

A MOOTHA VENKATESWARA RAO (DEAD) TR. LRS.  
v.  
GODHAVARI CO-OP MILK P. UNION LTD. & ORS.  
(Civil Appeal No. 7083 of 2008)

DECEMBER 3, 2008

B [ALTAMAS KABIR AND MARKANDEY KATJU, JJ.]

*Land Acquisition Act, 1894 – s.4(1) – Land acquisition proceedings – Memorandum of settlement between parties*  
C *– Condition therein that the Acquisition Authorities to deposit the amount awarded within the stipulated time period and in default, acquisition to be set aside – Payment not made in terms of MOU – In appeal, High Court not setting aside the acquisition proceedings and extending the time for making*  
D *such deposit – Interference with – Held: Not called for – Due to intervening circumstances, time schedule for depositing the amount could not be followed – By order of the court, Authorities stood released of the obligation of making deposit within time specified in MOU – Hence, acquisition*  
E *proceedings cannot be set aside.*

By Notification dated 8.7.1978, the State Government acquired land of the appellant for construction purpose. The Land Acquisition Officer passed an award fixing the market value of the land at Rs.28,750/- per acre. Appellant  
F challenged the acquisition by filing writ petition and the same was dismissed. However, the appeal was allowed. Respondent then filed SLP and the same was disposed of, in view of the compromise between the parties. The parties entered into Memorandum of Settlement that the  
G date of Notification would be treated as 7.2.1991 for all purposes; and that the compensation would be determined by the Subordinate Judge which was to be paid to the claimants within 8 weeks and in default the acquisition would be set aside. Thereafter, the Reference

Court fixed the market value at Rs.800/- per square yard. Aggrieved, respondents filed appeal contending that the market value was wrongly fixed. High Court held that even though the payment was not made in terms of the MOU, since the main appeal was heard, the entire acquisition could not be set aside. High Court directed the respondents to pay the compensation amount and extended the time for depositing the same. Hence, the present appeal.

The question which arose for consideration in this appeal was 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.

Dismissing the appeal, the Court

HELD: 1. The Order passed by the Second Senior Civil Judge was to be the basis of the compensation to be awarded to the appellants. 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. 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. Therefore, it is 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

A Subordinate Judge. 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. Therefore, 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 Subordinate Judge. Consequentially it cannot be said that the High Court had acted without jurisdiction in extending the time for making the deposit. [Para 13] [1144-C-H; 1145-A]

D 2. There is no reason to interfere with the impugned judgment of the High Court. 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. [Para 14] [1145-B]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7083 of 2008.

F From the final Judgment and Order dated 9.6.2006 of the High Court of Andhra Pradesh at Hyderabad in First Appeal No. 836 of 2003.

G R.F. Nariman, L. Nageshwar Rao, M. Srinivas R. Rao, Satyanarayana Murthy, Abid Ali Beeran, Sudha Gupta, Manoj Saxena, Rajneesh Kr. Singh, Rahul Shukla, T.V. George, R. Santhan Krishnan, K. Radha Rani, Vijay Kumar and Mahesh Babu for the appearing parties.

The Judgment of the Court was delivered by

H 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:-

A "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  
B 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  
C 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  
D 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  
E 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.

F 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  
G 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

H

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.

A 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  
B 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  
C 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  
D 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  
E 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  
F 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  
G 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  
H 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 instalments 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

A 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.

MOOTHA VENKATESWARA RAO v. GODHAVARI CO-OP. 1145  
MILK P. UNION LTD. & ORS. [ALTAMAS KABIR, J.]

Consequently, even the second question raised by Mr. A  
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 B  
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. C

15. There will be no order as to costs.

N.J.

Appeal dismissed.