

**(1982) 08 AP CK 0017**

**In the Andhra Pradesh High Court**

**Case No : Writ Appeal No. 530 of 1982**

A. Satyanarayana Rao and others

APPELLANT

Vs

The District Collector, Karimnagar and another

RESPONDENT

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**Date of Decision : 03-08-1982**

**Acts Referred:**

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 17(1), 17(4), 4, 4(1), 5A

**Citation : AIR 1982 AP 465**

**Hon'ble Judges : Sriramulu, J; Ramachandra Rao, J**

**Bench : Division Bench**

**Advocate : P. Babulu Reddy, for the Appellant;**

**Final Decision : Dismissed**

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## **Judgement**

Ramachandra Rao, J.—This writ appeal is preferred against the order of our learned brother, Raghuvir, J. dismissing Writ Petition No. 9372 of 1981 in which the petitioners, three in number challenged the notification of the District Collector, Karimnagar u/s 4(1) of the Land Acquisition Act published in the District Gazette dated 2-12-1981 proposing to acquire the land of the extent of 4 acres, 16 guntas in survey Nos. 378, 380/A, 380/B, 381 and 390 of Eldurthi village in Jagtial Taluk. The acquisition was being made for the purpose of providing house sites to Harijans and Backward classes of the village. Earlier, the lands in two Survey Nos. 378/A and 378-B belonging to petitioners 1 and 2 were notified to be acquired, but that was challenged in W.P. 497/81 by the said petitioners and the writ petition was allowed on 20-10-1981 quashing the said notification on some technical ground.

2. The three petitioners now challenged the acquisition of the lands notified on 2-12-1981 firstly, on the ground that there was extensive land of the Government in Survey No. 106 and therefore, there was no need to acquire the lands of the petitioners. But, it is stated that out of the land in Survey No. 106 belonging to the Government, nearly 40 acres have already been allotted to the

Harijans and the rest of the land is a hillock and not suitable for house sites. Therefore, this contention that other Government land was available was untenable and was rejected by the learned single Judge.

3. It was then contended before the learned single Judge that there was no publication in the village or locality of the substance of the notification as required u/s 4(1) of the Land Acquisition Act, but this contention was also found to be devoid of force, because the substance was published in the locality on 5-12-1981.

4. The learned Judge also found that possession of the lands was taken over on 27-1-1982 and the lands were sub-divided into plots on 28-1-1982 and were delivered to the beneficiaries for construction purposes. Following the judgment of the Division Bench of this Court in Writ Petn. No. 4793 of 1977 dated 15-2-1979 and the decision in Writ Appeal No. 339 of 1982 dated 14-4-1982, the learned Judge held that as the lands were taken possession of and sub-divided and delivered to the beneficiaries third party rights had intervened, that the aforesaid decisions applied to the facts of the case and therefore, the petitioners were not entitled to challenge the notification for acquisition of the lands in question.

5. In this writ appeal, the learned counsel for the appellants firstly contended that when there is other Government land available in the village, the lands of the petitioners-appellants should not have been acquired. But, in the counter affidavit, it is averred that out of the Government land in S. No. 106, 40 acres were already allotted to the landless poor and that the remaining land is a hillock and not suitable for house sites and are far away from the village. The question whether the notified land is suitable for acquisition or not is a matter for consideration of the concerned competent authorities under the Act This Court cannot sit as a Court of Appeal and interfere with the conclusion arrived at by the competent authorities with regard to the suitability of the land for acquisition for a public purpose. In the instant case, the authorities found that the lands sought to be acquired under the impugned notification are suitable for providing house sites to the Harijans and backward classes. This conclusion has been arrived at by the authorities on relevant material before them, we will not be justified in interfering with the said conclusion in a writ proceeding under Article 226 of the Constitution.

6. It is then contended by the learned counsel for the appellants that earlier, two other survey numbers belonging to the appellants were notified, but that notification was quashed by this Court in a writ petition and that the present proceeding for acquisition of the lands under the impugned notification was made with a view to wreak vengeance. But, we do not think this submission can be accepted. The acquisition proceedings were initiated by the Collector after receiving the necessary reports from the Revenue Authorities, and the Collector was satisfied that the lands in question are suitable for acquisition for providing house sites to the Harijans and backward classes. It cannot be said that the

Collector's action is vitiated by any extraneous consideration or that the acquisition proceedings were initiated with a view to wreak vengeance on the appellants. There is also no material to support this submission.

7. It is next contended that the acquisition was being made at the instance of the beneficiaries and that the Collector had not come to an independent conclusion as to whether the lands were needed for a public purpose, namely, for providing house sites to the Harijans and backward classes. But the record and the report of the Revenue Authorities show that Harijans in the village were in need of house sites and therefore, proposals were initiated for acquisition of the lands for providing house sites to them. The authorities concerned had on the relevant material come to the conclusion that the lands notified were needed for providing house sites to the Harijans and backward classes. Therefore, it cannot be said that the Collector was in any way influenced by the beneficiaries in coming to the conclusion that the lands notified under the impugned notification were acquired for providing house sites for Harijans and backward classes.

8. It is then contended that appellant No. 3 is a small farmer and therefore, the Collector should not have acquired the said land in view of the Government policy. But in the instant case, in the counter-affidavit, it is stated that the third appellant merely relies upon an agreement to sell, that he was not an inhabitant of the village, that he is not the actual owner of the said land and that a fictitious agreement of sale appears to have been created by petitioner No. 1 (appellant No. 1) to avoid the acquisition of the land. It is also averred that the allegation that petitioner No. 3 (appellant No. 3) was in possession of the land in survey No. 381 was not true, that as per the revenue records one Alineni Gattaiah was the pattadar, who expired long back, but the writ petitioner No. 1 was in actual possession and enjoyment of the said land and that as the said land is situated in close proximity of the lands of writ petitioner No. 1 as compact block, it became inevitable to acquire the said land also, since it is contiguous to the other lands under acquisition. Thus, the very title to and possession of, writ petitioner No. 3 to land of Survey No. 381 are being disputed. Even otherwise we do not see how merely because the third petitioner is a small farmer it would preclude the authorities from acquiring the land when it becomes inevitable to acquire the same for a public purpose, namely, for providing house sites to Harijans and backward classes. The policy laid down by the Government with regard to acquisition of lands pertaining to small farmers lays down that if the acquisition becomes inevitable the authorities can acquire the same. Even otherwise, the policy laid down are merely departmental instructions and have no statutory force. Therefore, it cannot be said that the acquisition of the lands of the small farmer is illegal or unauthorised. Hence, we do not find any merit in this submission of the learned counsel for the appellants.

9. It is next contended by the learned counsel for the appellants relying upon a ruling of P.A. Choudary J., in *K. Radhakrishna Reddy v. District Collector, Nellore*, (1981) 2 APLJ (HC) 93 that the publication of notification u/s 4 of the Land

Acquisition Act dispensing with the enquiry u/s 5A by invoking the emergency provisions of Section 17(4) of the Act has been done mechanically and without any application of the mind, and that it is violative of the principles of natural justice. But in the instant case, the acquisition is for a public purpose namely, for providing house sites to Harijans and backward classes. It has been repeatedly held by this Court that providing house sites for Harijans is an urgent matter and therefore the enquiry u/s 5A can be dispensed with. In the earliest of the cases, in Kasireddy Papaiah (Died) and Others Vs. The Government of Andhra Pradesh and Others, it was held by Chinnappa Reddy, J.

That the housing conditions of Harijans all over the country continue to be miserable even today is a fact of which Courts are bound to take judicial notice. History has made it urgent that, among other problems, the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent becomes the problem. Therefore, one can never venture to say that the invocation of the emergency provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties, unless, of course, it can be established that the acquisition itself is made with an oblique motive.

The learned Judge further held that the question whether the power u/s 17(4) was exercised mechanically or otherwise was a question of fact which could be decided on a consideration of all the relevant circumstances and no universal proposition could be laid down that long delay by itself was sufficient to prove that the power was exercised mechanically.

10. In *N. Ramanna v. Collector, East Godavari*, (1977) 2 APLJ (HC) 289 a Division Bench of this Court consisting of A. V. Krishna Rao and Punneya, JJ. held as follows:--

Indisputably therefore, even if there is urgency satisfying the requirements of Section 17(1), (2), it requires the concerned Government to consider whether it should direct that the enquiry u/s 5A need not be held. A discretion is thus vested in the Government regarding the dispensing with of Section 5-A. Whether the discretion is properly exercised or not cannot be the matter for judicial review. Exercise of the discretion is purely a subjective one for the appropriate authority. The matter also has to be tested with regard to the need for urgency on the date when Section 5-A is dispensed with. If Section 5-A was dispensed with, if there is delay in the matter of either the declaration or the notice, under Sections 9 and 10 which should follow, the delay ipso facto does not vitiate the direction dispensing with Section 5-A. All that is to be seen is whether on the date of dispensing with Section 5-A, there was urgency and the authority dispensing with Section 5-A felt it necessary to direct that Section 5-A enquiry be dispensed with. The fact that subsequently the concerned officers of the Government did not take further action by invoking the other provisions of the Act expeditiously, by taking possession of the land by issuing notices under

Sections 9 and 10 would not have the effect of rendering the dispensing with Section 5-A enquiry illegal or void.

11. In *P. Verra Reddy v. District Collector, Ongole*, Writ Petn. No. 5842 of 1978 dated 22-3-1979 reported in (1979) 1 APLJ 55, a Division Bench of this Court consisting of Madhava Reddy, J. (as he then was) and Jeevan Reddy, J. held:

In cases of acquisition of land for providing house sites to the poor, the invocation of power u/s 17(4) to dispense with the enquiry u/s 5A would be, ordinarily unquestionable. Therefore the invocation of power u/s 17(4) in the present case is not a case of non-application of mind, nor can it be said to be a mechanical one.

12. In *S. Parthasarathy v. Govt. of Andh. Pra.*, (1982) 1 AWR 4, Jeevan Reddy J. held as follows:

And the acquisition may be so urgent that it cannot wait for the period which may be taken up by the enquiry under S. 5A. Hence sub-section (4) provides that in case of any land to which the provisions of sub-section (1) or sub-section (2) are applicable, the Govt. may dispense with the enquiry u/s 5A. Once the enquiry is so dispensed with, the declaration under S. 6 can be made simultaneously with, or immediately following upon the publication of the notification u/s 4(1) and immediately following the publication of S. 6 declaration, notice u/s 9(1) can also be published. It must however, be noticed that sub-section (4) uses the expression "may". In other words, the sub-section confers a power upon the Govt. to be exercised where the circumstances call for the same. It is unnecessary for me, for the purpose of this writ petition to refer to various decisions on this sub-section. Suffice it to mention that the formation of the opinion on the part of the Government under sub-section (4) is subjective; and so long as it is formed fairly and on relevant material, the Court would not interfere. Where, however, the formation of opinion is questioned the Government has to produce the material upon which it formed the satisfaction, to satisfy the Court that there was some material upon which it could have formed the requisite satisfaction.

13. In *P. Punnaiah and Others Vs. The District Collector, Kakinada and Others*, Gangadhara Rao, J. held after referring to the earlier decisions of this Court as follows (para 18):--

It is also now well settled by the decisions of this Court that whether there is urgency or not is to be decided on the date when the notification was made u/s 4(1) but not in the light of the later events viewed in retrospect.

The learned Judge in the earlier paragraph referred to a ruling of a Division Bench of this Court consisting of Sambasiva Rao, J. (as he then was) and Punnayya J., delivered on 20-9-1976 in Writ Appeal No. 370 of 1976 where the learned Judges held that when the Government stated that the poor scheduled caste people of the villages were living in congested huts and under most

unhygienic and insanitary conditions injurious to their health and welfare and there was every urgency to provide house sites to avoid the danger of epidemics and other diseases spreading over in the Harijanwada that certainly constituted a grave urgency and rendered full justification for dispensing with the enquiry u/s 5A of the Act and that the lethargy on the part of the officials in making declaration u/s 6 of the Act, or taking possession of the land did not mean that there was no urgency for the acquisition. The learned Government Pleader has also cited several unreported rulings of this Court in support of his submission that in case of acquisition of land for providing house sites to Harijans and backward classes, the emergency provisions of Section 17(4) can be invoked, and the enquiry u/s 5A of the Act can be dispensed with. The following are some of the unreported judgments cited by him : (1) Writ Appeal No. 370 of 1976 dated 20-9-1976; (2) Writ Petn. No. 282 of 1976; (3) Writ Petn. No. 5042 of 1973 dated 22-3-1979; (4) Writ Petns. Nos. 5382 and 5417 of 1981 dated 8-4-1982.

14. In view of the long catena of cases mentioned above, the position is well settled that where the land is sought to be acquired for providing house sites for Harijans and backward classes and the competent authority on the relevant material before it forms an opinion that the site is urgently needed for the said public purpose, it can invoke the emergency provisions of Section 17(4) and dispense with the enquiry under Sec. 5A, and it is not open to this Court to interfere with the said conclusion arrived at by the competent authority in a writ proceedings. In view of the well settled legal position, we are unable to agree with the view taken by P.A. Chowdary J. in *K. Radhakrishna Reddy v. District Collector, Nellore*, (1981) 2 APLJ (HC) 93 and we hold that the legal position has not been correctly laid down in the aforesaid decision in view of the several Division Bench rulings of this Court referred to supra.

15. It is then contended by the learned Government Pleader that possession of the lands having already been taken over, it is not open to the petitioners appellants to challenge the acquisition proceedings. In support of this submission, he relies upon a Division Bench ruling of this Court in Writ Petn. No. 4793 of 1977 dated 15-2-1979, Writ Appeal 339 of 1982 dated 14-4-1982 and Writ Appeal No. 488 of 1982 dated 30-6-1982 and the decision of the Supreme Court in *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, where their Lordships of the Supreme Court observed in para 11 of the judgment as follows:

A valid notification u/s 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the Notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners.

Again in para 12, their Lordships observed as follows:

From the counter affidavit filed on behalf of the Government, it is clear that the Government have allotted a large portion of the land after the acquisition proceedings were finalised to co-operative housing societies. To quash the notification at this stage would disturb the rights of third parties who are not before the Court.

16. In *K. Satyanarayana Reddy v. Tahsildar (Land Acquisition)*, Suryapet, Writ Petn. No. 4793 of 1977, a Division Bench of this Court consisting of Punnayya, J. and myself decided on 15-2-1979 held as follows :--

It also appears from the record that the Government had taken over possession of the land and delivered possession of the same to the beneficiaries and issued pattas in their favour. After all these proceedings are over, the petitioners have come to this Court and filed the writ petition on 8-11-1977 challenging the acquisition proceedings on the sole ground that there was no publication of the substance of the notification in the village. We do not think we will be justified in exercising the jurisdiction under Art. 226 of the Constitution of India, for the petitioners have approached this Court at a very belated stage after the entire acquisition proceedings are completed and possession of the lands had been delivered to the beneficiaries. No satisfactory reasons have been given for the inordinate delay in seeking the relief under Article 226 of the Constitution of India.

On that ground, the petitioners therein were denied the relief under Article 226 of the Constitution. But, it is contended by the learned counsel for the appellants in this case that while the Government alleges that possession was taken over on 27-1-1982 and pattas issued to the beneficiaries on 28-1-1982, the appellants contended that they continued to be in possession of the lands, and therefore, there is no question of delay or laches on the part of the petitioners-appellants, in challenging the acquisition proceedings under Article 226 of the Constitution. But, it is not necessary to go into this question because we have come to the conclusion that providing house sites for Harijans is a public purpose, that the enquiry u/s 5A was properly dispensed with by invoking the emergency provisions in Section 17(4) of the Act and that there is no illegality or any want of jurisdiction in issuing the notification for acquisition. Therefore, the petitioners appellants are not entitled to any relief. In this view, we do not find any ground for interfering with the order of the learned single Judge under appeal.

17. The writ appeal therefore fails and is dismissed with costs. Advocate's fee Rs. 250/-.