
(2002) 02 AP CK 0171

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6324 of 1998

Bolla Babu Prasad and Others

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 14-02-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 4

Citation : (2002) 3 ALD 40

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : P. Prabhakara Rao, for the Appellant; Government Pleader for LA, Government Pleader for R and B and Government Pleader for Transport, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The present writ petition is filed by the petitioners for a writ of mandamus declaring the action of the respondents in not paying the compensation for their lands acquired for laying road from Vatsavai to Cheviticallu of Krishna District, as arbitrary, illegal and against the principles of natural justice and violative of Articles 14, 21 and 300A of the Constitution of India and consequently direct the respondents to pay the compensation to the petitioners for their lands acquired respectively in Thalluru village, Vatsavai Mandal, Krishna District and pass such other suitable orders.

2. It is stated that the writ petitioners were small marginal farmers and owners of the lands, the details had been furnished in the affidavit filed in support of the writ petition. It is further stated that about twenty years back the respondents had taken possession of these lands for laying the roads from Vatsavai to Cheviticallu of Krishna District and after laying the road, the said road was put to use and RTC buses etc., are being plied on the said road. It is further stated that though the writ petitioners had approached the respondents on several occasions, no compensation was paid to them in relation to the said lands and

hence, a legal notice, dated 29-1-1998, was issued by them to respondent Nos. 2 to 6 calling upon them to pay compensation. But, however, there is no further action in this regard.

3. In the counter-affidavit filed on behalf of fourth respondent, it is stated that it is a fact that the lands of writ petitioners were taken possession long back by R&B Department and no compensation was paid to them so far. It is further stated that the possession of lands were given by the ryots directly to the Requisitioning Department and the Land Acquisition Officer and Sub-Collector, Vijayawada cannot be held responsible for the payment of compensation to the land losers, as no funds were received so far from the Requisitioning Department to initiate Land Acquisition proceedings in this case. It is also further admitted that the lands were taken possession twenty years back and road was formed by R&B Department immediately. However, it is stated that it is not known whether compensation was paid to the landowners or not. The land plans and schedules were received in the year 1990 and action is being taken to pass award in this land acquisition case. The Requisitioning Department is not providing funds to take immediate action inspite of several requests made from the Office of the Sub-Collector, Vijayawada as well as from the Distinct Collector's Office, Krishna at Machilipatnam and the receipt of legal notice is also admitted. But, however, stated that the Requisitioning Department is not providing funds even the publication charges inspite of several requests made from the said office and hence, the Land Acquisition Officer -Sub-Collector, Vijayawada is not responsible for any inaction on the part of the Requisitioning Department.

4. Heard Sri P. Prabhakara Rao, the learned Counsel representing the writ petitioners and also Sri Peddanna, the learned AGP for Land Acquisition.

5. Sri P. Prabhakara Rao, the learned Counsel representing the writ petitioners, had contended that in the light of the stand taken in the counter-affidavit of R4, it is clear that long back the writ petitioners were deprived of the property and no compensation had been paid. It is also commented by the learned Counsel that one department is trying to throw the blame making allegations against the other department and the State Government cannot take such a stand. The total inaction on the part of the respondents in this regard is an arbitrary action and is violative of Articles 14 and also 300-A of the Constitution of India.

6. On the contrary, Sri Peddanna, the learned AGP had contended that R&B Department had taken possession of these lands directly from the ryots, but unfortunately, inspite of repeated correspondence to the Requisitioning Department, the Requisitioning Department is not providing funds and that is the reason why the further action could not be initiated in this regard. The learned Counsel submitted that in the facts and circumstances of the case, the Land Acquisition Officer cannot be held responsible for such inaction on the part of the Requisitioning Department.

7. Heard both the Counsel. It is also brought to my notice that in WPMP No.7724 of 1998 on 10-10-2000 after hearing both parties, this Court made the following direction:

"Having regard to the facts and circumstances of the case, the Requisitioning Department i.e., respondents 1, 2, 3 and 6 are directed to deposit the funds as requested by the respondent Nos. 4 and 5 so as to enable the respondents 4 and 5 to pass awards within six months from the date of receipt of this order."

It is also brought to my notice that inspite of the specific direction of this Court, there is no further action in this regard. Here is an unfortunate case, where the writ petitioners, small agriculturists, had been deprived of their respective properties for the purpose of laying the road by R&B Department. As can be seen from the respective pleadings, this that is not in dispute. But, the stand taken by the Government is that there is inaction on the part of the Land Acquisition Officer in initiating proceedings for non-providing of funds by the Requisitioning Department. It is needless to point out that the dispute is between two departments of the self-same State Government, and the writ petitioners-citizens, who are deprived of their properties, cannot be put to hardship because of such dispute. Apart from this aspect of the matter, in Executive Engineer, I.B. Division, Nirmal and others Vs. C. Shankar and others, , the Division Bench of this Court while dealing with a similar fact situation had observed:

"When the land was taken-over in 1971, proceedings under Land Acquisition Act were not initiated and as such, there was an infraction of fundamental right guaranteed under Article 31 of Indian Constitution. The said fundamental right read "No person shall be deprived of his property, save by authority of law." Even though the said fundamental right has been omitted by Constitution (Forty Fourth) Amendment Act, 1978, but the same has been bodily lifted making out a new provision i.e., Article 300A, which also reads "No person shall be deprived of his property, save by authority of law". By deleting from Part-III of Indian Constitution relating to fundamental rights, it should not be understood that there is no protection from the deprivation of the property and that the State can deprive its subjects even without following due process of law. The Constitutional guarantee under Article 300A acts with equal vigour and rigour to protect the owners of the property from being deprived without due process of law and the State cannot violate this constitutional guarantee and is bound to discharge its obligations under Article 300A by initiating proceedings under the Land Acquisition Act, as it is the only authority by which the State can deprive its subjects by acquisition of the private property for public purpose and as already stated above, the land was taken-over in 1971 without any authority of law then and it continued so even till this-day. It is distressing to note that the State which is liable to protect its subject from illegal usurpation of property, itself has indulged in such an act and is itself fighting like a private person and that too, contrary to its own record and inspite of making an admission, which is based on the said record. The land acquisition hints at compulsory acquisition and there is

no choice for the holder of the property, but to part with his property by sacrificing his individual interest to a larger public interest-So far so good. But, in our constitutional scheme, hitherto under Article 31 and now under Article 300A the person should be compensated and should be compensated at the earliest. Otherwise, there is a breach of constitutional obligation. That is what has happened exactly in the instant case and we feel sorry for the poor ryots who have been deprived of their lands long back in the year 1971 and are not paid compensation even this day. The interest they get, even at 9% for the first year of deprivation and 15% from the second year onwards, cannot compensate their hardship because of loss of land, which was almost three decades back. If this Constitutional Court does not remedy the situation even now, it will be failing in enforcing the constitutional obligations of the State."

8. This Court, while exercising powers under Article 226 of the Constitution of India, is expected to safeguard the rights of the citizens, especially when the deprivation thereof is by State's invasion and the total inaction in that regard has been complained and brought to the notice of this Court. It is also needless to point out that the State Government is not expected to take a defence of this nature throwing blame on the other department for non-supply of the requisite funds by the Requisitioning Department and in my considered opinion, such defence is not tenable in law and in fact, the State Government is duty bound to pay the due compensation to the citizens when they are deprived of their properties. In the light of the same, this Court feels just to issue the following directions.

(1) Respondent Nos. 1, 2 , 3 and 6 are directed to deposit the funds necessary in this regard and as requested by the respondent Nos. 4 and 5 forthwith.

(2) It is further directed that respondent Nos. 3, 4 and 5 after completing the other necessary formalities in this regard, shall further proceed to publish the necessary notifications under the provisions of the Land Acquisition Act and pass the Awards and pay the compensation positively within a period of six months from the date of receipt of a copy of this order,

(3) The respondents are directed to pay costs of Rs. 500/- (Rs. Five hundred only) to each of the writ petitioners.

9. In the light of the above directions, the writ petition is allowed.