

(1991) 09 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7903 of 1991

C.B. Anantam and Others

APPELLANT

Vs

The Collector and Another

RESPONDENT

Date of Decision : 03-09-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4(1), 5A, 5A(3)

Citation : (1992) 1 ALT 495

Hon'ble Judges : Sivaraman Nair, J

Bench : Single Bench

Advocate : Aziz Ahmed Kahn and M.S.S. Sastry, for the Appellant; The Govt. Pleader for Land Acquisition, for the Respondent

Judgement

Sivaraman Nair, J.—These Writ Petitions relate to the acquisition of land for the purpose of widening the road connecting Bashirbagh-Abids, within the local limits of Hyderabad Municipal Corporation. Petitioners contend that there was no proper publication of the notification u/s 4(1) or the declaration u/s 6 of the enquiry notices under Sections 9 and 10 of the Land Acquisition Act. Petitioners therefore submit that the entire proceedings are illegal. "They also contend that the proceedings are illegal. They also contend that the proceedings violated the principles of natural justice. Yet another submission is that the proceedings are vitiated by mala fides, in that, there has been collusion between the respective landlords and the Land Acquisition Officers. It is also submitted that acquisition of the respective lands involved in these Writ Petitions is not necessary for the purpose of achieving the public purpose, which has been mentioned in the land acquisition proceedings.

2. Writ Petition No. 7903/91 is filed by the tenant of shop bearing No. 5-9-319, situated at Gunfoundary, in which the petitioner is conducting Hair Cutting Saloon under the name "Bombay Therapan Hair Dressing Saloon" for the last 24 years in which he submits that he has invested huge amount of Rs. 1,50,000/-.

The original owner of the shop was one Mir Imdad Ali Khan, and after his death, one Muzaffer Ali Khan is collecting the rents from the Petitioner. It is stated that for the last about six years, the Municipal Corporation and the Urban Development Authority were planning to widen the road from Bashirbagh to Abids junction and that several times they came and took the measurements, but no concrete action was taken by them. It is stated that notices were issued to the adjacent tenants for acquisition of their shops, but their proceedings were not finalised. Petitioner submits that he came to know that the notification was published on 10-1-1991 in a locally daily "Citizen" stating that a part of his shop and the adjacent three shops will be acquired for widening the road. Petitioner submits that the notification was vague. He also submits that similar notices ought to have been served on all shop keepers situated on the road. Petitioner submits that acquisition of part of his shop building will affect his business and that ought not to have been done, without serving notices u/s 4 on the tenant. It is assumed that there has been no enquiry u/s 5A of the Land Acquisition Act. Petitioner also made his submissions on the assumption that the respondent had invoked Section 17(1) of the Act by dispensing with the enquiry. It is further contended that the petitioner being a person interested, ought to have been given notices as held by the Supreme Court in *Munshi Singh and Others Vs. Union of India (UOI)*, .

3. It is on these grounds that the petitioner seek the issue of a writ of Certiorari to quash the notification dt.3-6-1991 u/s 6 of the Land Acquisition Act, in Memo No. D3/4198/90 by the 1st respondent.

4. Writ Petition No. 7993/91 is filed by the tenant of shop No. 5-9-318. He claims that he was doing electrical business under the name "Hindusthan Light House". He submits that he has been doing his business for the last 21 years and has invested an amount of Rs. 1,00,000/- on the said shop by raising loans. The original Mir Imdad Ali Khan died, and after his death Dr. Jajidunnissa Begum is collecting the rents from him. Except these details all the other averments in the petitioner are the same as in W.P.No. 7083/91.

5. W.P.No. 8021/91 is filed by the occupant of shop bearing No,5-9-320/ 321. Petitioner submits that he is running a printing press in the shop under the name "Shyam Printing Press", by investing huge amount of Rs. 1,00,000/- on the machinery, for the last forty years. The original owner and the person collecting the rents now are the same in W.P.No. 7903/91. The other material averments are identical.

6. Writ Petition No. 3094/91 is filed by the occupant of shop bearing No. 5-9-315/316. Petitioner submits that he is doing hotel business under the name "Rain Bow Hotel" in that shop, for the last 15 years and has invested an amount of Rs. 1,00,000/- on the furniture. The person collecting the rents is the same as in W.P.No. 7903/91. The other material averments are the same as in that Writ Petition.

7. Writ Petition No. 7979/91 is filed by the person claiming to be the tenant who is in occupation of premises No. 5-9-328, Gunfoundary, Abids Road, situated in T.S. No. 41 and Ward No. 51, F. Block, wherein he is conducting a "Light House Theatre" for the last 40 years. Petitioner claims that it is the only means for his livelihood. His original landlord is said to have transferred the building to the 3rd respondent by a valid sale deed in the year 1967. There appears to have been some differences between the landlord and the tenant. It is stated that the landlord filed R.C. No. 467/88 on the file of the II Addl. Judge, City Civil Court, Hyderabad for evicting the tenant and the same is pending now. Petitioner is said to have received a notice on 14-6-91 under Sections 9 and 10 of the Land Acquisition Act. It is stated that notice (Ex.P-1) was preceded by a notification dt. 17-5-1990 (Ex. P-2) proposing acquisition of the front portion of the theatre to an extent of about 80.50 Sq. Yds. for the purpose of widening the road. Declaration u/s 6 of the Act was published in the A.P. Gazette dt. 10-6-1991 (Ex.P-3). Petitioner submits that he was not aware of the acquisition proceedings since no notice u/s 4 was served on him. He also submits that the respondents have not complied with the provisions of Sections 4 and 6 of the Land Acquisition Act, since notices were neither published in two local dailies nor served on the persons interested. Petitioner also submits that non-acquisition of two other mulgies adjacent to the cinema Theatre and falling on the same alignment indicates that the entire proceedings are mala fide. It is stated that a divider which was constructed long ago on the road was recently shifted towards the Mahaboobia College side, where there is lot of vacant space. According to the petitioner the width of the road in front of the building upon the divider is 13.4 metres, whereas at the other stretch, of the road are far narrower. It is therefore submitted that there is no justification for the acquisition at all.

8. Respondents have filed counter affidavits. They have asserted that the notification u/s 4 and declaration u/s 6 were duly published in the Gazette on 17-6-1990. A copy of the notification was published along with notice u/s 5A of the Act on 23-7-90 on the spot proposed for acquisition. The owner of the building bearing H.No. 5-9-328 acknowledged receipt of the notices on the same day, but did not file any objection u/s 5A(2) of the Act. The owner of the land in respect of other shops refused to accept notices and did not file any objections. The notices were duly published in the local dailies viz. "Udayam" a Telugu Daily, and News Time" an English daily on 28-6-1990. It is asserted that the notices were published in the locality and were affixed to the spot proposed to be acquired. It is also stated that the declaration u/s 6 was published in the official gazette dt.10-6-1991. The same was published in two local dailies viz., "Deccan Chronicle" an English Daily and "Siasat" an Urdu daily, on 10-6-1991. It is further asserted that copy of the draft notification was published in the local dailies and the same was affixed to the and proposed for acquisition. Even the petitioners did not raise any objection. It is thereafter that notices under Sections 9(3), 10(3) and 11 of the Act were issued. Even at that stage petitioners did not raise any objections as they could have. Petitioners did not

raise any objection before the finalisation of the award enquiry u/s 11 of the Act. Respondents submit that all the procedural formalities having been duly complied with, petitioners are not entitled to raise any of these objections at this stage. Dealing with the specific assumption of the petitioners in W.P.Nos. 79-3/91, 7993/91, 8021/91 and 8094/91 that the land was acquired as per the emergency provisions u/s 17(4) of the Land Acquisition Act, without conducting an enquiry u/s 5A, respondents assent that the same is misconceived and such averments were made recklessly without ascertaining the real facts of the case. It is also submitted that it is clear from the pleadings that the petitioners are aware of the proposed acquisition of the lands in question for the purpose of widening the road connecting Bashirbagh-Abids junction, for the last six years and the petitioners ought to have taken necessary steps if they were so advised to assail the notifications u/s 4(1) or at least the declaration u/s 6 of the Land Acquisition Act. Respondents submit that the petitioners having been fully aware of such acquisition at all times cannot now be heard to challenge the acquisition proceedings. Respondents also assert that widening of the road is a public purpose, for which acquisition proceedings were rightly initiated. The only fact that some other neighbouring shop buildings are not acquired is not a reason to find fault with the acquisition of the present premises for a public purpose. Respondents also maintain that the Writ Petitions are liable to be dismissed for grievous laches and inordinate delay on the part of the petitioners.

9. At the time when the petitions were posted for admission, Government Pleader was required to get instructions and to make the entire files available. I have already mentioned that the respondents have filed counter affidavits in the Writ Petitions. Petitioners have filed the affidavits in reply thereto. Government Pleader produced before me the files relating to the acquisition. On a perusal of the same, I am satisfied that the acquisition proceedings were initiated after due consideration of the need for widening the road. I am also satisfied that the "same is for a public purpose and the petitioners are not entitled to challenge the same. It is clear from the files produced by the Government Pleader that the notification u/s 4(1) and the declaration u/s 6 of the Land Acquisition Act were duly published in the official gazette, in two newspapers (one English and the other in local language) and was also published in the locality. It is evident from the files that the notices of enquiry u/s 5A were also published by affixture on the spot of acquisition and by beat of tom-tom. This fact is certified by the concerned Revenue Inspector in his endorsement dt.23-7-1990. Copies of these notices were sent to the Collector, Hyderabad, the Mandal Revenue Officer, Mushirabad, Police Station-Abids, Executive Engineer, PD-6, Municipal Corporation of Hyderabad, and the land owners. Pages 103 and 105 of the files contain evidence relating to the receipt of notices by the five and owner of the building, which is the subject matter of W.P.No. 7979/91, Same is the position in relation to other Writ Petitions as well, as is clear from the counter affidavits filed by the respondents. It is also evident from pages 257 to 262 that copy of the notification u/s 6 was duly published CD in the Gazette dt.10-6-1991, (2) in the

locality on 15-6-1991 (by affixture) at the land proposed for acquisition, (3) as also by publication in two dailies - one English and the other Urdu on 10-6-1991 (pages 241-243).

10. Counsel for the Petitioners urged that petitioner tenants of the building proposed to be acquired being persons interested in the land acquisition proceedings should have been given individual notices of the proposed acquisition u/s 4(1) and should have been heard u/s 5A of the Land Acquisition Act. Counsel submitted that individual notices not having been served on the petitioners, the entire proceedings are illegal.

11. It is necessary to examine Sections 4(1) and 5A of the Act to decide this question. Section 4(1) is in the following terms:-

"Section 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 news papers circulating in that locality of which at least one shall be in the regional language, and the Collector shall 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 the giving of such public notice, being hereinafter referred to as the date of the publication of the notification." Section 5A reads-

"5-A Hearing of Objections:-

(1) Any person interested in any land which has been notified u/s 4, Sub-section (1) as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of land or of any land in the locality, as the case may be.

(2) Every objection under Sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, Sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings, held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

12. According to Sub-Section 5A(3) petitioners being tenants they may be entitled to claim interest in compensation if the lands were acquired and they will therefore be persons interested in the land. But I do not find any warrant for the proposition that all such persons who are deemed to be interested in the land are entitled to personal notices u/s 4(1) or 5A of the Act.

13. The manner in which notices of the proposed acquisition shall be given is indicated in Section 4(1) i.e. (a) by notification published in the official gazette, (b) by publication in two daily newspapers circulating in that locality of which at least one shall be in the regional language, and (c) by publishing, notice of the substance of such notification at convenient places in the said locality. Such publication by the above three methods is deemed to be notice to all persons interested and such persons interested in the land which has been notified u/s 4(1) are entitled to object to the acquisition u/s 5A of the Act. The question whether individual notices in addition to the prescribed mode of publication is necessary, was considered by the Supreme Court in two decisions viz., *Bai Malimabu and Others Vs. State of Gujarat and Others*, and *State of Gujarat Vs. Panch of Nani Hamam's Pole and Others*, . The matter was considered with reference to the rules framed by the State of Gujarat under the Land Acquisition Act. The relevant rules provided that the Collector could have issued notices to the parties interested, as provided in Section 4(1) of the Act. In *Bai Malimbu* (2 supra) the court observed-

"The High Court has rightly held that no special notice was necessary to be given to the Appellants in regard to the notification u/s 4(1). Our attention was drawn to the alleged Rule 30-B of the Gujarat Rules in support of the contention that such notice was necessary to be issued to the parties interested. There is no such requirement in the said Rule, It merely pre-supposes that the Collector has issued notices to the parties interested u/s 4(1). The requirement of the Section is giving of a general notice and by two methods - (1) by publication of the notification in the official Gazette and (2) causing public notice of the substance of such notification to be given at convenient place in the locality."

14. *State of Gujarat v. Panch of Nani Hamam's Pole and Ors.* (3 supra) arose from an appeal from the Judgment of the Gujarat High Court, holding that personal notice to the persons interested was mandatory because of Rule 1 of the Gujarat Land Acquisition Rules, Differing from the above view, the Supreme Court held-

"What has been indicated is that the Collector has issued notice to the parties interested under provisions of Section 4(1). Section 4(1) quoted above indicates the manner in which a notice will be given to the parties interested. And that is by getting a public notice having the substance of the notification given at a convenient place in the said locality. Therefore what Rule 1 contemplated is a notice to the interested parties as required u/s 4(1) and Section 4(1) requires the notice to be notified at a convenient place in the said locality for information of the interested parties. It is, therefore, clear that by reading Section 4(1) with

Rule 1 it could not be interpreted to mean that a personal notice to each-and every interested person is the requirement of Section 4(1) and in absence of such a notice the proceedings of acquisition will be invalidated...."

"The manner in which the notice is to be given is provided in Section 4(1) itself by publication of the substance of the notification at a convenient place in the locality. It is not in dispute that such a procedure was followed and therefore it could not be said that the notice as contemplated u/s 4(1) read with Rule 1 was not given to parties interested and therefore it could not be held that the proceedings of acquisition are bad in law. The High Court therefore was in error and the view taken could not be maintained."

15. I am therefore not in a position to accept the submission that there was no due publication of the notification u/s 4(1) or notices u/s 5A or declaration u/s 6 of the Act, in respect of any of the proposed acquisitions, nor am I impressed by the submissions that the purposes which the acquisition was proposed was not public purpose. I am not inclined to accept the submission that there is no need to further widen the road by acquisition of small portion of the building in premises No. 5-9-328, as is urged by the petitioner in W.P.7979/91.

16. It is evident from the counter affidavits that after service of notices u/s 5A of the Act, the hearing was adjourned at least on three occasions, before the proposal was finalised at the final hearing on 30-8-1990. It is also interesting to notice that even after receiving notices under Sections 9 and 10 of the Act, petitioners did not care to file any objection before the Land Acquisition Officer, as they could have done. They have chosen to file this Writ Petition instead. Having failed to avail all the opportunities provided by the statute for objecting to the acquisition of the land or building under the Act. I do not find any reason why the petitioners should be granted the relief which they seek in these proceedings. This is more particularly so, in view of the fact that an undeniable public purpose viz., widening of an important thoroughfare in the city is held up. I have also to note the fact that petitioners may not be put out of the business by reason of the acquisition because substantial portion of the shops will still remain unaffected.

17. In view of the above, the Writ Petitions have to be and are hereby dismissed. There will be no order as to costs. Government Pleader's fee Rs. 350/- in each.

18. Counsel for the petitioners made a submission that some time may be granted to the petitioners to vacate the premises. It is for the petitioners to move the Land Acquisition Officer in that regard for time to move their belongings from the premises under acquisition.