

(2014) 03 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6860 of 2011

Anumula Lachi Reddy and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 11-03-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g) 21 226 300-A
Land Acquisition Act, 1894 — Section 10 11 11-A 12(2) 17(4)

Citation : (2014) 4 ALD 557

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : V.V. Ramana Rao, for the Appellant;

Final Decision : Dismissed

Judgement

P. Naveen Rao, J.—The petitioners are challenging notification dated 13.09.2008 issued u/s 4(1) of the Land Acquisition Act, 1894 (for short, the "Act") and draft declaration dated 13.11.2008 issued u/s 6 of the Act and the award dated 29.11.2010 opposing the acquisition of their lands. Petitioners were holding different extent of agricultural lands in Vardavelli village and Kodurupaka village in Boinipalli Mandal, Karimnagar District. Section 4(1) notification was issued on 13.09.2008 proposing to acquire the land to an extent of Ac.103.14 guntas for the public purpose i.e., to provide house site pattas to the project displaced persons. Section 6 declaration was published in the Gazette on 14.11.2008. According to the petitioners, paper publication of Section 6 declaration was made on 15.11.2008 in Eenadu Telugu daily newspaper and on 17.11.2008 in Deccan Chronicle English daily newspaper and award was passed on 29.11.2010 acquiring the lands of the petitioners.

2. Heard Sri V.V. Ramana Rao, counsel for the petitioners and the learned Government Pleader for Land Acquisition.

3. Learned counsel for the petitioners submitted that petitioners had agricultural

land in Vardavelli and Kodurupaka villages. The land of the petitioners in Kodurupaka village was also acquired for Mid Manair Project through different notifications. Small bit of land in Kodurupaka village and land in Sy. No. 57 was only two bits of land left with the petitioners and total extent of land owned by the petitioners is less than Ac.5.00 guntas. Therefore, as per the rehabilitation policy of the Government notified under G.O.Ms. No. 68, dated 08.04.2005, land of the petitioners could not have been acquired as it is in violation of the said policy. The policy is based on public interest. To rehabilitate one person, another person cannot be made landless poor. The intendment of G.O., is to save small farmers from acquisition proceedings. Learned counsel contended that this was the only source of livelihood to the petitioners and the Land Acquisition adversely affected them.

4. The last of the publications of the draft declaration was dated 17.11.2008, when the same was notified in Deccan Chronicle English daily newspaper. No locality publication was made on 30.11.2008 and that was invented only to justify their action of passing an award within two years. That the award was not passed on 29.11.2010 as contended by the respondents, but it was anti dated later. He, therefore, submitted that the award is vitiated as it is in violation of Section 11-A of the Act.

5. Initially intention expressed was to acquire Ac.103.14 guntas, but Ac.12.08 guntas in Sy. Nos. 59 and 60 of Vardavelli village was excluded and the action of the respondents in selective exclusion of land proposed for acquisition is arbitrary and discriminatory. It is discriminatory to exclude portion of the land as belonging to schedule caste people and include the land of the petitioners, who are also small and marginal farmers and belong to Backward classes.

6. In support of his contentions, learned counsel relied on following decisions: 1 Uppalapati Brahmamma, Pallakadiyam(V), Rajanagaram (M) and Others Vs. The State of Andhra Pradesh and Others, ; 2) Kattamreddi Radhakrishna Reddy and others v. the District Collector, Nellore and another APLJ (2) 1981 Page 93; and 3) Gadigeppa Mahadevappa Chikkumbi Vs. State of Karnataka and others,

7. Learned Assistant Government Pleader submitted that Section 6 of the Act prescribed three modes of notification of draft declaration. The draft declaration was published in gazette on 14.11.2008 and paper publications were made on 15.11.2008 and 17.11.2008; the draft declaration was sent to the Tahasildar for publication in the locality. The Tahasildar issued proceedings dt. 30.11.2008 for local publication and thereafter it is published in the locality. All the required formalities i.e., approval of the competent authority for the draft declaration and release of financial sanction were obtained by 29.11.2010 and award was pronounced on 29.11.2010. Notice of award u/s 12(2) of the Act in Form-9 (A) was issued and served on 29.11.2010 to the concerned pattedars. Consequent to the passing of the award, possession of the land was also taken and handed over to the Executing Agency i.e., APEWIDC, Jagityal on 04.01.2011. She further contended that as per Section 6, all the modes of notification of draft declaration

has to be complied with and for the purpose of computation of period of two years as prescribed in Section 11-A, the last of the notifications have to be taken as the starting point and the locality notification being 30.11.2008, an award had to be passed on or before 30.11.2010 and in the instant case, the award was passed on 29.11.2010.

8. Actual passing of an award is only the ministerial act and as per the mandate of Section 11 what is required is approval of the draft by the competent authority and such approval was granted by the Joint Collector on 29.11.2010. As a consequence to the approval by the Joint Collector, an award was pronounced on the same day.

9. In addition to her contention that the award was made within two years as mandated by Section 11-A of the Act, she further contended that making of the award means approval by the competent authority and as approval of the competent authority was within two years, the award is valid. She further submitted that the date as 24.11.2008 in the notice issued in Form-6 was wrongly typed and petitioners cannot take advantage of wrong date typed when the record clearly discloses Form-6 notice was actually dated 26.04.2010 and that the locality publication was made on 30.11.2008. As the notices issued under Sections 9(3) and 10 were refused by petitioners on 21.05.2009, notices were pasted on the door of the residences of the petitioners.

10. Learned Assistant Government Pleader further submitted that G.O.Ms. No. 68 has no application to the instant case. In the said G.O., guidelines are prescribed to identify the lands for acquisition. The guideline relied by petitioners deals with a situation where if an alternate Government land is available, which can be utilized for the public purpose, for which the acquisition is contemplated, the land of small farmer should not be acquired. In the instant case, no other Government land was available and, therefore, lands of the petitioners had to be acquired. She further contended that the land of the petitioners was in a compact block and, therefore, it could not have been excluded. She further submitted that there was due compliance of the provisions of Land Acquisition Act and acquisition was for a public purpose i.e., to provide house-site pattas to the persons, who were displaced from their lands due to submergence in irrigation project.

11. It is further contended that though initially proposal was to acquire the land to an extent of 103.14 guntas, the acquisition was restricted to Ac.91.06 guntas. Ac.12.08 guntas standing in Sy. Nos. 59 and 60 was purchased by the Government earlier under the scheme for the welfare of poor Scheduled Caste people and land was allotted to them and, therefore, it was felt not desirable to acquire the said land, and therefore, deleted from the acquisition. This was a valid reason and the same reason cannot be extended to other lands acquired.

12. Out of the proposed acquisition of 91.06 acres, the parties have consented to an extent of 85.31 acres including Ac.14.00 in Sy. No. 57 and accordingly consent awards were passed on 25.07.2009, 04.08.2009 and 07.08.2009

towards different extent of land totaling Ac.85.31 guntas. Insofar as the remaining extent of land i.e., Ac.5.15 guntas, award was passed on 29.11.2010. The land of the petitioners in Sy. Nos. 51 and 57 are part of compact block of Ac.91.06 guntas and it is not possible to exclude the land of the petitioners.

13. In support of her contentions, learned Government Pleader placed reliance on the following decisions.

- i) State of Haryana and Another Vs. Raghubir Dayal,
- ii) Smt. Bailamma @ Doddabailamma (Dead) and Others Vs. Poornaprajna House Building Co-operative Society and Others,
- iii) Kaliyappan Vs. State of Kerala and Others,
- iv) G. Gnanesha and others Vs. Special Deputy Collector, Land Acquisition (General) and others,

14. The points that arise for determination in this case are:

- i) whether not excluding the land of the petitioners was illegal and arbitrary; and
- ii) whether the award is vitiated on the ground that the award is not made within two years from the date of publication of draft declaration?

15. POINT NO. 1:

In G.O.Ms. No. 68, government notified guidelines to the land acquisition officer to explore the possibility of excluding the acquisition of land of the farmer whose total extent of land is less than Ac.5.00 guntas, if by acquiring the entire land of such farmer, he would become landless person, whereas there is an alternate government land available, which can be utilized for the public purpose for which the acquisition was intended.

16. As submitted by the learned Assistant Government Pleader, such contingency did not arise in this case as there was no government land available and exclusion of the land of the petitioners would only mean resorting to acquisition of some other land. Even otherwise, orders in G.O.Ms. No. 68 are guidelines for Land Acquisition Officers and cannot be enforced and even if there is violation, it cannot be a ground to assail the land acquisition proceedings, which were otherwise validly made.

17. In Uppalapati Brahmamma, this Court held that petitioners therein being small farmers, there was no justification to acquire the land of small farmers for the purpose of providing house sites to the weaker sections. It is held that in a welfare state, in order to benefit one section of people, another section of equally disadvantaged cannot be deprived of their lands and eventually their livelihood. In the said case, though an alternative land was available, but the proposal to acquire the alternative land of the bigger landlord was not agreed to on the ground that the pathway is required to be formed through the lands of the petitioners. This Court held that such objection was not valid.

18. In *Gadigeppa Mahadevappa Chikkumbi*, High Court of Karnataka held that as the petitioner therein was rendered landless destitute the acquisition of land is illegal. The acquisition was quashed on the ground that the action deprived the petitioner of his sole means of livelihood and rendered him landless. Karnataka High Court held that fundamental right to pursue his avocation is usurped. His right to life is seriously jeopardized. His right to carry on his occupation assured under Article 19(1)(g) of the Constitution is taken away. The Court held that acquisition liberating the petitioner from his inalienable right to avocation is unconstitutional.

19. In *Kattamreddi Radhakrishna Reddy*, Section 5-A enquiry was dispensed with and urgency clause incorporated in Section 17(4) of the Act was invoked. This court held that the matter where urgency clause is required to be invoked, existence of objective facts would be a precondition for invoking such exceptional power. The Court found that the District Collector did not act honestly in exercising his statutory powers of acquisition. Court also held that purpose of acquisition was providing house sites to poor Harijans and when there is an alternative land available, resorting to acquisition was wholly unnecessary. This judgment do not come to the aid of the petitioners.

20. Identical issue was considered by this Court in two decisions. In *Manyam Paramayya and others v. Government of Andhra Pradesh* 1991 (1) ALT 28. The contention urged was on earlier two occasions land of the petitioners was acquired and repeated acquisition offends Article 21 and Article 300-A of the Constitution. Rejecting their contention, this Court held as under:

...The law, however, recognizes the right of the State, in exercise of its power of eminent domain, to acquire the land of any person when it is needed for public purpose. Such acquisition cannot be questioned on the ground of hardship and inconvenience. Private interest must always yield to public interest.

21. Similar issue was also considered by the bench of two judges of this court in *Ashurkhana Nalsahabgadda at Sangareddy and Others Vs. District Collector, Medak and Another*, . It was contended that for providing house sites, petitioners and their shareholders were deprived of their only source of livelihood and they are rendered landless defeating the public interest sought to be achieved. The division bench held as under:

Even the other contention does not merit acceptance. May be the petitioners have no other land of their own than the one being acquired, but that does not establish that the present acquisition is not for a public purpose. What land should or not be acquired is primarily a matter lying thin the jurisdiction of and dependent upon the satisfaction of the authorities concerned. Unless the selection of the particular land is shown to be based on a colourable exercise of the power, the discretion cannot be interfered with by this court in exercise of its power under Art. 226 of the Constitution of India. We are therefore, unable to hold that the acquisition is bad for the reason that the petitioners would be

rendered landless as consequence of the impugned acquisition. It is for the petitioners to make representation in this behalf and for the concerned authorities to consider the same. This court, however, cannot issue any writ, direction or order on the ground of any hardship caused to the petitioners and their shareholders.

22. The Land Acquisition Act does not impose any fetters on the acquisition of land except the requirement of "public purpose". Once "public purpose" requirement is satisfied, the extent of land acquisition and persons from whom such acquisition is intended, have no relevance and are external to the provisions of the Act. Thus, as held by this court in the above two decisions and in view of the provisions of the Act, it cannot be said that the acquisition of land of the petitioners is vitiated merely on the ground that petitioners were small farmers and would be ousted from their only source of livelihood.

23. There is no merit in the further contention of the learned counsel for the petitioners that while excluding the land to an extent of Ac.12.08 guntas, land of the petitioners was not excluded. As contended by the respondents, this piece of land was purchased by the Government from the original pattedars for the purpose of providing land to the landless poor scheduled caste candidates under a special scheme formulated by the Government for the welfare of poor scheduled caste people. Under this Scheme, Government purchased the land from the private pattedars, and allotted to landless poor scheduled caste persons at a reasonable price determined, which was payable by them over a period of time. Acquisition of such land would have displaced them. Having regard to the peculiar circumstances, Government felt it desirable to exclude that portion of the land which was originally proposed for acquisition. The distinction brought out by the government is just and reasonable and action of the Government cannot be said to be palpably illegal, arbitrary or discriminatory to nullify the acquisition when such acquisition was in due compliance of the Act.

24. POINT NO. 2:

The contention of the petitioners rest on the assumption that there was no locality publication after 17.11.2008 and, therefore, the award dated 29.11.2010 is beyond the period of two years and, therefore, is invalid in view of the provision contained in Section 11-A of the Act.

25. Perusal of the original records produced by learned Assistant Government Pleader disclose that the contention of the petitioners is not valid. The letter of the Tahasildar, which sought to communicate the draft declaration for locality notification is dated 30.11.2008 and, therefore, the locality publication date has to be taken at least as 30.11.2008, but not earlier. This is one of the three modes of notification of draft declaration and this is the date to be reckoned as the starting point for computation of two years, within which the award has to be passed. Thus, there is no merit in the contention of the learned counsel for the petitioners that there was no locality publication after 17.11.2008.

26. It is next contended that even assuming that the locality publication was made on 30.11.2008, the award was not notified by the competent authority within two years, whereas even according to the assertion of the respondents the draft notification for publication of award was put up before the Joint Collector on 29.11.2010 and the Joint Collector only approved the draft award, but award was not notified by him nor by Land Acquisition Officer and, therefore, no award was passed as mandated by Section 11-A within two years.

27. In Kaliyappan case, Supreme Court held that "to make an award" in this Section 11-A means "sign the award" and that is ordinary meaning to be ascribed to the words "to make an award".

28. In Bailamma case, Supreme Court considered the scope of Section 11-A of the Act. The contention advanced to nullify the award passed by the competent authority was that after the approval granted by the Government on the draft award, the Collector must sign the award as approved and inform the parties concerned. If the Collector fails to do so within the period prescribed by Section 11-A of the Act, the entire proceedings of acquisition must be deemed to be lapsed. It is held that,

There can be no doubt that after the award is approved the same becomes an offer to be made to the persons interested, and this can be done by either giving notice to the persons interested of the date on which he may orally pronounce the award, or by giving written notice of the award to the persons interested.

29. It is further held that award which was already signed by the Collector becomes an award as it is approved by the Government without any alteration and there was really no necessity for the Collector to sign the award again, nor does Section 11 requires that for the purpose of pronouncing the award notice should be given by the Collector to the persons interested. Supreme Court affirmed the decision taken by the High Court, wherein it was held that an award was validly made and signed and approved by the Government within the period prescribed u/s 11-A of the Act.

30. Learned Single Judge of this Court in G. Gnanesha, held that there is no provision in the Land Acquisition Act, which precludes the award from being passed even if funds for payment of compensation as per the award are not made available to the Land Acquisition Officer.

31. As held by the Supreme Court, once an award was approved within the period of two years, there is compliance of Section 11-A of the Act and it is not necessary that there can be a formal pronouncement of award by issuing prior notice to the parties to make it valid. In the instant case, substance of Section 6 declaration was displayed in the village on 30.11.2008 and the award was approved on 29.11.2010. Thus, the award was made as mandated by Section 11-A of the Act within two years. Petition fails on both counts. I see no merit in the writ petition. Accordingly, the writ petition is dismissed. No costs.

Miscellaneous petitions if any pending in these writ petitions shall stand closed.