

**SUPREME COURT OF INDIA**

Koka Suryanarayana Rao & Ors.

Vs.

Land Acquisition

C.A.No.2565-2571 of 2011

(V.S.Sirpurkar and T.S.Thakur,JJ.,)

17.03.2011

**JUDGMENT**

**V.S.Sirpurkar,J.,**

SLP (Civil)No. 30531-30537of 2009

1. Leave granted in all special leave petitions.
2. By these appeals the judgment passed by the learned Single Judge of the Andhra Pradesh High Court allowing the civil revision petitions filed by the Land Acquisition Officer and Revenue Division Officer, Kakinada are in challenge. By the instant judgment, the said civil revision petitions were allowed and some directions were given to the Executing Court which was executing the decrees earned by the appellants herein. These civil revisions were filed against the order passed by the Court of IInd Additional Senior Civil Judge, Kakinada which was dealing with the execution petitions filed by the appellants herein. In those execution petitions, the calculations made by the decree holder-appellants herein regarding the decretal amount were accepted and the Land Acquisition Officer-judgment debtor was directed to deposit the amounts in terms of the calculations made by the decree holders.
3. Lands belonging to the appellants were acquired for the purpose of construction of bus station complex at Pithapuram. This was done on the basis of a requisition made by Andhra Pradesh State Road Transport Corporation (hereinafter called `APSRTC' for short). Possession was already taken of the land with building and trees on 29.1.1978 itself and award came to be passed on 1.6.1981 awarding compensation @ Rs.10 per square yard (48,400/- per acre) for the land, and Rs.97,930/- for permanent structures and Rs.740/- towards tress. A reference was made under Section 18 of the Act by the appellants herein and the reference Court by its order and decree dated 25.4.1984 enhanced the compensation @ Rs.40/- per square yard from Rs.10/- per square yard. It also increased the compensation for buildings as well as the trees. It also ordered the solatium @ 15% and interest @ 4 % per annum from the date of taking possession of the acquired land. Appeals came to be filed against this judgment. The High Court, however, confirmed the said judgment by its

judgment dated 5.2.1992 in appeal No.1970 of 1985. While confirming the compensation awarded and the rate fixed by the reference Court, the High Court further held that in addition to the market value of the land, the claimants shall be entitled to the additional amount calculated @ 12 % per annum on such market value for the period commencing on and from date of publication of notification under Section 4(1) of the Act to the date of award of the Collector or the date of taking possession of the land, whichever was earlier as contemplated under Section 23(1)A of the Amendment Act No. 68 of 1984. It was also ordered that the claimants-appellants-decree holders would also be entitled to solatium @ 30 % and interest @ 9 % per annum from the date of taking possession till the date of payment.

4. The Land Acquisition Officer deposited the amount as awarded by the reference Court awarding 12 % additional market value, solatium and interest by the High Court.

5. The claimants had filed execution petitions claiming compensation which was ordered by the Executing Court on 11.8.2005. The calculation made by the Court in the execution petitions suggested that apart from the market value, 30 % solatium and 12 % additional market value were also added for arriving at the proper compensation and on that amount interest @ 9 % per annum was also claimed from 29.1.1978 for a period of a year i.e. up to 28.1.1979 and thereafter @ 15 % per annum. The Executing Court also deducted the amount paid on 1.6.1981 and the interest was calculated on the balance amount including interest on the additional market value and accrued interest by deducting the compensation already paid under the award in compliance with the decree passed in OP. It is the case of the respondent that the compensation amount was deposited on 17.9.1984 and in one of the execution petitions and credited on 5.10.1984 to the full satisfaction of decree passed in OP No.113/1982 dated 25.4.84.

6. While these execution petitions were pending, APSRTC filed execution application No.424 of 1996 in execution petition No.279 of 1995 and OP No.113 of 1982 for impleading itself as the second respondent- judgment debtor. By that it wanted an opportunity to contest the execution petitions stating that they had deposited the amount under the threat of attachment. This execution petition was dismissed, and, therefore, the APSRTC filed a civil revision petition. This civil revision petition was also dismissed by the High Court by its order dated 10.8.2001. Therefore, APSRTC filed a writ petition being WP No.18813 of 2003 before the High Court. However, that Writ Petition No.18813 of 2003 also came to be dismissed by the High Court. The said judgment by the Single Judge was confirmed in writ appeal No.1190 of 2004. The APSRTC, not content with the judgment, approached this Court by way of a Special Leave Petition. However, even that Special Leave Petition was dismissed by this Court on 21.2.2005.

7. After this, however, the APSRTC filed three civil revisions being CRP Nos. 601, 603 and 604 of 2006 with leave to file revisions against the order of the Executing Court dated 11.8.2005 passed in EP No.237 of 1992, 44 of 1993, 279 of 1992 and 83 of 1996. These revision petitions were also dismissed by the High Court by separate orders. Again, a Special Leave Petition was filed against the orders passed in the civil revision petitions. However, this Special Leave Petition was also dismissed by this Court on 20.8.2007.

8. So far so good, after the dismissal of CRP Nos.601-604 of 2006 referred to earlier, now the Land Acquisition Officer filed review petitions to revise the orders passed by the High Court in CRP Nos.601-604 of 2006. While these review petitions were pending, the Executing Court allowed the execution petitions and directed the Land Acquisition Officer to deposit the decretal amount by order dated 26.11.2007. Against this, three revisions again came to be filed by the Land Acquisition Officer vide CRP Nos.273, 275 and 276 of 2008. The review petitions filed earlier by the Land Acquisition Officer were then withdrawn, they being CRP Nos. 273, 275 and 276 of 2008. The Land Acquisition Officer then filed four revision petitions they being CRP Nos.1514, 1580, 1697 and 1698 of 2008 against the order of the Executing Court dated 11.8.2005 in EP Nos.83 of 96, 237 of 92, 279 of 92, 44 of 93 and OP 113 of 1982, respectively. The judgment of the High Court allowing the said civil revision petitions is challenged here.

9. The learned counsel appearing on behalf of the appellants brought to our notice that the High Court was in complete error in allowing the civil revisions inasmuch as nothing was left in the said executions and the said execution had become final against the APSRTC. It was pointed out that what could not be achieved by APSRTC was now being tried to be achieved by the Land Acquisition Officer. The learned counsel pointed out that the acquisition was for APSRTC and the compensation would also flow from the APSRTC. It was pointed out that APSRTC having failed in achieving results in spite of the three earlier rounds of litigation, now the mantle has been taken over by the Land Acquisition Officer. The learned counsel took us through the list of dates and pointed out that after the final determination of principles of compensation, claimants filed execution petitions along with the calculation memos claiming the total decretal amount of Rs.15,87,833.61/-. This amount was directed to be deposited as per that calculation memo on or before 29.4.1996 by way of an order dated 2.4.1996. It was at that stage that the APSRTC who was the beneficiary filed the application for impleadment and that application failed throughout right up to the level of this Court. It was pointed out that when the civil revision petitions of impleadment were filed, a writ petition came to be filed being Writ Petition No.18813 of 2003 wherein the order of the Executing Court was challenged. The learned counsel pointed out that by its order dated 13.4.2004, that writ petition was dismissed. However, the learned Single Judge had given liberty to file an appeal against the order in CRP No.3894 of 2007 before this Court, if so advised. The learned counsel pointed out that this order of the learned Single Judge in WP No.18813 of 2003 was not challenged by way of special leave petition and instead the APSRTC filed a writ appeal against the judgment of the learned Single Judge. The Division Bench also dismissed the appeal and it is against that order regarding impleadment that APSRTC filed Special Leave Petition which was also dismissed.

10. The learned counsel then pointed out that the execution Court by its order dated 11.8.2005 considered the updated calculation memo up to 30.6.2005 and directed to deposit amount of Rs.32,14,328/- by 1.9.2005. Similar orders were passed in other execution petitions also. Against this order, the APSRTC again filed four civil revision petitions, they being CRP Nos.601-604 of 2006 which were dismissed by the Learned Single Judge. The

Learned Single Judge in his judgment dated 28.4.2006 had deprecated the attitude on the part of the APSRTC.

11. It was then pointed out that this order of 28.4.2006 was sought to be reviewed by the Land Acquisition Officer by filing review petitions. The learned counsel pointed out that against the dismissal of the civil revision petitions filed by APSRTC, the APSRTC again approached this Court which Special Leave petition was also dismissed, though after notice to the respondent. However, the review petitions filed by the LAO challenging the calculations were also dismissed as withdrawn by the orders dated 29.8.2008 passed by the High Court. While these review petitions were withdrawn, the learned counsel pointed out that there was no liberty given to the Land Acquisition Officer while dismissing the review petitions.

12. After withdrawal of the review petitions the Land Acquisition Officer again filed fresh Civil Revision Petition Nos.1514, 1580, 1697 and 1698 of 2008 before the High Court against the order of the Executing Court which had passed the orders on 11.8.2005 in four execution petitions. Learned counsel pointed out that this very order was challenged by APSRTC in CRP Nos.601-604 of 2006 and the same were dismissed. He pointed out that in those civil revision petitions, even the Land Acquisition Officer was a party. He also pointed out that Land Acquisition Officer did not present any argument against those orders which could have been presented even if it was a party respondent and yet the High Court not only entertained the civil revision petitions, but also allowed them. The learned counsel pointed out that all this was clearly impermissible. The learned counsel was at pains to point out and rely upon the judgment of the High Court dealing with the civil revision petition No.601-604 of 2006 filed by APSRTC. He pointed out that in those civil revisions, the APSRTC had challenged the calculations approved by the Executing Court by its order dated 11.8.2005. The learned counsel relied on the following paragraph in the judgment:

"Now, the APSRTC files the present civil revision petition questioning the calculation made by the office of the Court below. It is to be further seen that the said calculation is based on the calculation memo filed by the claimants. Same is the calculation memo filed earlier under the Court below. The present calculation memo is on the same lines, of course, by updating. Absolutely, there is no deviation from the earlier calculation memo and furthermore the present calculation arrived at by the office of the Court below is matching with the calculation memo filed by the claimants."

It is pointed out that in this very judgment, it was observed in paragraph 10 as under:

"At this stage, the APSRTC files the present civil revision petition. No objections were taken by any party of the execution petition EP No.237 of 1992 in EP No.113 of 1982 on the file of IInd Additional Subordinate Judge, Kakinada, including the Land Acquisition Officer, who is answerable party, or the party to the execution petition, the present Civil Revision Petition is filed, of course, by obtaining leave of this Court."

(emphasis supplied)

13. From this, the learned counsel said and, in our opinion, rightly that there was no question of finding fault with the calculation memo which were approved by the High Court in its aforementioned judgment. It is further pointed out that the Special Leave Petition against this judgment was already dismissed by this Court on 20.8.2007. It was also argued that in view of this judgment, nothing was left to be considered in respect of the calculation memo. In view of all this, the learned counsel urged that there was no question of finding fault with the calculation memos ordered upon by the Executing Court.

14. As against this, Shri R. Venkataramani, learned senior counsel appearing on behalf of the respondent-State tried to justify the order that the calculation of interest in the aforementioned calculation memo was not correct. It was tried to be pointed out by the learned senior counsel by filing the calculation sheet, that calculation of the claimants-appellants herein was excessive and in that the interest was calculated on the interest. The learned counsel tried to point out that in calculating the interest as per the calculation memo finalized by the Executing Court, the amounts of compensation which were already deposited were not taken into consideration and, therefore, the interest was swollen unnaturally. In short, the learned counsel tried to urge that the interest on interest was being claimed by the claimants, which was not correct.

15. It must be pointed out, at this juncture, that in the judgment of the High Court disposing of the Civil Revision Petition Nos. 601-604 of 2006 which were filed by the APSRTC, the question of correctness of the calculations was specifically raised almost on the similar lines. However, the High Court refuted that contention on the part of the APSRTC. It must be noted that, to that petition, the Land Acquisition Officer was also a party. But as has been held by the High Court, no objections were raised by the Land Acquisition Officer at all. It is only thereafter that the respondent Land Acquisition Officer seems to have woken up by filing the review applications. It has to be kept in mind that the judgment of 28.4.2006 passed by the Learned Single Judge was challenged by APSRTC up to the level of this Court wherein this Court confirmed that judgment by dismissing the Special Leave Petition. It has to be pointed out that even in those special leave petitions, the land Acquisition Officer was a party. At any rate, the Land Acquisition Officer even being a respondent in CRP Nos.601 to 604 of 2006 could have at least supported APSRTC or independently filed a Special Leave Petition. But that was not done. Instead, the Land Acquisition Officer chose to file review petitions and further chose to withdraw them. There was no liberty sought while withdrawing the review petitions and, therefore, civil revisions came to be filed before the High Court against the very same order of the Executing Court which was confirmed right up to this Court. All this obviously was not permissible. In that, the Land Acquisition Officer was only trying to fight a battle of APSRTC which APSRTC had already lost. It goes without saying that by the impugned order of the High Court, the beneficiary party would be the APSRTC because it was for its cause that the land acquisition was done and even the compensation would come from APSRTC. The things are, thus, clear that once the APSRTC had chosen to challenge the calculation memos and had failed in that exercise right up to this Court, the Land Acquisition Officer is now trying to challenge the very same orders. We do not think

that this is any more permissible. We have already pointed out that the respondent did not raise even its little finger against the calculation memos presented by the decree-holder-appellants herein. All through, the respondent herein was a party to all the proceedings including the Civil Revision Petitions filed by the APSRTC, firstly, for its impleadment and, secondly, against the order passed by the Executing Court accepting the calculation memos. Unfortunately, it is only when all the controversies were closed that the Land Acquisition Officer has chosen to file these four Civil Revision Petitions in 2008. We do not approve of this course as the Land Acquisition Officer could not have, at this juncture, filed the Civil Revision Petitions and even if those Civil Revisions were filed and could be entertained, in our opinion, all the questions regarding the correctness of the calculation memos had also been finally closed, firstly, by the judgment in CRP Nos.601 to 604 of 2006 and lastly by the dismissal of the Special Leave Petition filed challenging the calculation memos.

16. We have carefully seen the pleadings of the parties at various stages where the APSRTC had clearly challenged the calculation memos. Therefore, it cannot be said that the question of correctness of the calculation memos was not considered by the High Court or this Court. In our opinion, therefore, the contention raised by Shri R. Venkataramani regarding the calculation memos not being correct cannot be entertained now.

17. The appeals, therefore, deserve to be allowed and are allowed. The order of the High Court is set aside and that of the Executing Court is restored. However, under the circumstances, there will be no orders as to costs.