to result in a substantial enhancement of the compensation payable for acquisition of the land in question.

12. On a careful consideration of the submissions made on behalf of the respective parties, it is clear that the only question which we are called upon to decide is whether having regard to the conditions imposed in the Memorandum of Settlement, the acquisition proceedings would stand set aside in view of the default committed by the State and its authorities in depositing the amount awarded within the time stipulated in the Settlement.

13. Admittedly, the order passed by the Second Senior Civil Judge, Kakinada, was to be the basis of the compensation to be awarded to the appellants herein. However, the said order also came to be challenged in the High Court and a stay was also granted to the execution thereof, which lasted till the appeal was finally dismissed on 9.6.2006. It is only after the dismissal of the appeal and the vacation of the stay order that the respondents began to take steps for deposit of the compensation amount as per the Memorandum of Settlement. It is, therefore, obvious that because of intervening circumstances, the time schedule contemplated in the Memorandum of Settlement for deposit of the compensation amount by the respondent stood disturbed. Because of the stay order granted by the High Court, the respondents were released from the obligation of making such deposit within eight weeks from the date on which the compensation was determined by the learned Subordinate Judge, Kakinada (Second Additional Senior Civil Judge). In our view, once the respondents stood released of the obligation of making the deposit within the time specified in the Memorandum of Settlement by the orders of Court, it will no longer be available to the appellant to claim that because of the default in making the deposit, the acquisition should stand set aside in terms of the Memorandum of Settlement. The questions posed by Mr. Nariman at the beginning of the submissions, have therefore, to be answered against the appellant and in favour of the respondent. Firstly, the acquisition proceeding does not stand set aside on account of the default on the part of the respondents in making the deposit within 8 weeks from the determination of the value of the acquired land by the learned Subordinate Judge, Kakinada. Consequentially, even the second question raised by Mr. Nariman that the High

Court had acted without jurisdiction in extending the time for making the deposit cannot also be sustained.

14. We, therefore, see no reason to interfere with the impugned judgment of the High Court and the appeal is accordingly dismissed. Since, the deposits are said to have already been made pursuant to the permission granted by the High Court, the claimants to the said compensation will be entitled to withdraw the same upon proper identification.

15. There will be no order as to costs.