

(2010) 04 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1199 of 2007

Chatrathi Mohan Rao, Chatrathi Kusha Kumar and Chatrathi
Yugandhar Rao

APPELLANT

Vs

The District Collector (Land Acquisition), The Joint Collector,
The Revenue Divisional Officer-cum-Land Acquisition Officer
and The Mandal Revenue Officer, T. Narsapuram Mandal

RESPONDENT

Date of Decision : 15-04-2010

Acts Referred:

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

Citation : (2010) 4 ALD 708

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : K. Chidambaram, for the Appellant; G.P., for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioners are the owners of Acs. 8-12 cents of land in T. Narsapuram Village and Mandal of West Godavari District. The District Collector, West Godavari, 1st respondent herein, published a notification, dated 20.05.2006, u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act") proposing to acquire the said land for the purpose of providing house sites to the weaker sections. He dispensed with enquiry u/s 5A of the Act by invoking the urgency clause u/s 17(4) of the Act. The petitioners filed W.P. No. 19701 of 2006. An interim order was passed in that writ petition directing that enquiry u/s 5A of the Act be held.

2. The Joint Collector, West Godavari District, 2nd respondent herein, issued notices, dated 05.10.2006, to the petitioners, proposing to conduct enquiry u/s 5A of the Act, and the petitioners submitted their objections on 19.10.2006. Ultimately, the 2nd respondent passed an order, dated 12.01.2007, rejecting the objections raised by the petitioners. The same is challenged in this writ petition, mainly on the ground of want of jurisdiction.

3. On behalf of the respondents, a counter-affidavit is filed. It is stated that the Joint Collector, 2nd respondent, is competent to conduct enquiry u/s 5A of the Act and that taking the impugned order passed by the 2nd respondent into account, the 1st respondent has published a declaration u/s 6 of the Act on 31.01.2007. It is also stated that in case this Court takes a view that it was not competent for the 2nd respondent to conduct enquiry u/s 5A of the Act, the defect would be rectified.

4. Heard learned Counsel for the petitioners and the learned Government Pleader for Land Acquisition.

5. The notification u/s 4(1) of the Act was published by the 1st respondent on 20.05.2006. He appointed the Revenue Divisional Officer, Eluru, 3rd respondent herein, as the Land Acquisition Officer. Though he invoked the urgency clause and dispensed with the enquiry u/s 5A of the Act, it became obligatory on their part to conduct enquiry, in view of the interim direction granted by this Court in W.P. No. 19701 of 2006.

6. It is only the authority, who issued notification u/s 4(1) of the Act, that shall conduct enquiry u/s 5A of the Act. Even the Land Acquisition Officer, the 3rd respondent, is not competent to conduct such enquiry. The 2nd respondent did not figure anywhere in the scheme. Neither he is the authority, who issued the notification, nor is the one designated as the Land Acquisition Officer. Therefore, it was not at all competent for him to conduct enquiry u/s 5A of the Act. Hence the order, dated 12.01.2007, passed by the 2nd respondent rejecting the objections raised by the petitioner is set aside.

7. The view expressed by this Court is, in fact, fortified by the orders issued by the Government in G.O. Ms. No. 1888, Revenue (K), dated 31.12.1984. In this, it is directed that all the District Collectors shall exercise all the powers conferred and discharge all the duties imposed on the State Government under Sections 4, 5A, 6 and Sub-section (4) of Section 17 of the Act for the purpose of acquisition of land for provision of pathways to the Harijan Cheries and Weaker Sections Housing Colonies, etc. The power to be exercised u/s 5A of the Act is equated to the one under Sections 4 and 6 of the Act. The inescapable conclusion is that it is only the authority, who issued the notification u/s 4(1) of the Act, that can exercise the power u/s 5A of the Act and not any authority including the Land Acquisition Officer.

8. The petitioners did not challenge the declaration u/s 6 of the Act published on 31.01.2007, obviously because it was passed after filing of the present writ petition. As a matter of fact, this Court granted interim stay of all further proceedings on 23.01.2007. Since the declaration dated 31.01.2007 is in contravention of the interim order passed by this Court and it is based upon the order dated 12.01.2007 passed by the 2nd respondent, it is liable to be set aside, and accordingly, is set aside.

9. In the result, the Writ Petition is allowed. There shall be no order as to costs.