

IN THE HIGH COURT OF ANDHRA PRADESH : AMARAVATI

HON'BLE MR. JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE R.RAGHUNANDAN RAO

WRIT APPEAL No.1170 of 2023

The Project Director,
National Highways Authority of India,
Project Implementation Unit, Plot Nos.149 and 150,
KVR Estate, Koradapet Chellur Junction,
Vizianagaram - 535 004.

... Appellant

Vs.

M/s. Vijayanagaram Hatcheries Pvt. Ltd.,
Represented by its Authorized Signatory K.Srinivas Reddy,
Aged about 48 years, R/o.54-1-9, 4th Floor,
Dr.N.G.R's Lotus Plaza, Isukathota,
Visakhapatnam - 530 022 and 5 others

... Respondents

Counsel for the Appellant : Mr. Padma Rao G. S. Lakkaraju

Counsel for the Respondents : Mr. G. Ramesh Babu - R1

Mr. Jupudi V. K. Yagnadutt,
Deputy Solicitor General of India
- R2

Mr. S. S. Varma,
Standing Counsel - R3 & R4

G.P. for Land Acquisition - R5 & R6

Dt.: 26.12.2023

PER DHIRAJ SINGH THAKUR, CJ (Oral):

The present writ appeal has been filed under Clause 15 of the Letters Patent against the Judgment and Order dated 13.09.2023 in W.P.No.14432 of 2023.

2. The case setup before the learned single Judge by the writ petitioner was that even when its land measuring one acre twenty one cents in Sy.No.336/1B and two acres and twenty four cents in Sy.No.336/2B belonging to the petitioner had been acquired by the National Highways Authority of India (in short 'NHAI') and compensation determined as per the Award No.13-1/2022, dated 10.08.2022, payment had not been released in its favour.

3. The case of the petitioner further was that the Award was challenged before the Arbitrator (the District Collector) in terms of Section 3G(5) of the National Highways Act, 1956, which came to be dismissed on 05.04.2022 and since the Award had been upheld and had attained finality, withholding the payment of compensation was unjustified and illegal.

4. In the backdrop of the aforementioned claims, the learned single Judge, by virtue of the judgment and order impugned, on being satisfied that there was no challenge to the Award, dated

10.08.2022, which had attained finality “as on date”, issued directions to deposit the compensation amount payable to the petitioner as per the Award, dated 10.08.2022.

5. Learned counsel for the Appellant submitted that the petitioner had in fact not brought to the notice of the learned single Judge that the order passed by the Arbitrator (the District Collector) was already under challenge under Section 34 of the Arbitration and Conciliation Act, 1996, which was still pending adjudication. It was admitted that while a prayer for grant of interim relief had been made, yet no orders had been passed on the same by the learned District Judge.

6. Apart from this, reliance has been placed upon judgment of the Hon’ble Supreme Court in the case of **National Highways Authority of India Vs. Sheetal Jaidev Vade & Others**¹, to buttress the point that the Hon’ble Supreme Court had disapproved the entertainment of writ petitions under Article 226 of the Constitution of India for execution of Awards passed by the Arbitral Tribunal/Court, instead of relegating the judgment creditor to file execution proceedings before the competent Executing Court.

¹ [(2022) SCC Online SC 1070]

The aforementioned observations were made by the Apex Court in an appeal preferred against a judgment and order passed in exercise of powers under Article 226 of the Constitution of India directing the NHAI to deposit the entire compensation amount as awarded by the Arbitrator and thereafter permitting the original land owners/writ petitioners to withdraw the said amount.

The Apex Court in paragraph 12 of the judgment had noted that the Award had been challenged by the NHAI by initiating proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, which were reported to be pending and in those circumstances held that the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India for purposes of execution of the Award and that by issuing such directions, the High Court had virtually converted itself into an Executing Court.

7. The facts of the present case are quite similar to the ones which were before the Apex Court in the case supra. Admittedly, the appellant herein had initiated the proceedings under Section 34 of the Arbitration and Conciliation Act, 1996, before the learned District Judge, which proceedings are still stated to be pending. This fact, however, could not be brought to the notice of the learned

single Judge by the NHAI on account of the fact that on the date when the judgment and order came to be passed, the appellant was not represented.

8. Be that as it may, considering the ratio of the judgment discussed hereinabove, the judgment and order passed by the learned single Judge is unsustainable and is accordingly set aside leaving the parties to avail the remedies before the appropriate forum. The writ appeal is, accordingly, disposed of. No costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

R.RAGHUNANDAN RAO, J
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