

(2014) 10 AP CK 0034

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 28261 and 28262 of 2010

Anandi Bai

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 19-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 300A

Land Acquisition Act, 1894 — Section 11(2), 17(4), 4(1), 5A, 6

Citation : (2015) 3 ALD 92

Hon'ble Judges : Akula Venkata Sesha Sai, J

Bench : Single Bench

Advocate : Vijay Kumar Heroor, Advocate for the Appellant

Judgement

A.V. Sesha Sai, J.—Since the cause of action in these two writ petitions is one and the same and the facts and the contentions are also the same, these two writ petitions are heard together and are being disposed of by this common order.

2. In these two writ petitions, the consent award passed by the Land Acquisition Officer-Cum-Revenue Divisional Officer, Chevella Division, Attapur, Hyderabad, the third respondent herein vide File No. I/393/2005 dated 26.05.2007 is under challenge.

3. Heard Sri Vijay Kumar Heroor, learned counsel for the petitioners and the learned Government Pleader for Land Acquisition for the respondents 1 to 3 and Sri S.S. Varma, learned Standing Counsel for the fourth respondent National High Way Authority of India apart from perusing the material available on record.

4. The pleaded case of the petitioners is as under:

"4.1. Originally, the land admeasuring Ac.6-34 gts situated in Sy Nos. 275, 276 and 277 of Shamshabad Village and Mandal, Ranga Reddy District was owned by Sri Navinchand V. Haria and others and Chayadevi and another and they owned half share each i.e., Ac.3-17 gts. Petitioners in W.P. No. 28261/2010 purchased Ac.3-17 gts from Smt. Chaya Devi and another by way of a registered sale deed

Doc bearing No. 5267/2004 dated 01.11.2004 and initially petitioner No. 1 had 50% share and petitioner No. 2 and one Mr. Rajesh Agarwal had 25% share each, but later the said Rajesh Agarwal released his 25% share in favour of the petitioner by way of a registered release deed bearing Doc. No. 734/08 dated 30.01.2008.

4.2. The petitioners in WP. No. 28262/2010 purchased Ac.3-17 gts undivided share from Sri Navinchand V. Haria and others by way of registered document bearing No. 4804/2005 dated 05.05.2005. After purchasing the said lands, petitioners got their names mutated in the revenue records and pattadar pass books and title deeds had also been issued by the revenue authorities in their favour under A.P. Rights in Land and Pattedar Passbooks Act, 1971.

4.3. The authorities proposed the said lands for acquisition for laying NH.7 Road from Hyderabad to Bangalore. The District Collector, Rangareddy District/the second respondent herein issued a draft notification under Section 4(1) of the Land Acquisition Act, 1894 (hereinafter called "the Act") vide proceedings No. G2/3625/2005 dated 05.09.2005 published in A.P. Gazettee R.R. No. 161 dated 06.09.2005 showing the names of the petitioners" vendors and without showing the names of the petitioners herein.

4.4. The petitioners herein filed claim petitions before the third respondent/Land Acquisition Officer-cum-Revenue Divisional Officer and despite the same, the respondents, without giving any notice, passed a consent award dated 26.05.2007."

5. In the above background and calling in question the validity and the legal acceptability of the said consent award dated 26.05.2007 passed by the third respondent/Land Acquisition Officer-cum-Revenue Divisional Officer vide File No. I/393/2005 dated 26.05.2007, the present writ petition came to be filed.

6. Responding to the Rule Nisi issued by this Court, counter affidavits have been filed by the respondents 2 and 3 and the fourth respondent National High Way Authority of India, denying the averments in the affidavit filed in support of the writ petitions and in the direction of justifying the impugned action.

7. It is contended by the learned counsel for the petitioners that the consent award passed by the third respondent, without obtaining the consent of the land owners, is void and no nest in the eye of law and arbitrary, illegal and violative of Articles 14 and 300-A of the Constitution of India besides being opposed to the very spirit and object of the provisions of the Act. It is further contended by the learned counsel that despite the revenue records, standing in the name of the petitioners, the authorities did not issue any notice to the petitioners before passing the impugned consent award. It is further contended that the authorities did not adhere to the Negotiations Committee Rules, 1992 also.

8. Per contra, it is vehemently argued by the learned Government Pleader for Land Acquisition and the learned Standing Counsel for the National Highway

Authority of India, appearing for the fourth respondent that since the authorities had no knowledge of purchase of the lands by the petitioners and since their names were not mutated at the time of initiation of the subject land acquisition proceedings and as the petitioners did not make any claim prior to the award, basing on the consent of the land owners, the impugned award was passed on 26.05.2007. It is further submitted that the compensation amount is not yet paid to anybody and if the petitioners come forward with the documents in support of their title, they would be paid the compensation. It is also submitted that the road was also laid in the year 2007.

9. Right to property is a constitutional right as enshrined under Article 300-A of the Constitution of India which, in clear and unequivocal terms mandates that no citizen of this country shall be deprived of or divested of his or her property except in accordance with the procedure established by law. The Land Acquisition Act, 1894 is an expropriatory legislation which authorizes and empowers the State and its instrumentalities to acquire the properties of the private individuals without reference to their consent. Therefore, the provisions of the said legislation are required to be strictly adhered to and followed scrupulously and meticulously and any deviation from the mandatory requirements of the said legislation would undoubtedly render the entire proceedings invalid. The issue in the present writ petition is required to be examined in the light of the above aspects.

10. The material made available before this Court reveals that the District Collector, Ranga Reddy District/the second respondent herein issued the draft notification under Section 4(1) of the Act on 05.09.2005, proposing to acquire a total extent Ac.5-04 gts including the lands of the petitioners, admeasuring Ac. 1-02 gts in Sy. No. 276 and Ac.0-18 guntas in Sy. No. 277 of Shamshabad Village and Mandal, Rangareddy district for the purpose of formation of NH.7 from Hyderabad to Bangalore, admittedly, showing the names of the vendors of the petitioners and not the petitioners' names. It is also evident from the said draft notification that the enquiry under Section 5-A of the Act was also dispensed with by invoking the provisions of Section 17(4) of the Act. The said draft notification was followed by a draft declaration issued under Section 6 of the Act vide proceedings No. G2/3625/2005 dated 06.09.2005 published in A.P. Gazettee on 08.09.2005.

11. There is absolutely no dispute with regard to the fact that the petitioners in W.P. No. 28261 and 28262 of 2010 purchased the said properties by way of registered sale deeds dated 01.11.2004 and 05.05.2005 respectively and there is also no dispute that the revenue authorities issued the pattadar pass books and title deeds much prior to the impugned Award. The maintenance and update of revenue records are regulated by A.P. Record of Rights in Land and Pattadar Passbooks Act, 1971 and for the entries in the said revenue records maintained under the said Act such as pattadar passbooks and title deeds there is a statutory sanctity and there is also a statutory presumption under Sections 6 and

6-A of the Act and the same cannot be lost sight of by the authorities while dealing with the property rights of the citizens. The scheme of the Land Acquisition Act, 1894 imposes an obligation on the authorities to thoroughly and carefully verify the revenue records and the particulars available with the registration authorities before initiating the proceedings, otherwise the very purpose of maintaining the records would be frustrated and there is no meaning for the said records maintained under the relevant statutes.

12. Coming to the impugned award, the justification sought to be offered by the respondents is lack of knowledge of purchase by the petitioners and the names of the petitioners are not shown in the records. A perusal of the impugned consent award clearly shows that in respect of the subject lands no claims were filed by the petitioners/owners/vendors. In the absence of any consent expressed by the land owners as per the Land Acquisition Negotiation Committee Rules, 1992, it would not be open for the Land Acquisition Officer to pass a consent award and the said aspect is contrary to the very concept of consent award and the said contingency would not authorize the respondents to invoke the provisions of Section 11(2) of the Land Acquisition Act, 1894. The term consent cannot be unilateral at the instance of the authorities. The procedure adopted in the instant case is unknown to law and not authorized by law and on the other hand it is highly preposterous, unreasonable and iniquitous besides being opposed to the very spirit and object of the provisions of the Land Acquisition Act, 1894 and the Rules framed thereunder.

13. At this juncture, it may be appropriate to extract the relevant portion from the impugned award in respect of the subject survey numbers 276 and 277 and the same reads as follows:

"Sy. No. 276 Extent Ac. 1-02 (5082 sq. Yards):--

As per Revenue Record Sri Sultan Mohammed, Subhan, Burhan, Oman, Bhimarjun Reddy, Pavan Kumar, Naveen Chandra, Muthyal Rao and Citizen Weigh Bridge is recorded as pattadar against the land Sy. No. 276 of Shamshabad Village. As per Sub-Division Record the land adm. Ac.1-02 gts in Sy. No. 276 is under acquisition. Smt. Khaja begum W/o Late Mohd Sultan, Mohd Subhan, Mohd Burhan, Mohd Omran have filed claim petition for the land adm. 644 Sq. Yards in support of their claim they have filed Regd. Sale Deed Doct. No. 163/98 dated 11.02.1998. K. Bhimarjun Reddy S/o. Late K. Yadava Reddy has also filed claim petition for the land adm. 847 Sq. yards. In support of his claim he has filed a copy of mutation orders passed by the MRO Shamshabad vide Procs No. B/130-131-132/97 dated 4-4-97. No other claim petition covering full extent under acquisition Ac.1-02 gts have been received by this office. Therefore on receipt of the claim petition covering area Ac.1-02 gts from the claimants, the correct area of each claimant will be determined and compensation will be paid to the right person. The land compensation for an extent Ac.1-02 gts is determined as follows:

Sy. No. 277 Extent 0-18 gts (2178 Sq yards:--

"As per Revenue Record Sri Naveen Chandra, Naveen Kumar Gopal, Nithish, Chaya Devi, Purotosh are the pattedars for the land adm.5-17 gts in Sy. No. 277 of Shamshabad village. Out of which Land adm.Ac.0-18 gts is under acquisition. No claim petition in respect of land adm.0-18 gts in Sy. No. 277 has been received. On receipt of the claim petition, the compensation will be paid to the rightful owner after verifying their title in support of their claim. However, the compensation is determined as follows:

14. A reading of the above clearly and categorically shows that no claims were made covering the full extent of the land under acquisition in respect of Sy. No. 276 and no claim was made in respect of Sy. No. 277 at all. Therefore, the very action of the respondents in passing the consent award without obtaining the consent of the owners of the property is liable to be deprecated.

15. While dealing with the property rights of the citizens, the authorities shall be highly cautious, transparent and meticulous in their actions and should not be mechanical, routine and callous in their conduct in view of the Constitutional mandate as enshrined under Article 300-A of the Constitution of India. In the instant case, there is absolutely no justification on the part of the respondent authorities in passing the impugned consent award in the absence of any consent expressed by the owners of the property. This action in the considered opinion of this Court is highly arbitrary and high handed.

16. For the aforesaid reasons, the writ petitions are allowed, setting aside the award passed by the Land Acquisition Officer-cum-Revenue Divisional Officer, Chevella Division/the third respondent herein vide File No. I/393/2005 dated 26.05.2007 to the extent of the lands of the petitioners herein only situated in Sy Nos. 276 and 277 of Shamshabad Village and Mandal, Ranga Reddy District. Since the respondents have already laid road in the lands of the petitioners, the respondents shall immediately initiate proceedings under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and pay compensation to the petitioners. The said exercise shall be completed within a period of six months from the date of receipt of this order. As a sequel, the miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.