
(1956) 11 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 41 of 1956 in Writ Petition No. 121 of 1953

Ambatipudi Ramabrahmam

APPELLANT

Vs

State of Andhra and Another

RESPONDENT

Date of Decision : 16-11-1956

Acts Referred:

Constitution of India, 1950 — Article 229

Land Acquisition Act, 1894 — Section 1, 1(2), 17, 17(1), 17(2)

Citation : (1956) 11 AP CK 0009

Hon'ble Judges : Subba Rao, C.J; Manohar Pershad, J

Bench : Division Bench

Advocate : G. Venkatarama Sastri, for C.V. Kanyaka Prasad, for the Appellant;
D. Venkatappayya Sastri, for M. Seshachalapathi, Govt. Pleader for Respondent
No. 1 and N. Rajeswara Rao, for the Respondent

Judgement

Subba Rao, C.J.—This is an appeal against the order of our learned brother Drnamaheswaram J., dismissing the application filed by the Appellant under Article 229 of the Constitution of India to issue a writ of mandamus or other appropriate writ to restrain the Respondents from taking further proceedings in pursuance of G. O. R. No. 91G Development dated 8th December, 1952. .

2. The Guntur Co-operative House Construction Society Ltd., was formed in 1849, for the purpose of acquiring lands and constructing houses for its members on a co-operative basis. For the purpose of building houses, the Society approached the Government for. acquiring 8 acres, 54 cents under the provisions of the Land Acquisition Act (hereinafter referred to as; the Act). fThe Registrar of Co-operative Societies submitted for the Government a draft declaration u/s 9 of the Act for approval and for publication.

On 8th December, 1952, the Government of Madras approved the said drafts and requested he Superintendent of the Government Press to publish the same u/s 4 (1) of the Act in puccessive Issues of the Fort St. George Gazette. the same order, the Government accepted the &w that the acquisition of the lands was an

tent one and directed that the provisions of p5-A of the Act would not apply to the said action. Pursuant to the said order, on 24th December, 1952, a notification was issued u/s (1) of the Act to the effect that the afore said lands were needed for a public purpose, for the construction of houses and that special Land. Acquisition Officer was authorise exercise the powers conferred by Section 4 with Act., withstanding the order dated 8th Decem-1952 exempting the acquisition in question from the operation of Section 5-A of the Act, presumably by some oversight, the notification used the usual form and appointed the Special Land Acquisition Officer, Co-operative Housing Schemes, to perform the functions of a Collector u/s 5-A of the Act. The Appellant filed objections u/s 5A to the proposed acquisition.

But the Government, without deciding those objections, issued a notification on 31st December, 1952 u/s 6 of the Act declaring that the aforesaid lands were needed for a public purpose and appointing the Special Land Acquisition Officer, Co-operative Housing. Schemes to pez-form the functions of a Collector under the Act and to take possession of the lands u/s 17 (1). Pursuant to the said notification, the Special Land Acquisition Officer was taking further steps to acquire the lands.

In the aforesaid circumstances, the writ was filed to issue an order prohibiting the Government of the State of Andhra represented by the Special Land Acquisition Officer, Co-operative Housing Schemes from proceeding further in the matter of acquisition.

3. It was, Inter alia, contended before the learned Judge that, as the direction by the Government exempting the acquisition from the operation of Section 5-A of the Act was not published in the Gazette, the said direction was not In compliance with Section 17(4) of the Act & was, therefore, invalid. The learned Judge negated the contention and held that the said direction was in compliance with the provisions of Section 17(4).

4. Mr. Venkatarama Sastri, learned Counsel for the Appellant, raised before us the same contention, which he had failed to substantiate before the learned Judge. To appreciate his contention, the relevant provisions of the Act may be read;

Section 4 (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, a notification to that effect shall be published in the Official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

Section 9 (1) "Subject to the provisions of Part VII of this Act, when the appropriate Government is satisfied after considering the report, if any, made u/s 5-A, Sub-Section 2 that any particular land is needed for a public purpose, or for a" company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its

orders.

Section 9 (1) "The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land and that claims, to compensation for all interest in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice) and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections if any to the measurements made u/s 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

Section 17 (4) "In the case of any land to which, in the opinion of the appropriate Government, the provisions of Sub-Section 1 or Sub-Section 2 are applicable, the appropriate Government may direct that the provisions of Section 5-A shall not apply, and, if it does so direct a declaration may be made under S. C in respect of the land at any time after the publication of the notification u/s 4, ".Sub-section I.

5. The aforesaid provisions may be summarised thus. When it appears to the appropriate Government that a land is likely to be needed for any public purpose, it issues a notice to that effect u/s 4 (1). It can also authorise an officer to take preliminary steps to ascertain the particulars of that land and, for that purpose, to enter upon the land. The persons interested in the land so notified may file objections within the prescribed time to the acquisition of the land before the Collector who will hear them after giving them the necessary opportunity.

The Government, after considering the report of the Collector and if it is satisfied that the land is needed for a public purpose, issues a declaration u/s C (1) to that effect. Thereafter the Collector issues public notice at convenient places giving the necessary particulars and requiring the persons interested to state the nature of their respective interests in the land and the amount and particulars of their claims. The Collector then proceeds to make the necessary enquiry and makes an award in due course. In the case of urgency u/s 17 (4), the Government may direct that the provisions of Section 5-A shall not apply and, if it does so direct, a declaration u/s 6 may be made at any time after the publication of the notification u/s 4. It is, therefore, clear from the aforesaid provisions that, in the ordinary-course of timings; the procedure laid down by Section 5-A will have to be followed unless it is dispensed with by the Government u/s 17 (4) in the case of urgency.

6. Learned Counsel contends that the Government can direct that the provisions of B. 5-A shall not apply only after the notification u/s 4" is issued, that it is incumbent upon the Government also to publish that direction in the Gazette

and that as in the present case the direction was given prior to the notification u/s 4 and as it was not duly published in the Gazette the said direction was illegal. This argument is not supported by the provisions of Section 17 of the Act.

Sub-Section 4 does not prescribe that the said direction should be given only after the publication of the notification u/s 4. Therefore, there is nothing illegal if the Government by the same order, directs the officer concerned to issue "the notification u/s 4 and also to dispense with the procedure laid down u/s 5-A of the Act. The only reason for dispensing with that procedure is the urgency of the acquisition and the Government, if made aware of the Urgency before issuing the notification u/s 4, can certainly give the necessary direction at that stage.

Nor does the Sub-section state that the said direction should be published in the Gazette. After the Government gives the said direction, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4 (1). u/s 6, subject to the provisions of Part VII of the Act, when the appropriate Government is satisfied, after considering the report if any made u/s 5A (2), that any particular land is needed for a public purpose, a declaration may be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders.

The contents of the declaration u/s 6, are, therefore, confined only to the fact that a particular land is needed for a public purpose. It is not necessary under this section to publish the report or the reasons for the satisfaction of the Government that the land is required for a public purpose. If the record of satisfaction of the Government need not form part of the notified declaration, we do not see why the direction of the Government dispensing with the procedure laid down" u/s 5A should form part of it.

In either case u/s 6, the notified declaration relates only to the fact that a particular", land is needed for a public purpose. In the absence of any statutory requirement of the publication of the direction, we cannot import one in Section 17 (4) of the Act. We therefore, hold that¹ the direction issued in G. O. R. No. 916, dated 8th December, 1952 is valid.

7. It is then contended that the Government can dispense with the procedure u/s 5-A only after the publication of the notice u/s 9 of the Act. In support of this argument, reliance is placed upon the first part of Section 17 (4) which reads:

In the case of any land to which in the opinion of the appropriate Government the provisions of Sub-Section 1 or Sub-Section 2 are applicable." and it is contended that as u/s 17 (1) the appropriate Government can take possession of the land in the case of urgency on the expiration of 15 days from the date of the publication of the notice and as u/s 17 (2) in the case of unforeseen emergency, the Government can direct the Collector to- take possession of the land immediately on the publication of the notice mentioned in Sub-Section 1, the direction under Sub-Section 4 can only be issued after the publication of the notice u/s 9.

This argument, if accepted, would defeat the purpose for which Sub-Section 4 is enacted. It is true that u/s 17 (1) and (2) in the case of urgency the Government can direct the Collector to take over possession after the publication of the notice u/s 9 (1). If the publication of the notice u/s 9 (.1) is a condition precedent for dispensing with the procedure u/s 5-A, the power conferred on the Government under B. 17 (4) would become nugatory, for the procedure u/s 5-A would have been complied with by the time the notice u/s 9 (1) is published. As aforesaid, the notice u/s 9 marks the further and subsequent stage in the process of acquisition after the enquiry u/s 5-A is completed. It is, therefore, reasonable to assume that Sub-Section 4 by mentioning Sub-Sections 1 and 2 of Section 17 refers only to the urgency but not to the stage mentioned therein. We are supported in this view by a decision of a Division Bench of the Madras High Court in *A. Natesa Asari Vs. State of Madras and Another*, . Adverting to a similar argument, the learned Judges observed at page 685 (of MLJ): (at p. 481 of AIR), as follows:

To adopt the construction contended for by Mr. Rajah Ayyar will be to render Sub-section (in wholly nugatory. What all is required u/s 71 (4) is that the Government must be satisfied¹ that there is such urgency as is contemplated by Section 17 (1). If they are so satisfied they are entitled to pass an order u/s 17 (4) suspending the application of Section 5-A and that is what has been done in this case.

We respectfully agree with the aforesaid observations.

8. It is then contended that the Government itself stated in the counter filed by it that the notifications issued by it were illegal and that,, therefore, it would publish the requisite notification under Sections. 4 and 9 afresh. It is true that in the counter filed in the first instance, the Government stated that by some clerical mistake the ordinary provisions of the Act have been printed in the notification instead of (he urgency provisions of the Act. But, in a supplemental counter" affidavit, it averred that the notifications issued substantially complied with the requirements of the provisions of the Act.

The question, therefore, really falls to be considered not on the allegations made in the affidavits but on the contents of the relevant documents. On 8th December, 1952, the Government made the order directing that the provisions of Section 5A would not apply to the case. But by some mistake in publishing the notification u/s 4 (1), the usual form was used and though it is not necessary in view of the aforesaid direction, the notification contained the appointment of the Special Officer to perform, the functions of the Collector u/s 5A of the Act. The Appellant also filed objections u/s 5A.

The fact that, in the notification issued u/s 4 (1), the Special Land Acquisition Officer was authorised to perform the functions of a Collector u/s 5A of the Act could not invalidate the express direction given by the Government on 8th December, 1952, dispensing with the procedure laid down u/s 5A. In view of the

said direction, the officer appointed had no jurisdiction to function under that section. We are satisfied that the said appointment was due to an oversight and that it could not invalidate the direction u/s 17 (4) which was otherwise valid.

9. Learned Counsel further contends that the said direction was not issued to the Collector but only to the Superintendent, Government Press. This point was not raised at any stage of the proceedings and we are not, therefore, justified in: allowing the learned Counsel to raise it for the first time before us, for if raised earlier, the Government would have been in a position to establish that .the direction was given to the Collector.

10. In the result, the appeal fails and is dismissed with costs. Advocate"s fee Rs. 100 one set.