
(1976) 11 AP CK 0017
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1037/76

Chandramouliprasad Devabhaktuni

APPELLANT

Vs

State of A.P. and others

RESPONDENT

Date of Decision : 03-11-1976

Acts Referred:

Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 — Section 10, 16, 17, 17(1), 7
Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 10, 17(1), 17(4), 4, 4(1)

Citation : (1976) 11 AP CK 0017

Hon'ble Judges : Gangadhara Rao, J

Bench : Single Bench

Advocate : M. Chandrasekara Rao, for the Appellant;

Final Decision : Dismissed

Judgement

Gangadhara Rao

1. D. Chandramouli Prasad has filed this Writ Petition to quash the notification made u/s 4 (1) of the Land Acquisition Act which was published in the Andhra Pradesh Gazette dated 23-12-1971 and also the notification issued under section 6 of the Act which was published in the Andhra Pradesh Gazette dated 18-2-72. The Government wanted to acquire Ac. 4-09 cents belonging to the petitioner in S.Nos. 172/1 and 172/2 of Hanumojipalem village for providing house sites for the Harijans. According to the counter filed on behalf of the Government it is stated that the notification u/s 4 (1) of the Act was published in the Andhra Pradesh Gazette dated 13-1-72. Under that notification the provisions of S. 5-A were dispensed with under S. 17 (4) of the Act. Notification under S. 6 was published in the Andhra Pradesh Gazette dated 6-4-72. Notices under S. 9 (1) and S. 10 of the Act were duly promulgated and served on the persons interested in the manner prescribed under the rules. The petitioner acknowledged the receipt of the notice on 21-6-72. Award enquiry was

conducted on 10-72. The petitioner attended the enquiry on that date and consented for the acquisition and payment of compensation. It is stated that the award could not be passed immediately for want of sufficient funds. The award was passed on 10-3-76. Even before passing the award the petitioner was personally contacted by the Land Acquisition Officer on 4-2-3976 and the petitioner gave a statement stating that he has no objection but he also agreed for non-payment of cost for the existing structure (Chapta) on the land acquired. Thereafter on 15-3-76 the petitioner has filed this Writ Petition challenging the acquisition proceedings.

2. His objections are first the enquiry under S. 5-A should not have been dispensed with. Secondly there, was no publication in the locality of the substance of the notification as contemplated by S. 4(1) of the Act. Thirdly, in view of the long delay in passing the award, the acquisition proceedings should be started afresh and thereby he would have the benefit of the difference in the market value of the land. Fourthly, under S. 17 of the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act 1973 herein after called the Ceilings Act the Government cannot proceed further with the acquisition proceedings because it is an alienation within the meaning of that section.

3. On behalf of the Government it is submitted that this writ petition has been filed after nearly four years after the notification was published under S. 4(1) of the Act and on that sole ground I should dismiss it. Next it is submitted that the petitioner himself has consented for the acquisition and gave a statement to that effect and therefore his present objections should not be entertained. It is stated that there was really urgency when the notification was issued in 1972, and therefore rightly the enquiry under S. 5(A) was dispensed with. Lastly, it is contended that it is not an alienation within the meaning of S. 17 of the Ceilings Act and even otherwise, that makes no difference nor does it invalidate the acquisition proceedings.

4. I agree that the petitioner has agreed for the acquisition of his lands and payment of compensation and also gave a statement to that effect on 10-7-1972 before the enquiry officer. Similarly on 4-2-1976 he gave another statement before the Land Acquisition Officer in which he did not; file any objections, but also agreed for non-payment of the cost for the existing structure (Chapta) on the land acquired. Thus he was never aggrieved by the land acquisition proceedings. It is only after the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act 1973 came into force from 1-1-1975 under which he had to surrender his surplus land to the Government he filed this writ petition so that he might show the land acquired as surplus land liable for surrender under S. 10 of that Act.

5. The learned counsel for the petitioner has submitted that the provocation for petitioner to file this writ petition was the long delay in making the award and therefore he could not be accused of any laches. I do not agree. In this petition he is questioning the land acquisition proceedings from A to Z and the main

emphasis is that the acquisition is an alienation within the meaning of S. 17 (1) of the Land Ceilings Act. I have no doubt in my mind that this writ petition is filed more to circumvent the provisions of the Ceilings Act than because the petitioner is aggrieved by the acquisition of his lands. That is the real reason for the delay of four years. On that sole ground I should dismiss this writ petition. Nevertheless, since the learned counsel for the petitioner has argued at length the questions raised by him, I propose to decide them.

6. It is argued that since the award was passed nearly after four years the notification was made under S. 4(1) of the Act and so far possession of the lands has not been taken, there is really no urgency in the matter so as to dispense with the enquiry under Sec. 5A of the Act. In this case, the notification under S. 4 (1) was published in the Gazette on 13-1-1972. Enquiry under S. 5-A of the Act was dispensed with under that notification. I have to see whether there was really urgency on that date to dispense with the enquiry under Sec. 5A.

7. In the counter affidavit filed on behalf of the respondents, it stated that the acquisition was urgent because it was intended to relieve the congestion in the existing Harijan Cheri. It is further submitted that the State Government considered the reports submitted by the officials in that regard and approved the same after satisfying itself that the lands were suitable and required urgently for providing houses to the poor Harijans. It is a question of fact whether there was congestion in the existing Harijan Cheri and I cannot decide it in this writ petition. If there was urgency then certainly the Government was justified in dispensing with the enquiry under S. 5-A of the Act on that date. The fact that subsequently the officials were tardy and negligent in dealing with the matter and did things in a leisurely way will not make any difference as to the evidence of the urgency on the date when the provisions of S. 5-A were dispensed with under S. 17 (4) of the Act. In this connection, I may refer to the decision of Chinnappa Reddy and Punneya JJ, in W. P. No. 582 of 1976 and Sambasiva Rao and Punneya JJ in W.A. No. 370 of 1976. The Supreme Court also observed in Jage Ram and Others Vs. State of Haryana and Others, :

The fact that State Government or the party concerned was lethargic at an earlier stage is not very relevant for deciding the question whether on the date on which the notification was issued, there was urgency or not. The conclusion of the Government in a given case that there was urgency is entitled to weight if not conclusive.

8. In Kasireddy Papaiah (Died) and Others Vs. The Government of Andhra Pradesh and Others, Chinnappa Reddy J., observed:--

I am not prepared to agree with the submission that delay on the part of tardy officials to take further action in the matter is sufficient to nullify the urgency which existed at the time of the issue of the notification and to hold that there was never any urgency. It may be a relevant circumstance to be taken into consideration in deciding whether there was any urgency at all or whether the

emergency provision was invoked without the Government applying its mind to the circumstances of the case. That the housing conditions of Harijans all over the country continue to be miserable even to-day is a fact, of which courts are bound to take judicial notice. History has made it urgent that among other problems the problem of housing Harijans should be solved expeditiously. The greater the delay the more urgent become the problem. Therefore, one can never venture to say that the invocation of the emergency Provisions of the Land Acquisition Act for providing house sites for Harijans is bad merely because the officials entrusted with the task of taking further action in the matter are negligent or tardy in the discharge of their duties unless of course it can be established that the acquisition itself is made with an oblique motive. The urgent pressures of history are not to be undone by the inaction of the bureaucracy. I am not trying to make any pontific pronouncements. But I am at great pains to point out that provision for house sites for Harijans is an urgent and pressing necessity and that the invocation of the emergency provisions of the Land Acquisition Act cannot be said to be improper, in the absence of mala fides, merely because of the delay on the part of some Government officials. As already observed by me, the greater the delay the greater the urgency. Of course, there may be causes where the very acquisition is mala fide and so too the invocation of the urgency provisions. We are not concerned with such a situation here as there are no allegations of mala fides.

9. Now, I may refer to the decisions cited by Sri Chandrasekhara Rao In Adinarayana v. State of A.P. 1974 (11) An WR 357. Ramachandra Rao J., observed:

It has been held by this Court in Kurapati Venkatasatyanarayana and Others Vs. State of Andhra Pradesh, An WR 43 and K. Yanadi Reddy v. State of Andhra Pradesh 1973 (2) APLJ 408 that when there is a long delay in taking possession of the lands proposed to be acquired it demonstrates that there is no real urgency for the acquisition and that the order dispensing with the inquiry u/s 5-A by exercising the power u/s 17 (4) was passed mechanically and that the exercise of power u/s 17 (4) dispensing with the inquiry u/s 4-A is not proper or valid.

10. When this decision was brought to the notice of Chinnappa Reddy, J in Kasireddy Papaiah vs State AIR 1975 AP 2694 the learned Judge observed :

In my view, the question whether the power u/s 17 (4) was exercised mechanically or otherwise is a question of fact which can be decided on a consideration of all the relevant circumstances and no universal proposition can be laid down that long delay by itself is sufficient to prove that the power was exercised mechanically. I do not think that my brother Ramachandra Rao J. laid down any such proposition. All that he appeared to decide was that it is a strong circumstance to be taken into consideration. In every case apart from the delay there are several other circumstances such as the very object of the acquisition, the reason for the delay etc., which must necessarily be considered before the

court can decide the question of fact.

11. I agree with the reasoning of Chinnappa Reddy J. In view of these decisions and on the facts of this case, I am not prepared to agree with the learned counsel for the petitioner that the enquiry under S. 5-A should not have been dispensed with in this case.

12. Next it is submitted that since the substance of the notification was not published in the locality under S. 4 (1) of the Act, the proceedings are void. But when once the petitioner has agreed for the acquisition of his lands and has also given a statement to that effect, it does not lie in his mouth now to say after nearly four years, that the acquisition is bad on that ground. After all the purpose of giving public notice of the substance of the notification in the locality is to put the persons interested in the land on notice of acquisition. In this case, the petitioner had knowledge of the proceedings when notice under sections 9 (1) and 10 were served upon him on 21-6-1972. He attended the award enquiry on 10-7-1972 and gave a statement stating that he had no objection for the acquisition and payment of compensation. After four years, he cannot be permitted to raise that objection. He must be deemed to have waived it. When I say this I do not mean to say that the publication of the substance of the notification in the locality under S. 4 (1) of the Act is not mandatory. I only mean to say that even a mandatory requirement of law can be waived if it is conceived in the interest of a particular party, but not in public interest vide *Dhirendra Nath Gorai and Subal Chandra Shaw and Others Vs. Sudhir Chandra Ghosh and Others*, *Jeevan Reddy J.*, has also taken a similar view in W.P. No. 2072/1975 dated 8-9-1976. The learned Judge held that the requirement of publication in the village under S. 4 (1) is for the benefit of the land owner, it cannot be said that the said requirement is conceived in public interest and if so is open to the owner to waive the said requirement. Consequently I hold that this objection is not tenable.

13. It was submitted by Sri Chandrasekhra Rao that in view of the delay of nearly four years in passing the award and in not so far taking possession, the acquisition proceedings should be quashed. Here it may be noted that no period is prescribed in the Act for passing the award. I am not prepared to quash the proceedings in view of the fact that the petitioner himself had agreed for the acquisition and payment of compensation as early as 10-7-1972 and even subsequently on 4-2-1976, and also in view of the fact that he has filed the Writ Petition after nearly four years.

14. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, notification under S. 4 was issued on 13-11-1959. On 13-3-1966 the declaration under S. 6 of the Act was published in respect of a portion of the area. Thereafter in 1970 notices were issued under S. 9 (1) of the Act requiring the appellants to state their objections if any to the assessment of compensation. The enquiry under S. 5-A was not dispensed with in that case. The appellants challenged the validity of the proceedings for acquisition before the High Court of Delhi in a Writ petition in

1972. One of the grounds taken was unreasonable delay between the publication of the notification u/s 4 and the issue of notices under S. 9 of the Act with the result that the appellants were deprived of the appreciation in value of the property after the date of the notification under S. 4. The High Court negated his contentions and dismissed the Writ Petition. The appeal filed against that judgment in the Supreme Court was also dismissed. The Supreme Court observed:

A valid notification under S. 4 is a sine qua non for initiation of proceedings for acquisition of property. To have sat on the fence and allowed the Government to complete the acquisition proceedings on the basis that the notification u/s 4 and the declaration, u/s 6 were valid and then to attack the notification on grounds which were available to them at the time when the notification was published would be putting a premium on dilatory tactics. The writ petitions are liable to be dismissed on the ground of laches and delay on the part of the petitioners (see. Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, and Rabindranath Bose vs. Union of India 1970 (2) SCR 597

15. In Ratnidevi vs. Chief Commissioner Delhi AIR 1975 SC 199 sec. 4 notification was published in the year 1959 and S. 6 notification in July 1960 and again in October 1951. Writ Petitions were filed in 1971. The Supreme Court refused be interfere with the acquisition proceedings. One of the reasons given was the delay in filing the writ petition. They quoted with approval the observations in AFLATOON'S case referred to supra.

16. These decisions clearly go to show that delay and laches on the part of the petitioner in this case will disentitle him for the relief prayed for by him. Apart from that, the relief to be granted under Article 226 is discretionary and on the facts of this cast, I am not prepared to interfere and quash the proceedings on the ground that there was delay in passing the award and taking possession. The Government have stated in the counter that the delay in not passing the award immediately was due to want of sufficient funds. This statement does not do credit to the Government. But if possession of the land of the petitioner has not been taken so far, he had been enjoying the fruits from the land. In view of this conclusion it is really unnecessary for me to refer to the decisions cited by Sri Chandrasekhara Rao to show that when there is delay the acquisition proceedings should be quashed. Any way, I will briefly refer to them. In K.V. Krishna Iyer Vs. The State of Madras and Another, Sec. 4 (1) notification was issued on 1-7-1959 and the declaration under S. 6 (1) was published on 1-1-1964 after a period of nearly four years and enquiry under S. 5-A was not dispensed with. So the facts are different.

17. In Doongarsee and Sons and Others Vs. State of Gujarat and Others, enquiry under S. 5-A was not dispensed with. An enquiry was held and a declaration was made under S. 6. Then notices were served under S. 9 (1). Thereafter, the Government cancelled the earlier notification made under S. 6 and issued a fresh notification under that Section. The learned Judges held that after the issue of

the first-notification under S. 6 notification under S. 4 was exhausted and cannot thereafter support any subsequent notification u/s 6 Thus there was no notification under S. 4 to support the second notification under S. 6. It was further held that a declaration under S. 6 to be valid must be made within a reasonable time after notification under S. 4 and a lapse of five years was not reasonable. There also the facts are different.

18. In *S. Appa Rao vs. Special Land Acquisition Officer* 1960 (1) An WR 282 there was long delay in holding the enquiry and passing the award and the learned Judge thought that there was delay on the part of both the parties. Chief Justice Jaganmohan Reddy and Gopal Rao Ekbote J., observed :

We are at a loss to understand as to how when the petitioner once refrained from challenging the validity of the proceedings, she could subsequently contest it merely on the ground that there was delay. We do not think the petitioner is justified in asking us to interfere with the award though, as we have said earlier, when inordinate delays such as these occur, it would justify us in interfering with the award...Further it is not also shown that any prejudice has been caused to the petitioner. It may also be stated that she was not only in possession of the land but was also receiving rents from tenants.

19. This Decision far from supporting the petitioner goes against him.

20. In *Ambalal Purshottam etc. Vs. Ahmedabad Municipal Corporation and Others*, The Supreme Court observed;

We are not hereby to be understood as suggesting that after issue of the notifications under sections 4 and 6 the appropriate Government would be justified in allowing the matters in drift and to take in hand the proceedings for assessment of compensation whenever they think it proper to do. It is intended by the Scheme of the Act that notification under Sec. 6 of the Land Acquisition Act must be followed by a proceeding for determination of compensation without any unreasonable delay. But on the facts of the present case, it does not appear that there was any scope for holding that with a view to deprive the land owners or the persons claiming derivative title from them from getting the benefit of the rise in prices notifications under Sections 4 and 6 were issued without any intention to take steps for acquisition of the land.

21. In that case, S. 4 (1) notification was published on 9-6-1941, declaration under S. 6 was made in 1943 and the award was passed on 13-8-1960 Still, the Supreme Court did not interfere with the acquisition proceedings. This decision also does not help the petitioner but is really against him.

22. In this case, it is not the case of the petitioner that the proceedings are vitiated by any mala fides. And for the reasons already given by me on the facts of this case, I am not prepared to quash the acquisition proceedings on the ground of delay in passing the award and in not taking possession of lands so far.

23. Next I take up the question as to whether the acquisition of the land of

petitioner is an alienation within the meaning of section 17 (1) of the Land Ceiling Act.

24. Sec. 17 (1) reads as follows :

17. Prohibition of alienation of holding :

(1) No person whose holding and no member of a family unit, the holding of all the members of which in the aggregate, is in excess of the ceiling area as on the 24th January 1971, or at any time thereafter, shall on or after the notified date, alienate his holding or any part thereof by way of sale, lease, gift, exchange, settlement, surrender, usufructuary mortgage or otherwise or effect a partition thereof, or create a trust or convert an agricultural land into non-agricultural land, until he or the family unit, as the case may be, has furnished a declaration u/s 8, and the extent of land, if any to be surrendered in respect of his holding or that of his family unit has been determined by the Tribunal and an order has been passed by the Revenue Divisional Officer under this Act taking possession of the land in excess of the ceiling area and a notification is published u/s 16 : and any alienation or made or partition effected or trust created in contravention of this section shall be null and void and any conversion so made shall be disregarded.

25. The learned counsel for the petitioner strongly relied upon the words "or otherwise" in the Section and contended that the acquisition of land is also an alienation within the meaning of this section. I am of the opinion that acquisition of land by the Government under the Land Acquisition Act is not an alienation within the meaning of this section. Acquisition of land is a compulsory purchase, but not a voluntary sale. The consent of the party, whose land is acquired, is not required. Notwithstanding his protests and his unwillingness the land can be acquired. There is no volition on his part when his land is acquired. That is why solatium is paid to the party. Solatium is paid in consideration of the compulsory nature of the sale and is also intended to compensate the owner for his disinclination to part with his property. "Alienate" means to "transfer". The words "or otherwise" in the Section meant "or in a similar way". Thus those words should be construed on the principle of "ejus dem generis".

26. In this connection the learned counsel for the petitioner relied upon KVV. Satyanarayana v. Y. Subba Rao 1976 ALT. 563=1976 (1) APLJ 217 and contended that the acquisition of land is also an alienation within the meaning of S. 17 (1) of the Act. That was a case where the court was dealing with a court sale. On a construction of S. 7 of the Act and on the facts of that case, the court came to the conclusion that in that case, the court sale was an alienation.

27. But I am of the opinion that a court sale is different from an acquisition of land under the Land Acquisition Act. S. 7 of the Land Ceilings Act, to the extent it is relevant, reads as follows :

Special provision in respect of certain transfers etc. already made : (1) Where on

of after the 14th January, 1971 but before the notified date, any person has transferred whether by way of sale, gift, usufructuary mortgage, exchange, settlement surrender or in any other manner whatsoever, any land held by him or created trust of any land held by him, then the burden of proving that such transfer or creation of trust has not been effected in anticipation of and with a view to avoiding or defeating the objects of any law relating to reduction in the ceiling on agricultural holdings shall be on such person, and where he has not so proved, such transfer or creation of trust shall be disregarded for the purpose of the computation of the ceiling area of such person.

2) Notwithstanding anything in sub-section (1), any alienation made by way of sale, lease for a period exceeding 6 years, gift, exchange, usufructuary mortgage or otherwise, any partition effected or trust created of a holding or any part thereof, or any such transaction effected in execution of a decree or order of a civil court or of any award or order of any other authority on or after the 2nd May, 1972 and before the notified date, in contravention of the provisions of the Andhra Pradesh Agricultural Lands (Prohibition of Alienation) Act 1972 shall be null and void.

28. A reading of sub-section (2) clearly shows that a sale effected in execution of a decree or order of the civil court is treated as an alienation. But the learned counsel for the petitioner relies upon the words "of any award" and contends that even an award passed under the Land Acquisition Act is an alienation by way of sale. I do not agree. Under subsection (2) of Section 7 it will be an alienation if the sale was effected in execution of an award or in execution of an order of any authority on or after the 2nd May 1972 and before the notified date, that is 1-1-1975. But, it is not disputed that the award passed by the Enquiry Officer under the Land Acquisition Act is not executable since it is not a decree. An award is only an offer. If an award is given for payment of compensation and if the compensation is not paid, the remedy of the party is only to file a civil suit. Therefore, the award as contemplated by sub-section (2) of section 7 does not cover an award made under the Land Acquisition Act.

29. Even otherwise, S. 7 (2) has no application to the facts of this case. It applies to a transaction effected on or after 2-5-1972 and before the notified date that is, 1-1-1975. But, in this case the award was passed on 10-3-1976. Therefore I negate the contention that the acquisition of the land of the petitioner is an alienation within the meaning of S. 7 (1) of the Land Ceiling Act and is null and void. In the result, I dismiss this Writ Petition with costs. Advocate's fee Rs. 150/-.