

SUPREME COURT OF INDIA

Jayabheri Properties Pvt.Ltd.

Vs.

State of Andhra Pradesh

(Altamas Kabir and Cyriac Joseph JJ.)

05.04.2010

JUDGEMENT

Altamas Kabir, J.

1. Civil Appeal No.52 of 2008 arising out of SLP(C)No.19592 of 2007 filed by M/s. Jayabheri Properties Pvt. Ltd. and others, was taken up for hearing and final disposal along with Civil Appeal Nos.74 and 215 of 2008 arising out of SLP(C)No. 19633/07 and SLP(C)D.No.29751/07 respectively.

“Since all the three appeals arise out of the same set of facts and give rise to the same set of issues, they have been taken up together for hearing and final disposal.”

2. Two writ petitions being Writ Petition Nos.22809 and 22810 of 2006, were filed by the appellants herein, whereas Writ Petition No.26996 of 2006 was filed by T. Chittaiah and three others against the State of Andhra Pradesh and, in particular, against the Hyderabad Urban Development Authority (hereinafter referred to as the `HUDA').

“The three writ petitions relate to the challenge thrown to the acquisition of land comprised in Survey Nos.176, 189, 190, 191, 197, 198, 199, 200, 201 and 202 of Narsingi Village and Survey Nos.292, 293 and 294 of Poppalguda Village of Rajendranagar Mandal, Ranga Reddy District for the Outer Ring Road (ORR) Project for the twin cities of Hyderabad and Secunderabad.”

3. The said project was for the purpose of providing an Inner and Intermediate Ring Road and an Outer Ring Road as part of the main circulation system for traffic. In 1984, HUDA undertook a detailed study for the development of the Intermediate Ring Road, but there was little or no progress in view of the growth of the city and advent of the Information Technology industry and various other educational and industrial projects.

“In 2001, the Government of Andhra Pradesh initiated a project known as the "ORR Project" and HUDA engaged M/s. MECON for feasibility study.”

4. The report submitted by M/s. MECON contemplated the laying of a 109 km. 4-lane connectivity around the city. In July, 2004, the project was re- examined and on the recommendations made by senior officers of the Government and HUDA, the project was revised so that ORR could pass through open areas avoiding major settlements and habitations.

“The revised project was notified vide G.O.Ms.No.442 dated 19th October, 2004. The ORR alignment was finalised in April, 2005, providing for a 159 km. road around the twin cities and Ranga Reddy District.”

5. The final alignment comprised of Western, Northern, Eastern and Southern sectors.

“Thereafter, notifications dated 13th April, 2005 and 21st April, 2005, were issued under Section 4(1) of the Land Acquisition Act, 1894, for acquisition of various lands in different sectors. Since the alignment of the Western Sector was through Poppalguda and other villages which comprised hillocks, tanks and lakes, representations were made for change of the said alignment which led to the inspection of the same by officers of the technical wing of the ORR Project. It was found that the alignment involving huge rock-cutting, would be highly uneconomical. The proposed Trumpet Interchange at the T-Junction point which was incorporated at Poppalguda Junction, was found to be affecting a water body and school building.

Accordingly, an alternative alignment was considered by a Committee comprising senior officials of the Government and HUDA which inspected the alternative alignments and made certain observations. Among the observations which affected the parties to the present proceedings, was observation (e), which, on the basis of a quick survey, inter alia, provided as follows:

(i) The alignment should not affect any water body, as it was environmentally sensitive zone.

(ii) The alignment should involve minimal rock cutting and filling, as the terrain was uneven.

(iii) The alignment should involve minimal bends and curves keeping the design standards of the Outer Ring Road in mind.”

6. On the basis of the aforesaid suggestions, the matter was assigned to NSS Associates, which submitted its report on 15th November, 2005, with the recommendation that the notified Western Alignment joining Phase I at Poppalguda Village was not advisable and an alignment passing through Narsingi village should be worked out to lessen the expenses for cutting through rock forming part of the proposed alignment. After considering the report submitted by NSS Associates, the Alignment Committee, once again studied the entire matter and recommended that the alignment suggested by NSS Associates be accepted. One

of the observations made by the Alignment Committee with regard to the Western Sector alignment, as suggested by NSS Associates, is that the new alignment avoids all water bodies in the area, which was an environmentally sensitive area with a need to protect all water bodies. Upon approval of the State Government of the Report of the Alignment Committee, a G.O.M. No.8 dated 12.12.2005 was issued, whereby the Project Director and the Special Collector, Land Acquisition, Outer Ring Road Project, were permitted to notify the final alignment of the ORR.

7. Subsequent thereto, on 13th December, 2005, a notification was issued under Section 4(1) of the Land Acquisition Act for the purpose of acquiring the land belonging to the appellants situated at Narsingi Village. Another notice of even date was also issued seeking to acquire the lands belonging to the appellants situated at Poppalguda Village.

“On 12th January, 2006, objections were filed by the appellants under Section 5-A of the Land Acquisition Act, inter alia, contending as follows:

(a) there is a water body in the impugned alignment in Survey No.291 of Poppalguda Village.

(b) the change of alignment is illegal, since the earlier alignment was straight in shape and the impugned alignment is taking several twists and turns.

(c) earlier alignment was finalized upon scientific survey and consequently notifications were earlier issued on 21-4-2005, which was a straight alignment.

(d) impugned alignment was finalized without any proper survey and verification.

Reference was also made to a Land Use Certificate issued by HUDA on 16th January, 2006, indicating that as per the approved Zonal Development Plan, there was a notified water body in the land comprising Survey No.291 of Poppalguda.

The objections filed under Section 5-A were fixed for consideration on 17th July, 2006, before the Special Deputy Collector and on 21st July, 2006, the same were rejected and on 29th July, 2006, a Draft Declaration was published under Section 6 of the Land Acquisition Act, 1894.”

8. In the meantime, on the complaints made on behalf of the appellants, a CBI inquiry was directed by the Central Government in respect of 5 projects undertaken by the Government, including the ORR Project and the HUDA Township at Kokapet.

9. After considering the objections filed on behalf of some of the land owners, a draft declaration dated 29.7.2006 was issued under Section 6 of the aforesaid Act and the same was published in the Andhra Pradesh Gazette Extra- ordinary of the same date. By virtue of the said draft declaration under Section 6 of the Land Acquisition Act, the Government of

Andhra Pradesh declared that the land specified in the schedule to the draft declaration situated at Narsingi village of Rajendranagar Mandal, Ranga Reddy District, measuring 23 acres and 23 guntas was needed for a public purpose, namely, for formation of the Outer Ring Road. The same was challenged by the Appellants herein by way of a Writ Petition on 24th October, 2006, on several grounds. One of the grounds taken was that the earlier notifications under Sections 4 and 6 of the Land Acquisition Act had been issued keeping in view the scientific alignment of the road and suitability of the land proposed to be acquired and more importantly that the proposed acquisition did not cover the land of Narsingi village. Perhaps, the most important ground was that the land covered by Survey No.291 was shown to be a water body and Survey No.292 was a green belt touching a water body.

10. It was also urged on behalf of the Appellants that the alignment of the road had been altered with mala fide intent to benefit certain people belonging to the ruling party in power. It was also claimed that the revised alignment would convert the straight road into a serpentine road with the sole object of ensuring that the Outer Ring Road passed in a manner which boosted the value of the land held by ruling party leaders, their well-wishers and kith and kin.

11. Appearing for the appellants, Mr. Bhaskar Gupta, learned Senior Advocate, submitted that although one of the reasons given for alteration of the alignment was that water bodies on the said alignment would be disturbed, in fact, the alternative alignment would affect a larger number of existing water bodies and destroy particularly Survey Nos.291, 298, 299 and 300. It was urged that the objections filed by the appellants under Section 5-A of the Land Acquisition Act, 1894, which gives a very valuable right to the appellants and had been given almost the same status as a fundamental right by this Court, had been dealt with perfunctorily revealing non-application of mind as the above-mentioned survey numbers had, in fact, been identified by the local authorities, including HUDA, to be water bodies. Mr. Gupta pointed out from the Land Use Information given by HUDA on 16th January, 2006, that Survey No.291 was a water body, Survey No.292 was used for wet and dry agriculture and was touching a water body and Survey Nos.293 and 294 were also used for wet and dry agriculture.

12. He contended that apart from the above, even in GOM No.647 dated 3rd October, 2001, prescribing registration of water bodies, Survey No.291 under the entries relating to Poppalguda Village was shown to be "Kunta", meaning a tank.

13. Mr. Gupta submitted that in a letter dated 23rd December, 2006, the Executive Engineer, Irrigation Department, informed the appellants herein regarding the existence of water bodies in Survey Nos.291, 298, 299 and 300 of Poppalguda Village.

“Mr. Gupta submitted that the concerned Executive Engineer was suspended from service for giving a true picture of the terrain to the appellants. It was submitted that the report of the Central Water Commission dated 27th November, 2007, which had been submitted to this Court after inspection of Survey Nos.291, 298, 299 and 300 on

24th November, 2007, did not give a correct picture of the plots in question, since the inspection was conducted during the month of November which is a dry season in the area when most of the tanks and water bodies tend to dry up. Mr. Gupta submitted that although a great deal of reliance has been placed by the respondents on a letter written by another Executive Engineer also dated 23rd December, 2006, saying that there were no water bodies at all, such a statement had to be incorrect in view of the report of the Central Water Commission which also indicated that there were water bodies, of which some were dry. Mr. Gupta submitted that, in any event, water bodies were required to be preserved and could not be converted to other use, even if it was for the public good.”

14. In support of his aforesaid submissions, Mr. Gupta referred to and relied upon the decision of this Court in Intellectuals Forum, *Tirupathi vs. State of A.P. & Ors.*¹ wherein the need for balancing water and land resources for urban developmental needs was considered and it was observed that the responsibility of the State to protect the environment is now a well accepted notion in all countries. Reference was also made to a decision of this Court in *Hinch Lal Tiwari vs. Kamala Devi & Ors.*² and on a decision of the Calcutta High Court in *PUBLIC vs. State of West Bengal*³, wherein similar views have been expressed. Various other decisions were also cited in this regard, which will only have a multiplying effect to the views already expressed in the earlier judgments.

15. On the question of the importance of Section 5-A, Mr. Gupta referred to several decisions of this Court, such as:

“(i) *Munshi Singh & Ors. vs. Union of India*⁴;

(ii) *Union of India & Ors. vs. Mukesh Hans*⁵;

(iii) *Hindustan Petroleum Corpn. Ltd. vs. Darius Shapur Chenai & Ors.*⁶ and

(iv) *Ram Krishan Mahajan vs. Union Territory of Chandigarh & Ors.*⁷ wherein the importance of Section 5-A and the very valuable right given to an individual, whose land is being sought to be taken away, to raise an objection, has been emphatically demonstrated.”

16. Mr. Gupta submitted that since a very valuable right to object to the acquisition of land has been given to a person whose land was being sought to be taken away, it was the statutory duty of the Collector to consider the suitability of the land, hear objections, if any, filed by any of the persons affected, and, thereafter, to make his recommendations on the objections so raised and forward the same to the Government for further action. Instead, the Collector appeared to be helpless since a decision had already been taken by the Government even before the publication of the Section 4 notification. The report of the Collector dated 23rd December, 1996, was nothing but an empty formality.

17. Mr. Gupta also urged that the High Court, while considering the two contradictory letters dated 23rd December, 2006, written by two Executive Engineers, erroneously chose to reject the letter which had been relied upon by the Appellants merely on the ground that according to the Gazette Notification Survey No.291 falls in Narsingi Village, although, the letters say that the same falls in Poppalguda Village. Mr. Gupta submitted that the error committed by the High Court would be evident from the project description submitted by M/s NSS Associates along with its communication dated 15th November, 2005.

18. Mr. Gupta urged that the entire approach of the High Court was erroneous and failed to take into consideration the facts relating to the topography of the land involving the changed alignment of the ring road.

19. Mr. Altaf Ahmed, Senior Advocate, who appeared for the Appellants in Civil Appeal Nos.74 of 2008 and 215 of 2008, reiterated Mr. Gupta's submissions relating to denial of a proper opportunity to the Appellants (land owners) under Section 5-A of the Land Acquisition Act, 1894. Mr. Ahmed submitted that while the public purpose of the project could not be denied, what we are called upon to consider is regarding the viability of the land included in the second alignment since it passed through and affected some of the water bodies in the area. Mr. Ahmed referred to the report submitted by the Committee comprised of the Principal Secretary, Infrastructure and Investment Department (IIT), Managing Director, INCAP and Vice-Chairman, Hyderabad Urban Development Authority (HUDA) and other officers of HUDA, the Chief Engineer and Special Collector, ORR, wherein in paragraph (e) the Committee was of the view that the data available was insufficient and a quick survey should be made, inter alia, to ascertain that the alignment did not affect any water body since the area was an environmentally sensitive zone.

20. Reference was also made to the final decision of the Committee which was based on the recommendations of the Pollution Control Board in which it was stated that the alignment avoids all water bodies in the area, which statement was incorrect. Having regard to the admission subsequently made by HUDA in the Land Use Certificate issued on 16.1.2006 indicating that plot No.300, which falls squarely on the new alignment, was a water body together with plot No.291.

21. Mr. Ahmed urged that based on an incorrect appreciation of the topography relating to the second alignment, a decision had been taken to act on the basis of the new alignment, which, in fact, could not have been proceeded with for the same reason as was given for abandoning the first alignment. Mr. Ahmed repeated Mr. Gupta's submission regarding the two certificates dated 12th August, 2009, which showed the existence of water bodies in plot Nos.298, 299 and 300. He contended that the creation of the second alignment was made only to suit certain individuals who had an interest in the lands which fell within the first alignment.

22. Mr. Ahmed submitted that the decision taken to approve the second alignment was motivated and was contrary to the stand taken while disapproving the first alignment.

23. Appearing for the Hyderabad Urban Development Authority (HUDA), Mr. K.K. Venugopal, Senior Advocate, referred to the report of the Alignment Committee, on which strong reliance was placed by him. Mr. Venugopal submitted that only after examining the reports submitted by M/s NSS Associates and M/s. Aarvee Associates that the Alignment Committee set up by the Government recommended change in the alignment of the Outer Ring Road in the Poppalguda and Narsingi villages in the Western Sector. Mr. Venugopal submitted that proper care had been taken to avoid all major structures, water bodies and habitations. Learned counsel submitted that the change from the first alignment to the second alignment was necessitated by the fact that a large portion of the alignment was comprised of hilly terrain which would involve a considerable amount of rock cutting and that in order to avoid the said hillocks at Poppalguda the second alignment was proposed through Narsingi village.

24. Mr. Venugopal submitted that a major portion of the construction work in respect of the Western Sector of the Outer Ring Road had been completed and only the portion comprising about a two- kilometer stretch, which is the subject matter of the present appeals, was yet to be completed.

25. In this connection, Mr. Venugopal also referred to the report of the visit of the Expert Central Team of the Central Water Commission for an on the spot study and to verify as to whether Survey Nos.291, 298, 299 and 300 of Poppalguda Village were, in fact, water bodies. The report of the Central Water Commission indicated that none of the three survey numbers, apart from Survey No.300, disclosed the existence of a water body. On the other hand, it was categorically indicated that there was no water body existing as on the date of inspection in plot Nos.291, 298 and 299.

26. Apart from the above, Mr. Venugopal submitted that the possession of the land had already been taken under Section 16 of the Land Acquisition Act, 1894, and as indicated hereinbefore, the major portion of the construction work of the Outer Ring Road had been completed and only the two ends of the construction work had to be brought together in order to complete the project. Mr. Venugopal submitted that in respect of projects of national importance, the balance of convenience and inconvenience of the majority of the citizens would have to be considered as opposed to private interests. He referred to the decision of this Court in *Delhi Admn. vs. Gurdip Singh Uban*⁸, wherein it was held that when several plots of land are involved in an acquisition, the objection of several individual plot owners could not be entertained even under Section 5-A of the 1894 Act, particularly, because when several LA Collectors were dealing with different segments of 24 the acquired lands, it would not be possible for one of such Collectors to take a decision with regard to the operation of the integrated project.

27. Mr. Venugopal ended on the note that since the inconvenience that may be caused to a few individual plot owners could not outweigh the interest of the public, the appeal filed by M/s Jayabheri Properties Pvt. Ltd. & others was liable to be dismissed.

28. Mr. Anoop G. Chaudhari, Senior Advocate, who appeared for the State of Andhra Pradesh, endorsed the submissions made by Mr. Venugopal and added that the Appellants could not be considered to be "a person interested" within the meaning of Section 3(b) of the 1894 Act. He urged that the Collector had duly applied his mind to the fact situation and the decision ultimately taken did not merit any interference.

29. Mr. A.K. Ganguli, Senior Advocate, appeared on behalf of Mr. Purshottam Reddy, who had made an application for intervention in the proceedings and submitted that the intervenor who was the Director of the Centre for Environmental Studies, Osmania University, had challenged the change of alignment on account of the fact that the integrated hydrological system which was prevailing in the area would be destroyed if the Western Sector of the project was allowed to be completed.

30. We have taken pains to set out the fact situation in some detail since a decision in this matter depends on the fact situation leading to the change of alignment of the Western Sector of the Outer Ring Road Project in the twin cities of Hyderabad and Secunderabad in Andhra Pradesh. From the site plans of the area submitted by the parties, it is clear that both the two alignments touch and disturb existing water bodies, which was the main ground for the change of alignment in the first place. From the reports submitted by the various local authorities, it is, however, clear that in order to proceed according to the first alignment, the respondents would have to cut through a great deal of rock, which is not so as far as the second alignment is concerned. It is no doubt true that in terms of the environmental policies of the State Government, the Western Sector of the project has been shown to be a highly ecologically sensitive zone, but we have no choice but to consider the viability of either of the two alignments for the purpose of the connectivity of the Outer Ring Road and while doing so we have to balance the aforesaid factor and also the interest of the private land owners as against the interest of the public. Apart from the above, we have also to take into consideration the factors that the major stretch of the Outer Ring Road is said to have been completed, even in the Western Sector, and only a small stretch involving the plots of the appellants, is yet to be completed.

31. There is no doubt that in the facts of this case the public interest will out-weigh the interest of the individual plot holders. The only consideration is with regard to the preservation of the water bodies which are yet untouched, such as, plot No. 300 mentioned in the report of the Central Water Commission and also in the letter written by the Executive Engineer on 23rd December, 2006. The arguments advanced on behalf of the appellants have their positive value but looking at the problem holistically, we are of the view that their objections to the use of the lands for the purpose of the Outer Ring Road have to give way to the construction of the said road. However, while constructing the portion of the road affecting the plots in question, maximum care has to be taken by the concerned authorities to preserve as far as possible the water bodies over which the road is to be constructed.

32. The submissions advanced on behalf of the appellants alleging that adequate opportunity had not been given to them under Section 5A of the Land Acquisition Act, 1894, to voice their objections, is without substance as the objections filed were duly considered by the Special Deputy Collector and rejected by his order dated 21st July, 2006.

33. Although, we are not inclined to interfere with the orders impugned in the three appeals or to entertain the two writ petitions, we dispose of the same with a direction to the authorities to take all possible steps to ensure that the water bodies in the area are not unduly affected and are preserved to the maximum extent possible during the construction of the remaining portion of the Outer Ring Road on the Western Sector.

34. The Interlocutory Applications filed for intervention are also disposed of by this order.

¹(2006) 3 SCC 549

²(2001) 6 SCC 496

³AIR 1993 Cal. 215

⁴(1973) 2 SCC 337

⁵(2004) 8 SCC 14

⁶(2005) 7 SCC 627

⁷(2007) 6 SCC 634

⁸(2000) 7 SCC 296