

(1991) 11 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6211 of 1987

Ambati Raji Reddi and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 08-11-1991

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4(1), 55(1)

Citation : (1991) 3 ALT 520

Hon'ble Judges : Iyyapu Panduranga Rao, J

Bench : Single Bench

**Advocate : K.V. Narasimha Murthy and K. Manikya Prabhu, for the Appellant;
Govt. Pleader for Social Welfare and S. Venkata Reddy, for the Respondent**

Final Decision : Dismissed

Judgement

Iyyapu Panduranga Rao, J.—This writ petition is directed for the issue of writ of mandamus declaring that the acquisition of wet land of Acs. 4-48 cents covered by Survey No. 72/2 and ac. 1 -88 cents covered by Survey No. 73/1B of Jammulapalli village in Pithapuram Mandal, East Godavari district in pursuance of notification u/s 4(1) of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") is illegal, invalid and to direct respondents 1 to 3 to forbear from taking any steps regarding the acquisition of the said property in pursuance of the said notification.

2. The material facts which are not in dispute are the following: Respondents 4 and 5 are the owners of Acs. 4-48 cents covered by Survey No. 72/2 while respondents No. 6 is the owner of Ac. 1-88 cents covered by S.No. 73/1B of Jammulapalli village, Pithapuram Mandal, East Godavari district. While petitioners 1 to 4 are tenants in respect of Ac. 1-88 cents covered by S.No. 73/1B, petitioners 5 and 6 are the tenants regarding Ac. 4-48 cents covered by S.No. 72/2. It is also not in dispute that petitioners 1 to 6 have been in possession and enjoyment of the lands above stated since a long time as cultivating tenants.

While so, the first respondent Collector, East Godavari District Kakinada got issued a notification u/s 4(1) of the Act proposing to acquire the above two extents of land for construction of houses to weaker sections namely respondents 7 to-134 and aggrieved by the same the petitioners have come up with this writ petition to quash Section 4(1) notification issued under the Act

3. Before proceeding further it is to be noted that respondents 4 to 6 who are the owners of the land in question have filed W.P.No. 13513 of 1983 questioning the validity of the self-same notification issued u/s 4(1) of the Act and the same was disposed of as per orders dated 25-2-1986 without deciding the case on merits and consequently that writ petition has no bearing on the issue that is to be considered in this writ petition.

4. It is submitted on behalf of the petitioners that the lands in question are wet lands fit for cultivation of sugarcane crop, these are very valuable lands and lands which are less costly are available in the vicinity of the land in question. It is brought to my notice that the alternative land suggested by the petitioners was verified by the respondents 7 to 134 and they did not incline to accept the said land as the same is situated at a far off place and is unfit for habitation. It is to be seen that in the event of the land under acquisition is a very valuable land, under the Act the market rate of the land can be claimed as on the date of Section 4(1) notification and the contention raised on behalf of the petitioners that alternative land is available for house sites to weaker sections and that the land in question cannot be acquired because it is a very costly land is of no consequence.

5. The main contention of the petitioners is that the notification u/s 4(1) of the Act is not validly published according to law and consequently the same is liable to be quashed. In support of their contention the petitioners rely upon number of decisions of this High Court. As such it is to be seen whether Section 4(1) notification is not validly published in accordance with law. Section 4(1) of the Act reads as follows:

4. Publication of preliminary Notification and Powers of Officers thereupon:

"(1) Whenever it appears to the appropriate Government, that land in any locality (is needed) or is likely to be needed for any public purpose (or for a company) a notification to that effect shall be published in the Official Gazette (and in two daily newspapers circulating in that locality of which atleast one shall be in the regional language), and (the Collector shall within 40 days from the date of publication of such notification) cause public notice of the substance of such notification to be given at convenient places in the said locality the last of the dates of such publication and giving of such public notice being hereinafter referred to as the date of the publication of the notification".

6. Section 4(1) of the Act contemplates along with other things publication of the acquisition proceedings in the official Gazette and in two daily newspapers circulating in the locality of which one atleast shall be in the regional language.

Section 4(1) of the Act further shows that in addition to the above formalities, the Collector shall within 40 days from the date of publication of such notification cause public notice of the substance of such notification to be given at convenient places in the said locality. To show that the Collector "caused public notice of substance of such notification at convenient places in the said locality" reliance is placed on the Tom Tom notice showing that the acquisition of the lands in question was duly published in the village and a certificate to that effect was given by the village Kamam of the said village within the prescribed period. This aspect is also not disputed by the learned counsel appearing for the petitioners. But the contention of the learned counsel appearing for the petitioners is that public notice by means of Tom Tom is not sufficient compliance as per the requirements of Section 4(1) of the Act.

7. It is to be seen that what all is contemplated u/s 4(1) of the Act is to "cause public notice of the substance of such notification to be given at convenience places in the said locality" and the said section does not further show as to how public notice of the substance of such notification be given. It is common knowledge that in the villages where most of the people are illiterate, publication by Tom Tom was considered to be one of the most effective means of publication which enables the people to know about the acquisition proceedings. Section 4(1) further shows that the said public notice be given at convenient places in the locality as the people in the locality concerned should know about the acquisition. Thus when Section 4(1) of the Act only speaks of causing public notice of the substance of such notification to say that public notice by means of Tom Tom is not sufficient and publication by other means like distribution of pamphlets, affixture of notice at places like police station, village chavidi etc., cannot be read into Section 4(1) of the Notification which is silent about the mode of causing such public notice.

8. According to the learned counsels appearing for petitioners the notification must be published by way of affixture at the village chavidi and police station etc., It is to be seen that Section 4(1) of the Act does not specifically mention about the same and on the contra what is required is causing public notice of the substance of such notification given at convenient places in the said locality. It is common knowledge that the police stations are available for a cluster of villages and it is also well known that very few people in the village will be having work either in the police stations or in the Mandal Revenue Offices etc., and publication about the factum of acquisition at convenient places in the locality by Tom Tom etc., enables the people of the locality where the land sought to be acquired is situated to know about the acquisition proceedings. Similarly it is not as though for every village there is a village chavidi and it is not uncommon to have a single village chavidi for 2 or 3 villages. Similarly there are hamlets or kandrigas situated at far off places from the main village, as a result of which what was published in the village chavidi rarely known in the kandrigas or hamlets.

9. Strong reliance is placed on Rule 1 of the Rules issued under Sub-section (1)

of Section 55 of the Act. Section 35 of the act speaks of power to make rules by the appropriate Government Rule 1 which is framed u/s 55(1) of the Act reads as follows:

"Immediately after the publication of the notification u/s 4(1), the Collector shall issue a notice stating that the land is needed or is likely to be needed, as the case may be, for a public purpose and requiring all persons interested in the land to lodge before the Collector, within 30 days after the issue of the notification a statement in writing of their objections, if any, to the proposed acquisition. This notice should be published at convenient places in the said locality, and copies thereof fixed up in the office of the Collector, the Tahsildar and in the nearest police station."

It is to be seen that what is contemplated under Rule 1 of the Rules framed under the Act is regarding calling of objections for the acquisition of the land in question and Rule 1 specifically lays down that the notice calling for objections should be published at convenient places in the said locality and copies thereof fixed up in the office of the Collector, the Tahsildar and in the nearest police station. It is to be further noted that what is contemplated u/s 4(1) of the Act is to cause public notice of the substance of the notification to be issued u/s 4(1) of the Act and affixing of copies of calling for objections contemplated under Rule 1 of the Rules to be fixed up in the office of the Collector, Tahsildar and in the nearest police, station cannot be read into Section 4(1) of the Act. Hence notification issued u/s 4(1) of the Act cannot be invalidated on the ground that copies of the said acquisition proceedings are not fixed up in the office of the Collector, the Tahsildar and in the nearest police station.

10. My attention is also drawn to Memo No.6416/C1/77-I dated November 5,1977 issued by the Government of Andhra Pradesh (Social Welfare-C) Department. Para 3 of the said memo which is relevant reads as follows:

"The publication of substance of the notification u/s 4(1) of the Act at convenient places in the concerned village is mandatory."

This memo is in accordance with the provisions of Section 4(1) of the Act and as mentioned in the said memo Section 4(1) notification was duly published at convenient places in the locality where the land under acquisition is situated as evidenced by the communication from the village karnam.

11. The learned counsels appearing for the petitioners rely upon the decisions reported in

1. K. Bapayamma v. Govt. of A.P., 1986 (1)APLJ 323

2. Writ Petition No.1998 of 1982 disposed on 15-7-1985 1985 (2) APLJ 50 (Short Notes) and

3. Kancherla Subba Rao v. The Collector, East Godavari District 1985 (1) APLJ 65 (Short Notes) to show that Section 4(1), notification in this case is not published

according to law.

12. In *K. Bapayamma v. Govt. of A.P.* 1986 (1) APLJ 323 it is observed as follows:

"Now in so far as the case on hand is concerned the endorsement on the reverse of the Gazette Notification runs as under.....and this endorsement\\ has been made by the Revenue Inspector. The whole file has been scanned through. There is no piece of paper found on the file directing the Revenue Inspector to have the substance of the notification published in the Village either by the Collector directly or through the Revenue Divisional Officer or the Tahsildar. It is incomprehensible as to on what basis the Revenue Inspector has endorsed saying that the publication has been made in the village by Tom Tom. There is no additional certificate issued by the village officer or the village assistant."

13. Thus from the facts of the said case the learned Judge doubted as to whether there was any notification by Tom Tom in the village. But so far as this case is concerned it is an admitted case that the village karnam who is the village officer caused public notice of the substance of the notification at convenient place in the locality by Tom Tom as is borne out by the record and the said fact is not at all disputed and of course the contention of the learned counsels appearing for the petitioners is that the said course of Tom Tom is not sufficient compliance with the provisions of Section 4(1) of the Act In view of this and in view of my observations that Rule 1 governs altogether a different and separate area, I find that this decision has no application.

14. In Writ Petition No. 1998 of 1982 disposed on 15-7-1985 (2 supra) by Upendralal Waghay J., is a case where the record produced by the Government Pleader does not show that there has been a publication of the substance of the notification u/s 4(1) of the Act and under the said circumstances it was held that in the total absence of the publication of the substance of the notification u/s 4(1) of the Act, the acquisition was quashed. This case also has no application since in the case on hand Section 4(1) notification was in fact made by Tom Tom and that fact is not at all in dispute.

15. *Kancherla Subba Rao v. The Collector, East Godavari District* 1985 (1) APLJ 65 (Short Notes) is a case where there was no certificate by the Village Officer in the form usually adopted stating that the substance of Section 4(1) notification has been published in the locality. Further the said decision shows that there was no internal evidence showing that such a procedure was adopted. Since in the case on hand there is village officer's statement evidencing due publication of notification u/s 4(1) of the Act by Tom Tom this decision has no application. Hence I find that the decisions relied upon by the learned counsels for the petitioners have no application and in view of the material on record I am of the clear opinion that Section 4(1) Notification was duly published as laid down therein and the submissions made to the contra are not correct.

16. It is brought to my notice that Acs. 1-88 cents covered by, S.No. 73/1B

belonging to the 6th respondent is under the tenancy of petitioners 1 to 4 and the same is no longer required by the Government as the other extent namely Acs.4-48 cents covered by Survey No. 72/2 is quite adequate and consequently Mandal Revenue Officer concerned made a recommendation to that effect in Reference No. A-157A/86 dt.12-10-90 to the Revenue Divisional Officer, Kakinada, the Revenue Divisional Officer, Kakinada endorsed the stand taken by the Mandal Revenue Officer and made a further recommendation to the Collector, East Godavari at Kakinada to delete Acs. 1-88 cents covered by S.No. 73/1B from the acquisition proceedings and the file is now pending with the District Collector, East Godavari at Kakinada. Hence it is submitted that Government may be directed to delete the said land from the acquisition proceedings. Since Acs. 1-88 cents covered by S.No. 73/1B even according to the Revenue Officers namely Mandal Revenue Officer and Revenue Divisional Officer, Kakinada is not necessary for the purpose for which it was acquired namely allotment of house sites to weaker sections there is no necessity for the Government to proceed further with the acquisition of the said land; more so in view of the fact that the said land is held by petitioners 1 to 4 as tenants, having tenancy rights in the said property. So the District Collector shall consider deletion of Acs.1-88 cents covered by S.No. 73/1B of Jammulapalli village, Pithapuram Mandal, East Godavari district, provided he is satisfied that the said land is no longer required to allot the same as house sites for the weaker sections as recommended by the Mandal Revenue Officer concerned and the Revenue Divisional Officer.

17. It is submitted that in Acs.4-48 cents covered by S.No. 72/2 of Jammulapalli village there is standing sugarcane crop. The said land is under the tenancy of petitioners 5 and 6 and according to the petitioners 5 and 6 there is standing sugar cane crop which is likely to be cut by the end of December or in the first or second week of January 92. Hence it is prayed that in any event the standing crop in the Acs.4-48 cents may be permitted to be cut by petitioners 5 and 6 and possession be taken by the end of January, 1992. Since end of January, 1992 is hardly 2 1/2 months away and since petitioners 5 and 6 being cultivating tenants raised sugarcane crop, the Government shall take possession of Acs.4-48 cents covered by S.No. 72/2 by 1st February, 1992.

18. With the above observations the Writ Petition is dismissed. No costs. Advocate's fee Rs.250/-.