

(2003) 04 AP CK 0051

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11953 of 1998

A. Indira

APPELLANT

Vs

Special Deputy Collector, (Land Acquisition) and Another

RESPONDENT

Date of Decision : 04-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 11, 11A, 4, 6

Citation : (2003) 4 ALD 586 : (2003) 4 ALT 400

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : G. Ramesh Babu, for the Appellant; K. Bhathi Reddy and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is aggrieved by the notification dated 18-12-1992 issued u/s 4(1) of the Land Acquisition Act, 1894 ("the Act") and seeks a writ of mandamus declaring the said notification and another notice dated 12-3-1998 issued u/s 12(2) of the Act informing her that award has been passed for the land acquired, is illegal and invalid.

2. At the outset, be it noted that challenging the award dated 12-3-1998, some of the aggrieved land owners earlier filed writ petitions in 1993. Those writ petitions were dismissed on 30-6-1994 (except W.P. No. 6653 of 1993, which was dismissed 25-3-1996. After conducting award enquiry, the first respondent passed award on 12-3-1998. Again those persons who had earlier filed the above mentioned writ petitions filed writ petitions being W.P. Nos. 17076, 17077, 17078, 17108, 17109 and 17110 of 2000 challenging the award on the ground that the same is illegal as it was not passed within a period of two years from the date of publication of declaration as required u/s 11A of the Act. By judgment dated 21-1-2003 reported as C. Munikrishnaiah and Others Vs. District Collector and Others, I have dismissed all the writ petitions holding that the award passed

is not vitiated.

3. The petitioner herein who claims to be the daughter of one C. Lakshmipathi alias Erraiah, who is recorded as occupant/ enjoyer of the land admeasuring Acs.2.52 cents comprised in Sy.No. 202/3 did not file any writ petition in 1993 challenging the notification u/s 4(1) of the Act. She only chose to file the writ petition after the award is passed feigning ignorance about the land acquisition proceedings allegedly because she was not given any notice at any time during the land acquisition proceedings. Be that as it is, the question whether the award passed on 12-3-1998 is vitiated by non-compliance with the mandatory legal requirement of Section 11A of the Act is covered by the judgment of this Court in C. Munikrishnaiah and Ors. v. District Collector, Chittoor District (supra), which was rendered following the judgment of the Supreme Court in State of Tamil Nadu v. Mahalakshmi Animal AIR 1996 SC 886. Nonetheless, the learned Counsel for the petitioner -contends that the decision of the Supreme Court referred to hereinabove is not an authority to justify the subsequent award which was passed with long delay.

4. The facts are not much in dispute. It is the case of the petitioner that the land admeasuring Acs. 12.59 cents comprised in Sy.No. 202/3 of Vedanthapuram village in Chittoor District originally belonged to one I. Viswanatha Prasad. The petitioner's father entered into an agreement of sale on 31-5-1976 for purchasing Acs.5.00 and allegedly took possession of the same. After the death of Viswanatha Prasad on 16-10-1976, his legal representatives executed a sale deed in favour of the petitioner on 27-6-1986 and she claims that her name was mutated in the Revenue records. The notification u/s 4(1) was issued on 18-12-1992 and it is admitted that the petitioner filed objections on 4-2-1993 opposing the land acquisition. After conducting enquiry u/s 5A of the Act, declaration u/s 6(1) was published on 20-4-1993. It is her case that her name was not mentioned in the declaration. The notification u/s 4(1) was challenged in W.P.No. 5283 of 1993 and batch, which was dismissed and ultimately the writ appeals filed by the land owners were dismissed on 29-2-1996. It is her further case that she got issued a legal notice on 19-4-1997 raising objection again and that she has not received any notice under Sections 9, 10 or 11 of the Act. The award was passed on 12-3-1998 and she was issued notice of award.

5. In the affidavit accompanying the writ petition, the grounds raised in support of the writ petition are as follows, (i) The award is not made within two years from the date of publication of declaration as contemplated u/s 11A of the Act; (ii) the time taken for receiving copy of the order of this Court, which had earlier been dismissed, cannot be counted for the purpose of Section 11A of the Act as per the decision of the Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, ; (iii) the respondents resorted to selective land acquisition by dropping various extents of land in the original proposal due to extraneous reasons. The proceedings are therefore vitiated by discrimination and abuse of power violating Article 14 of the Constitution of India; and (iv) issue of

notices under Sections 5A, 9(2), 9(3) and 10(1) is mandatory. In spite of the fact that the petitioner is the owner of the property, she was not issued any notice and, therefore, the entire proceedings are vitiated.

6. The Special Tahsildar, Land Acquisition, Tirupati Urban Development Authority (TUDA) filed counter-affidavit and also additional counter. It is stated that TUDA has placed a requisition for acquisition of Acs.25.22 cents in Sy.Nos.196, 196/2A, 202, 203 and 204 of Vedanthapuram village for the purpose of sites and structures. Accordingly land acquisition proceedings were initiated by publishing notification u/s 4(1). Enquiry u/s 5A was conducted on 9-3-1992 after issuing notices to all the interested persons. Declaration u/s 6 of the Act was published in the District Gazette on 20-4-1993 and on 22-4-1993 in the local newspapers. The substance of the draft declaration was also published in the locality on 18-2-1993. As per the village accounts, the land in Sy.No. 202/3 admeasuring Acs.12.48 cents was recorded in the name of Sri Viswanath Prasad and his name was published in the draft notification. The draft declaration was published showing the name of the said Viswanath Prasad as owner of the said property. An award being Award No. 1/1993 was passed on 16-6-1993 in respect of Acs. 11.96 cents out of Acs.25.22 cents comprised in Sy.No. 196/A. Some of the land owners filed writ petitions before this Court in W.P. No. 5282 of 1993 and batch and the same were dismissed. The writ appeals filed by them were also dismissed. Thereafter, Award No. 1/1998 was passed on 12-3-1998 in respect of the remaining extent of Acs. 11.96 cents.

7. It is further stated in the additional counter affidavit that none of the lands proposed for acquisition were dropped except the land in Sy.No. 203/3B where a residential layout was approved by TUDA prior to initiation of land acquisition proceedings. The allegation of selective acquisition is denied. It is also stated that the award has been passed as stipulated in Section 11A of the Act.

8. Learned Counsel for the petitioner, Sri N. Ramamohan Rao, mainly argued the same contentions as referred to hereinabove.

9. Sri K. Bathi Reddy, learned Standing Counsel for TUDA opposed the writ petition contending that the challenge to the notification u/s 4(1) of the Act was already negatived in earlier writ petitions and writ appeals and that when once the award is passed, the petitioner cannot be allowed to challenge the notification. He would contend that though initially proposal for acquisition of land in various survey numbers of Vedanthapuram and Mallamgunta villages was issued, notification u/s 4(1) of the Act was issued for acquiring land situated in Vedanthapuram only. Though proposal was mooted to acquire the lands of Vedanthapuram and Mallamgunta admeasuring about Acs.40.73 cents, the District Collector approved for acquisition of Acs.25.22 cents which falls in Vedanthapuram village. The very notification u/s 4(1) was issued for acquiring the lands in Vedanthapuram village only and, therefore, there is no infirmity in the impugned notification. In excluding the lands of Mallamgunta village there was no other consideration except the decision of TUDA to restrict the acquisition

for the lands in Vedanthapuram village. Subsequently at the time of issuing declaration u/s 6, some of the government lands were excluded. He also contends that in respect of the same land, one G. Chanchaiah filed W.P. No. 5237 of 1993 and the same was dismissed on 13-6-1994. The writ appeal filed against the order of the learned single Judge was ultimately dismissed on 11-6-1996 and, therefore, in respect of the same lands, the matter cannot be agitated again. If there is a dispute as to the right to claim compensation, that has to be worked out elsewhere and in respect of the same land, repeated challenges cannot be permitted by this Court. He contends that the writ petition is barred by delay and laches. He placed reliance on the judgment of this Court in *C. Munikrishnaiah and Ors. v. District Collector, Chittoor District* (supra).

Delay and Laches:

10. First, I will take up the question of delay and laches. The notification was published in the gazette on 18-12-1992. The petitioner who claims title by succession to her father's property did not challenge the same during all these years. She chose to challenge the same only after she received notice of award on 12-3-1998. It is well settled that delay and laches defeat the claim of a person to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution. It is also well settled that when once the award is passed by the Land Acquisition Officer after due process of law, the writ petition is not maintainable. A reference may be made to the decision of the Supreme Court in *State of Maharashtra Vs. Digambar*, , in support of the principle that challenge to land acquisition proceedings with long delay must fail. A reference may also be made to the decisions of the Supreme Court in *State of Haryana and others Vs. Dewan Singh and others*, and *The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others*, .

11. In *State of Haryana v. Dewan Singh* (supra) it was held:

The question for consideration is whether the High Court was justified in interfering with the award dated April 19, 1984 made by the Collector and the notification u/s 4(1). It is seen that the notification u/s 4(1) and the declaration were not challenged till May 13, 1985 while the award came to be made on April, 13, 1984. The respondents in fact received the amount under protest but that fact was not brought to the notice of the High Court. It is also not in dispute that at that point of time an application for reference u/s 18 was made within the limitation provided therein. It would appear that after the writ petition was allowed the application was withdrawn. After the award was made, the Court would not be justified to quash the notification u/s 4(1) and declaration u/s 6 for dispensing with the enquiry u/s 5A.

12. In *Municipal Council, Ahmednagar v. Shah Hyder Beig* (supra), after referring to *Municipal Corporation of Greater Bombay Vs. The Industrial Development Investment Co. Pvt Ltd.*, and others, and *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, , the Supreme Court held that after Award is

passed no writ petition can be filed challenging acquisition notice or any proceedings thereunder.

13. Learned Counsel for the petitioner, however, attempts to explain the delay and laches. He first contends that though the names of petitioner's father and mother were mutated and entered in the Revenue records, after the death of her father her name was not mentioned in the notification u/s 4(1) or declaration u/s 6 of the Act. Therefore, she was not aware of the acquisition. Indeed, in one of the grounds on which the award is challenged with which I will deal with a little later, she stated that the name of her father Lakshmipathi alias Erraiah was shown in the Revenue records even at the time of initiation of land acquisition proceedings. Reliance is placed by the learned Standing Counsel on the notice dated 26-8-1992 issued to Viswanatha Prasad, who was the original owner calling upon him to attend the meeting at the office of the first respondent in connection with acquisition of the land. The notice shows that the occupant of the land in Sy.No. 202/3 (part) is one Erraiah.

14. The first respondent stated in the counter affidavit that in the village Revenue records, the name of Viswanatha Prasad (Vidya Varaprasad) was shown as owner of the land in Sy.No. 202/3 and, therefore, he was shown as owner in the notification u/s 4(1) as well as declaration u/s 6 of the Act. The notification u/s 4(1) was published in the local newspapers on 18-12-1992 and declaration u/s 6 was published on 22-4-1993. It is interesting to note that the petitioner who claims that she is ignorant of the acquisition proceedings, got issued a legal notice dated 4-2-1993 to the Vice-Chairman of TUDA raising objections for the land acquisition. Another notice dated 19-4-1997 was issued by the petitioner after this Court gave a quietus to the challenge to the land acquisition proceedings on 29-2-1996 when writ appeals were dismissed. In the notice dated 4-2-1993 issued on her behalf, she admits that she received the notice dated 26-8-1992 issued by the first respondent and she expressed hardship and inconvenience to the Vice-Chairman, TUDA. In the second notice dated 19-4-1997, which refers to the earlier notice dated 4-2-1993, while stating that she has a statutory claim for compensation, she requested the Vice-Chairman not to disburse the compensation amount to G. Chanchaiah, C. Lokanadham, C. Ramaiah alias Uttammaiah or anybody else in accordance with Award No. 1 of 1993, dated 16-6-1993. Copies of the legal notices are filed by the petitioner herself in the paper book at page Nos. 20 to 27. These two documents clinchingly show that the petitioner had knowledge of the land acquisition proceedings and she did not choose to challenge the same. Indeed, one G. Chanchaiah claiming to be the owner and occupier of the land in Sy.No. 202/3 which was proposed to be acquired filed W.P. No. 5327 of 1993 and obtained interim orders, by reason of which all proceedings were stayed. The stay of land acquisition proceedings stood withdrawn only when the writ appeals were dismissed by this Court on 29-2-1996. Yet another aspect of the matter which belies the contention of the petitioner that she purchased the land in Sy.No. 202/3 is that acquisition of the same land is challenged by a person (G.

Chanchaiah) who was claiming to be owner entitled for compensation. This also goes against the petitioner. For these reasons, it must be held that the writ petition filed after long delay is not maintainable.

Exclusion of the lands:

15. It is strongly contended by the learned Counsel for the petitioner that initially the lands in Vedanthapuram as well as Mallamgunta villages were proposed, but the final notification u/s 4(1) was issued in respect of the lands in Vedanthapuram village. I have gone through the file produced before this Court. It discloses that TUDA sent proposals for acquiring an extent of Acs.40.73 cents comprised in various survey numbers of Vedanthapuram as well as Mallamgunta villages, which were almost contiguous. The matter went before the screening committee for land acquisition cases. Under the Chairmanship of Secretary to the Government of Andhra Pradesh. In a meeting held on 4-5-1992, the proposal of TUDA for acquiring the land admeasuring Acs.25.22 cents in Vedanthapuram village and an extent of Acs.15.51 cents in Mallamgunta village was cleared. However, when proposals were submitted to the District Collector for approval of the notification u/s 4(1), the proposal for acquisition of land admeasuring Acs.25.22 cents in Vedanthapuram village was only approved as seen from pages 191 to 193 of File No. 4129/AI/88. Indeed, in her two objection petitions referred to above, the petitioner never raised any objection nor did she take such ground in this writ petition.

16. It is nextly contended by the learned Counsel for the petitioner that the lands in some of the survey numbers which were originally proposed were dropped and excluded from the acquisition in a discriminatory manner. He submits that selective acquisition for public purpose suffers from the vice of malice and abuse of power. With reference to a sketch/plan showing the lands in Vedanthapuram and Mallamgunta villages, the Court's attention was specifically invited to the lands in Sy.Nos.196/1, 203/1 A, 203/2A, 204/1, 204/ 2C and a piece of land in Sy.No. 203. In the additional counter-affidavit filed, the first respondent gave reasons for such exclusion, which read as under:

..... It is respectfully submitted that one of the lands proposed for acquisition were dropped. While initiating the land acquisition proceedings two bits of lands were left out, because a residential layout was approved by Tirupati Urban Development Authority in Sy.No. 203/3B prior to initiation of land acquisition proceedings and there is an existing oil mill in Sy.No. 204/2 of Vedanthapuram village. Hence there is no discrimination in acquiring the said lands. The other lands covered by Sy.Nos.196/1, 203/1, 203/2, 203/4, 204/1 etc., are classified as government poramboke lands for which necessary alienation proposals are initiated by Tirupati Urban Development Authority. The rough sketch is filed along with this additional counter affidavit for perusal of this Hon'ble Court. The said rough sketch clearly shows demarcation of government lands, approved layout land, existing oil mill and the land proposed to be acquired.....

17. Though a reply affidavit is filed, there is no specific denial that the lands in Sy.Nos.196/1, 203/1, 203/2, 203/4 and 204/ 1 were classified as Government poramboke lands and alienation proposals are submitted to the Government by TUDA. The file in Roc.No. 2230/C3/92 produced before this Court shows that as early as 27-10-1991, Special Deputy Collector, Land Acquisition, TUDA, had sent proposals to the District Collector for alienation of an extent of Acs.4.84 cents in Sy.No. 196/1, 203/1 and 204/1 of Vedanthapuram village in favour of TUDA. The file also discloses that the proposal for alienation was pending with the Government. It is also stated in the additional counter-affidavit that for the land in Sy.No. 203/3B, TUDA approved layout prior to initiation of land acquisition proceedings and there is an existing oil mill in Sy.No. 204/ 2 and, therefore, those lands were not acquired. In view of the counter submissions, which are well supported by documents in the file, the submission of the learned Counsel that respondents resorted to selective acquisition cannot be countenanced. Even otherwise, when the Government acquires land, it is for the Government to identify the land for acquisition having regard to various factors like proximity to the approach roads, availability of water, cost involved, suitability of the land etc. It is not for the Court to nicely balance the pros and cons for acquiring or not acquiring particular land. These issues, unless patent mala fides are pleaded and proved, are not justiciable in exercise of power of judicial review by this Court. The submission that the impugned land acquisition is whittled by discriminatory exercise of power must fail.

Whether the Award is passed within time:

18. The decision of this Court in C. Munikrishnaiah and Ors. v. District Collector, Chittoor District (supra) has considered the question whether the award is vitiated for non-compliance of provisions of Section 11A of the Land Acquisition Act, 1894 ("the Act"). In spite of the same, learned counsel for the petitioner made a vain attempt to contend that the decision of the Supreme Court in State of Tamil Nadu v. Mahalakshmi Ammal (supra) following which this Court rendered the decision in C. Munikrishnaiah and Ors. v. District Collector, Chittoor District (supra), is not an authority for the proposition laid down by this Court. This submission is noted to be rejected.

19. In State of Tamil Nadu v. Mahalakshmi Aammal (supra), notification u/s 4(1) of the Act was published in the State Gazette on 26-7-1978. After conducting enquiry u/s 5A, a declaration u/s 6 was published on 3-6-1980 and award was passed on 22-9-1986. In relation to the land comprised in other survey numbers, a subsequent award was passed on 31-8-1990. The petitioners were successful before a Division Bench of the Madras High Court. Before the Supreme Court, counsel for the respondents (petitioners before the High Court) contended that the respondents are entitled to exclusion of their land from the acquisition and that non-exclusion is arbitrary and amounts to invidious discrimination. It was also contended that declaration u/s 6 without conducting enquiry, is invalid in law, that there was no proper service of notice under Sections 9 and 10 and,

therefore, the award passed u/s 11 was non est. Lastly it was contended that the long delay renders the award illegal and is liable to be set aside.

20. We are not concerned with the decision of the apex Court on other grounds. Insofar as the delay is concerned, in paragraph 9 (of AIR), the Supreme Court, while noticing that an initial award was passed on 26-9-1986 and for Sy.No. 2/11 award was made on 31-8-1990, observed as under:

.....The initial award having been made within two years u/s 11 of the Act, the fact that subsequent award was made on 31st August, 1990 does not render the initial award invalid. It is also to be seen that there is stay of dispossession. Once there is stay of dispossession, all further proceedings necessarily could not be proceeded with as laid down by this court. Therefore, the limitation also does not stand as an impediment as provided in the proviso to Section 11A of the Act. Equally, even if there is an irregularity in service of notice under Sections 9 and 10, it would be a curable irregularity and on account thereof, award made u/s 11 does not become invalid.....

21. After going through the judgment of the Supreme Court in *State of Tamil Nadu v. Mahalakshmi Aammal* (supra) thoroughly and noticing the submissions made therein, I must hold that the ratio of the decision in the said judgment is that if the initial award is made within two years u/s 11A of the Act, even if the subsequent award made beyond two years, the same is not rendered invalid. Therefore, I reject the contention raised by the learned counsel for the petitioner. The submission that the petitioner was not served with notices under Sections 9 and 10 of the Act rendering acquisition invalid cannot be countenanced. The above observations of the Supreme Court in *State of Tamil Nadu v. Mahalakshmi Aammal* (supra) would show that any irregularity in the service of notice under Sections 9 and 10 being curable irregularity and on account thereof, the award does not become invalid.

22. As already noticed, one G. Chanchaiah filed W.P. No. 5327 of 1993 questioning acquisition of land in Sy.No. 202/ 3 and there was stay granted by this Court and hence the respondents could not have passed award. It may be noticed that explanation to Section 11A of the Act excludes the time during which land acquisition proceedings are stayed by an order of the Court while computing the period of two years within which an award has to be passed. The orders of stay need not be at the instance of a person who also claims ownership. It could be at the instance of a person who is a rival claimant and approaches the Court challenging the acquisition of land in respect of same survey number. As G. Chanchaiah challenged the acquisition of land in Sy.No. 202/3 of Vedanthapuram claimed by the petitioner and the writ appeal was dismissed on 11-6-1996, the said period must be excluded while computing the period of two years. In effect, this Court upheld the acquisition proceedings and, therefore, at the instance of the petitioner the challenge is unsustainable. The respondents passed award within two years after dismissal of the writ appeal. However, the time taken for obtaining certified copy of the judgment was also considered for the purpose of

excluding two years. In *C. Munikrishnaiah and Ors. v. District Collector, Chittoor District (supra)*, having regard to the law laid down by the Supreme Court in *State of Tamil Nadu v. Mahalakshmi Ammal (supra)*, I have held thus:

.....If an award is passed in relation to the land in respect of which no litigation is pending before the High Court and where there is no challenge in respect of those lands, even if the award is passed in respect of the lands subsequently, the same does not render the award invalid in terms of Section 11A of the Act.....

23. Therefore, the submission that the award passed by the respondents beyond two years is not valid, is rejected.

24. In the result, for the above reasons, the writ petition fails and is accordingly dismissed with costs quantified at Rs. 5,000/-.