

IN THE HIGH COURT OF ANDHRA PRADESH

+W.A.No.460 of 2013 & W.P.No.21566 of 2013

W.A.No.460 of 2013

Between:

1. Syed Habibulla Shah

S/o. S.R Shah, aged about 59 years,
R/o. 46-17-47, Ganugu Veedhi,
Danavaipeta, Rajahmundry,
E.G District.

2. Smt. Khadarunnisa Begum,

W/o. Syed Amiruddin Shah, aged about 43 years,
R/o. 46-17-47, Ganugu Veedhi,
Danavaipeta, Rajahmundry,
E.G District.

... Appellants

AND

\$ 1. The State of A.P,

Rep. by the Principal Secretary,
Social Welfare Department,
Secretariat, Hyderabad.

2. The Collector,

East Godavari District,
Kakinada.

3. The Land Acquisition Officer & Sub-Collector,

Rajahmundry, East Godavari District.

4. The Tahsildar,

Korukonda Mandal, Korukonda,
East Godavari District.

... Respondents

W.P.No.21566 of 2013

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East Godavari District.

... Respondents

Date of Judgment pronounced on : 04.03.2025

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

And

HON'BLE DR JUSTICE K. MANMADHA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

*** HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

And

HON'BLE DR JUSTICE K. MANMADHA RAO

+ W.A.No.460 of 2013 & W.P.No.21566 of 2013

% Dated: 04.03.2025

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AND

- \$ 1. The State of A.P,
Rep. by the Principal Secretary,
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Rajahmundry, East Godavari District.
4. The Tahsildar,
Korukonda Mandal, Korukonda,
East Godavari District.

... Respondents

! Counsel for the Appellants/ Petitioners : Sri K. Venkat Rao

^Counsel for Respondents/ Respondents : Assistant Government
Pleader for Revenue

<GIST :

>HEAD NOTE:

? Cases referred:

- 1) AIR 1993 S.C. 2517
- 2) (2011) 9 SCC 354
- 3) 2022 SCC Online SC 1408
- 4) 2022 LawSuit (SC) 594
- 5) 2017 (11) SCC 339

APHC010429402013



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3525]

TUESDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE DR JUSTICE K MANMADHA RAO

WRIT APPEAL No: 460 of 2013 & WRIT PETITION No: 21566 of 2013

WRIT APPEAL No: 460 of 2013

Between:

Syed Habibulla Shah, Rajahmundry, E.g.dist., & Anr.
and Others

...APPELLANT(S)

AND

The State Of A P Rep By Prl Secretary S W Hyd 3
Otrs and Others

...RESPONDENT(S)

Counsel for the Appellant(S):

1. KAKARA VENKATA RAO

Counsel for the Respondent(S):

1. GP FOR LAND ACQUISITION

2. GP FOR SOCIAL WELFARE

WRIT PETITION No: 21566 of 2013

Between:

Syed Habibulla Shah, Rajahmundry, & Anr. and Others **...PETITIONER(S)**

AND

The State Of A P S W Hyd 3 Otrs and Others

...RESPONDENT(S)

Counsel for the Petitioner(S):

1.KAKARA VENKATA RAO

Counsel for the Respondent(S):

1.GP FOR LAND ACQUISITION

The Court made the following common Judgment:

(per Hon'ble Sri Justice R Raghunandan Rao)

The land of the appellants/ writ petitioners herein, admeasuring Ac.8.37 cents in Sy.No.321/1 and 321/2 & 188 of Gummuluru Village, Korukonda Mandal, East Godavari District, was initially sought to be acquired for the purpose of providing house sites for the weaker sections of the society. It appears that, ultimately, only Ac.5.73 cents of land was taken over. The appellants had thereupon approached the erstwhile High Court of Andhra Pradesh, by way of W.P.No.4234 of 2013, contending that no award had been passed from 20.12.2003 when a notification had been issued under Section 4 (1) of the Land Acquisition Act, 1894 (here-in-after referred to as "the 1894 Act") till the filing of the writ petition. The appellants contended that Section 11-A of the 1894 Act mandated that, where an award is not passed within three years from the date of notification under Section 4 (1) of the 1894 Act, the entire proceedings would lapse. The appellants, on this basis, contended that the acquisition process had lapsed and the land should be given back to the appellants.

2. A Learned Single Judge, who heard the matter, disposed of the writ petition, by an order, dated 25.02.2013. The Learned Single Judge noticed that Section 17 of the 1894 Act was invoked on the ground of urgency and that the mandate under Section 11-A of the 1894 Act would not apply, wherever Section 17 has been invoked. The Learned Single Judge took this view on the basis of the Judgment of the Hon'ble Supreme Court in the case of **Satendra Prasad Jain Vs. State of Uttar Pradesh¹**. The Learned Single Judge also noticed that the said view of the Hon'ble Supreme Court was doubted in a subsequent Judgment in the case of **Delhi Airtech Services Pvt. Ltd. Vs. State of Uttar Pradesh and Another²**, and that the matter had been referred to a larger bench. However, the Learned Single Judge, on the ground that the ratio laid down in **Satendra Prasad Jain (1-supra)** continues, till a contrary view is taken by a larger bench, had dismissed the writ petition.

3. Aggrieved by the said order, the appellants have approached this Court, by way of the present Writ Appeal.

4. Sri K. Venkat Rao, learned counsel appearing for the appellants contends that the reference of the Hon'ble Supreme Court, in **Delhi Airtech Services Pvt. Ltd. (2-supra)**, has been answered by a Full-Bench of the Hon'ble Supreme Court in the case of **Delhi Airtech**

¹ AIR 1993 S.C. 2517

² (2011) 9 SCC 354

Services Pvt. Ltd. and Another vs. State of U.P. & Another³. He would submit that the Full-Bench of the Hon'ble Supreme Court had taken the view that the acquisition process would lapse, even when Section 17 of the 1894 Act is invoked, wherever 80 % of the compensation had not been paid. The learned counsel would contend that since the appellants were not paid 80 % of the compensation, as required under Section 17 of the 1894 Act, the proceedings would have to be treated as lapsed.

5. The learned counsel would further submit that the land in question has already been converted into house sites and various persons are in occupation and have constructed structures in the lands. In view of these developments, the learned counsel would contend that the appellants would have to be compensated by fixing compensation under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (here-in-after referred to as "the 2013 Act") by fixing a fresh date that is to be taken as the date for fixation of compensation.

6. The learned Assistant Government Pleader for Revenue contends that compensation of 80 % had been offered to the appellants at the time of issuance of notification of Section 17 of the 1894 Act and the appellants had refused to receive the same. He relies upon the pleadings set out in the counter affidavit filed in the writ petition before the

³ 2022 SCC Online SC 1408

Learned Single Judge for this purpose. The learned Assistant Government Pleader would also draw the attention of this Court to the subsequent paragraphs in the Judgment of the Full-Bench of the Hon'ble Supreme Court in the case of **Delhi Airtech Services Pvt. Ltd. (3-supra)**. In these passages, the Hon'ble Supreme Court, taking into account similar facts where subsequent developments had resulted in a situation where land could not be returned to the affected persons, had directed fixation of compensation, as per the subsequent award passed in that case. The learned Assistant Government Pleader would also contend that, even in the present case, an award, dated 12.04.2013, had been passed after the Judgment had been rendered by the Learned Single Judge. He would contend that the date for compensation would have to be taken on the aforesaid basis, in the event of this Court not accepting the compensation fixed under the award passed on 12.04.2013.

7. In the case of **Satendra Prasad Jain (1-supra)**, the Hon'ble Supreme Court had taken the view that once notification under Section 17 of the 1894 Act is invoked and possession of the land is taken, there would be no lapse of acquisition proceedings, as the land stands vested in the State. The Full-Bench of the Hon'ble Supreme Court in the subsequent Judgment of **Delhi Airtech Services Pvt. Ltd. (3-supra)**, without disputing the said view, had held that a notification, under Section 17 of the 1894 Act, alone is not sufficient and the proceedings would not

lapse only if 80 % of the compensation, as required under Section 17 of the 1894 Act, is paid immediately. The Full-Bench took the view that where such payment is not made, it would have to be held that notification of Section 17 of the 1894 Act itself is invalid and consequently the proceedings initiated under the 1894 Act would lapse if an award is not passed within the time frame set out under Section 11-A of the 1894 Act.

8. In the present case, the pleading of the Acquisition Authorities is that 80 % of the compensation was offered to the appellants and the said offer was refused. Without going into the question of whether there was an offer or not, it would suffice to point out that the said 80 % compensation was not deposited in Court, in the event of the appellants refusing to receive the said compensation. In such circumstances, it would have to be held that the requirement for payment of 80 % of the compensation under Section 17 of the 1894 Act had not been complied with. Consequently, the protection afforded to the Acquisition Authorities, under the Judgment of the Hon'ble Supreme Court in **Satendra Prasad Jain (1-supra)** would not be available in the present case.

9. It is an admitted fact that no award had been passed in the acquisition process, initiated in the year 2003, till an award was passed

on 12.04.2013. Since this award is way beyond the period set out under Section 11-A of the 1894 Act, the acquisition proceedings stand lapsed.

10. However, the fact remains that the land in question has now been developed and various structures have now come up in the land and a large number of people have been allotted plots in the said land. In such circumstances, it would not be possible to set the clock back and hand over possession of this land to the appellants.

11. The appellants would have to be compensated appropriately for losing this land and the fact that the acquisition proceedings have themselves lapsed would have to be taken into account. It may also be noted that the appellants have not received compensation and the same has been deposited in Court. In such circumstances, it is clear that the appellants have been given no compensation for the last 22 years.

12. The Hon'ble Supreme Court were faced with a similar situation, in the case of **Delhi Airtech Services Pvt. Ltd. (3-supra)**, and had held that it would be appropriate to take the date of passing of the award as the appropriate date for fixing of compensation. This Court also deems it appropriate that a similar course of action is undertaken in the present case. Accordingly, the award, dated 12.04.2013, is set aside and the 3rd respondent- Acquisition Officer, shall undertake a fresh exercise of

acquisition of compensation by taking the market value of the land as on 12.04.2013.

13. The further issue that remains before this Court is whether the provisions of the 1894 Act or the provisions of the 2013 Act are to be applied. In the Judgment of the Full-Bench, the provisions of the 1894 Act were applied as the award had been passed before the 2013 Act had come into force. In the present case also, the award has been passed before the provisions of the 2013 Act have come into force. However, Sri K. Venkat Rao, learned counsel for the appellants would rely upon the Judgment of the Hon'ble Supreme Court in the case of **Noida Industrial Development Authority vs. Ravindra Kumar & Others**⁴ and **Sahara Indian Commercial Corporation Limited and Others vs. State of Uttar Pradesh and Others**⁵ to contend that, in a similar situation, the Hon'ble Supreme Court had taken the view that the compensation should be awarded in accordance with the provisions of 2013 Act and not the 1894 Act.

14. In the case of **Noida Industrial Development Authority (4-supra)**, possession was taken invoking the provisions of Section 17 of the 1894 Act. The possession of a part of the land was taken in the year 2008 and possession of the remaining area was taken on 15.06.2013. In this

⁴ 2022 LawSuit (SC) 594

⁵ 2017 (11) SCC 339

case, the award had been passed on 12.01.2011 and 31.12.2013 in respect of the separate possessions of land which were taken in 2008 and 2013 respectively. In the case of **Sahara Indian Commercial Corporation Limited (5-supra)**, a similar situation arose. Though the Hon'ble Supreme Court in the case of **Noida Industrial Development Authority (4-supra)** and **Sahara Indian Commercial Corporation Limited (5-supra)** had applied the provisions of 2013 Act, we would deem it appropriate to direct that the provisions of the 1894 Act be applied in as much as the Full-Bench of the Hon'ble Supreme Court in **Delhi Airtech Services Pvt. Ltd. (3-supra)**, in similar situation, had applied the provisions of 1894 Act.

15. In the circumstances, the present Writ Appeal and the Writ Petition are disposed of, setting aside the award of the 3rd respondent, dated 12.04.2013, with a direction to the 3rd respondent to pass an award within a period of four (04) months from the date of receipt of this order. Needless to say, the appellants are entitled to all separate benefits, including interest, on delayed payment from the date on which the possession of land had been taken over till the date of payment. Apart from this, the appellants are also entitled to withdraw the amount deposited in the Court. Such withdrawal shall be taken into account when calculating the final compensation that would be payable to the appellants. The respondents 1 & 2 shall take all necessary steps to

ensure that the payment of compensation, fixed by the 3rd respondent, shall be paid within a period of three (03) months from the date of the award. There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R RAGHUNANDAN RAO, J

Dr. K MANMADHA RAO, J

Date: 04.03.2025

MJA

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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO
AND
THE HONOURABLE SRI JUSTICE Dr. K MANMADHA RAO

WRIT APPEAL No: 460 of 2013 & WRIT PETITION No: 21566 of 2013

(per Hon'ble Sri Justice R Raghunandan Rao)

04.03.2025

MJA