
(2008) 07 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13458 of 2000

Chinnari Jagga Rao and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 29-07-2008

Acts Referred:

Constitution of India, 1950 — Article 226, 300A, 31A, 31A(1), 32
Land Acquisition Act, 1894 — Section 4(1)

Citation : (2008) 6 ALD 34 : (2008) 6 ALT 479

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P. Vikram, for C. Kodanda Ram, for the Appellant; Government Pleader for Land Acquisition, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a writ of mandamus to declare the action of the respondents in not initiating proceedings for acquisition of lands admeasuring Acs. 18.40 cents comprised in Survey Nos. 24 to 34 in Peddavalasa @ Gadabavalasam in Pedamarangi Revenue Village of Giyyamavalasa Mandal, Vizianagaram District, belonging to the petitioners, as illegal, arbitrary and violative of Article 300A of the Constitution of India. The petitioners sought for a consequential direction to the respondents to pay compensation as per the provisions of the Land Acquisition Act, 1894 (for short "the Act").

2. The petitioners claim that they are the owners of the above-mentioned land and that possession of the said land was taken in the year 1990-91 from them for provision of rehabilitation of the tribal victims for construction of housing colony and agricultural purposes. In the affidavit, they averred that in spite of their approaching the respondents time and again, no action has been taken to acquire their land, out of which, Acs.2.01 cents was utilized for construction of housing colony and Acs. 16.19 cents was allotted to the tribals for agricultural purposes. They further averred that respondent No. 4 vide letter bearing RR.C.

No. 867/98, dated Nil.11.1998 requested respondent No. 1 to take expeditious action to purchase the land admeasuring Acs. 16.19 cents from out of ITDA funds and process the land acquisition proposals and that in spite of the same, respondent No. 1 has not taken any action. The petitioners, therefore, filed the present writ petition.

3. No counter-affidavit was filed for about 8 years after filing of the writ petition. However, this Court at the request of the learned Assistant Government Pleader for Land Acquisition made on 21.7.2008 and also on 28.7.2008, adjourned the case to enable the respondents to file counter-affidavit. Today, at the hearing, counter-affidavit along with certain enclosures has been furnished to the Court.

4. In the counter-affidavit sworn to by the Revenue Divisional Officer, Parvathipuram Division, Vizianagaram District, respondent No. 3, it is stated that clashes ensued between tribals and non-tribals in the year 1990 in Kaspagadabavalasa Village of Kurupam Mandal over a land dispute, in which, five tribals were killed; that this incident sparked law and order problem between tribals and non-tribals over the land in question; that the District Collector, Vizianagaram; the Revenue Divisional Officer, Parvathipuram; the Project Officer, ITDA, Parvathipuram and the Mandal Revenue Officer, Jiyammavalasa, visited Peddavalasa Village; that the tribal families pressurized the authorities to allot the lands for house-sites and for agricultural purposes and that long prior to the said clashes between tribals and non-tribals, the tribals unauthorisedly occupied the petitioners' land admeasuring Acs.16.19 cents. It is further stated that the petitioners ought to have taken steps to evict the tribals, who unauthorisedly occupied their land. It is, however, admitted that the then Mandal Revenue Officer has taken possession of the land admeasuring Acs.2.01 cents belonging to the petitioners and distributed house-site pattas to 34 S.T. families on 6.12.1990 and the remaining land admeasuring Acs.16.19 cents already in possession of the tribals is being enjoyed by them. It is further stated that there is no provision under the Act to acquire any land for agricultural purposes and the expenditure for acquisition of land for house-sites to tribals cannot be met from the Social Welfare Land Acquisition grant as the same could be met from the Tribal Welfare Department and hence, the land value could not be paid to the petitioners immediately. It is further stated that due to threat from the naxalites, the petitioners have not taken steps to evict the tribals and also have not insisted on the authorities for payment of land value and that due to lack of funds, the Project Officer could not provide funds to the then Mandal Revenue Officer immediately. The answering respondent admitted the fact that the land admeasuring Acs. 18.20 cents in Survey Nos. 25 to 34 belongs to the petitioners and the fact that the Mandal Revenue Officer addressed to the Project Officer, ITDA to provide funds for purchase of the lands of the petitioners under the Land Purchase Scheme on 18.1.2000, in April, 1998, October, 1998 and on 18.2.1999, but the Office of respondent No. 2 has not taken initiative in the matter. She also admitted that housing colony for the tribals was constructed on the land admeasuring Acs.2.01 cents belonging to the petitioners after granting house-

site pattas in their favour and that the remaining land admeasuring Acs. 16.19 cents is being cultivated by the tribals. It is also stated that the answering respondent took charge as Revenue Divisional Officer, Parvathipuram on 4.7.2008 and immediately, she addressed letter, dated 24.7.2008 to the Project Officer, ITDA for providing funds to pay the land value to the petitioners for the land admeasuring Acs.2.01 cents and immediately, the Project Officer, ITDA provided the required funds through ITDA on 25.7.2008 for payment of land value to the petitioners; that immediately, on the same day, on 25.7.2008, the answering respondent informed the petitioners to attend the Office and receive the value of the land admeasuring Acs.2.01 cents, but the petitioners refused to accept the said proposal and insisted that they be paid compensation for the entire land admeasuring Acs. 18.20 cents as one time settlement and they gave consent to that effect in writing on 25.7.2008 that they agreed to receive the land value at Rs. 90,000/- per acre, if the respondents pay the same within one month. She further stated that she has informed about the said consent given by the petitioners and requested the District Collector, Vizianagaram, who is also the Chairman of ITDA, to provide funds. Thereupon, the District Collector instructed the Project Officer to request the Director, Tribal Welfare to release necessary funds and accordingly, the Project Officer, ITDA addressed letter, dated 25.7.2008 to the Director of Tribal Welfare to sanction funds. It is further stated that soon after the funds are received from the Director of Tribal Welfare, the amount would be paid to the petitioners immediately.

6. Before considering the case on merits, it is to be noted that there is discrepancy in mentioning the survey numbers between the prayer in the writ petition and the affidavit. However, there is no dispute regarding the extent of the land being Acs. 18.20 cents and its identity.

7. At the hearing, the learned Counsel for the petitioners took a serious objection to respondent No. 3, denying taking possession of the land admeasuring Acs.16.19 cents by the respondents. He invited my attention to letter, dated 24.7.2008 addressed by respondent No. 3 herself to the Project Officer, ITDA, Parvathipuram, a copy of which is filed by the learned Assistant Government Pleader for Land Acquisition along with the counter-affidavit. A perusal of this letter shows that on 9.2.2001, the Mandal Revenue Officer submitted a report to the Project Officer, ITDA, Parvathipuram by stating that the land admeasuring Acs. 18.20 cents held by the petitioners' family was taken possession during 1990-91, when there was a clash between tribals and non-tribals as per the directions of the Project Officer, ITDA, Parvathipuram; that out of the said extent, land admeasuring Acs.16.19 cents was given to tribals for agricultural purposes and the remaining land admeasuring Acs.2.01 cents was allotted to the tribal families for house-sites and also colony was constructed on the same land. She also took note of the contents of the report of the Mandal Revenue Officer, wherein it is stated that with regard to the land admeasuring Acs.16.19 cents allotted to the tribals for agricultural purpose, there is no provision to acquire any land for agricultural purposes except to be purchased from the landowners

on market value from out of the ITDA funds and that as the land was taken possession during the year 1990, the owners of the land are agitating for payment of compensation.

8. She further stated that the Project Officer, ITDA, Parvathipuram in his letter, dated 26.9.2002 addressed to the Government Pleader for Land Acquisition, High Court of Andhra Pradesh, Hyderabad stated that there is no recorded evidence to show that possession was taken as per the orders of the Project Officer, ITDA, and that the land admeasuring Acs.16.19 cents is under the cultivation of tribals, but no pattas in respect thereof were issued by the Mandal Revenue Officer. She further stated that as per the oral orders of the then Project Officer, ITDA, Parvathipuram and the District Collector, Vizianagaram at the disputed site, land admeasuring Acs.2.01 cents was proposed for acquisition for construction of house-sites under the Act and the remaining land admeasuring Acs.16.19 cents was proposed for purchase through sale deeds from the landowners from out of the funds available with ITDA, Parvathipuram. It is noticed from the papers along with the counter-affidavit that a part of letter, dated 24.7.2008 is missing from page three onwards. However, the contents of the said letter referred to above are sufficient enough to show that though there were no written orders given by the Project Officer, ITDA, Parvathipuram and the District Collector, Vizianagaram, the fact remained that on the oral orders issued during the year 1990, when the tribals and non-tribals were at loggerheads, possession of the entire land admeasuring Acs. 18.20 cents in Survey Nos. 25 to 34 of Peddavalasa @ Gadabavalasam in Pedamarangi Revenue Village of Giyyamavalasa Mandal, Vizianagaram District, belonging to the petitioners was handed over for being used for agricultural and house-site purposes. It is indeed surprising that respondent No. 3 who had duly taken note of the report of the Mandal Revenue Officer, Giyyamavalasa written as far back as 9.2.2001 made a volte-face in her counter-affidavit by stating that the tribals have unauthorisedly occupied the land admeasuring Acs.16.19 cents long prior to the clashes taking place between the tribals and non-tribals and sought to blame the petitioners for not recovering its possession. Such a stand is not expected from and does not behove the Office of the Revenue Divisional Officer. In the counter-affidavit, she has not found fault with the report of the Mandal Revenue Officer, who categorically stated that the entire land admeasuring Acs. 18.20 cents was taken possession, during the year 1990-91 as per the directions of the Project Officer, ITDA, Parvathipuram, out of which, Acs.2.01 cents was utilized for house-sites and the balance land admeasuring Acs.16.19 cents was handed over to the tribals for agricultural purposes. It is regrettable that the stand taken by respondent No. 3 in the counter-affidavit is contrary to the record and misleading.

9. The entire facts present a disquieting picture. The private land belonging to the petitioners was handed over to (he tribals as far back as 1990 and the respondents have done precious little except indulging in fruitless correspondence on the issue of compensating the petitioners for depriving them of their property. Having not responded for as long as 8 years in the writ petition

filed by the petitioners, the above mentioned counter-affidavit has been filed, which shows the distinct lack of sensitivity and responsibility on the part of the respondents in remedying the injustice caused to the petitioners by paying compensation at least at this belated stage. Having considered letter, dated 24.7.2008 addressed by respondent No. 3 to the Project Officer, ITDA, Parvathipuram, I have absolutely no doubt in my mind that the entire land of an extent of Acs. 18.20 cents belonging to the petitioners was taken by the respondents and utilized both for agricultural and house-site purposes on the decision taken at the village where clashes between tribals and non tribals took place during the year 1990, albeit, without a written order.

10. The reason given in the counter-affidavit that due to lack of funds, compensation could not be paid to the petitioners in respect of land admeasuring Acs.2.01 cents can never be appreciated coming as it did from the State functionary. It is the bounden duty of the State to compensate its citizens for the property acquired by it, lest its action will fall foul of the constitutional mandate under Articles 31A and 300A of the Constitution of India. The action of the respondents in utilizing the lands of the petitioners for more than 18 years is thus, wholly without the authority of law and in the teeth of the constitutional provisions, which protect the citizens from being deprived of the property otherwise than by following due process of law and without being paid compensation which shall be not less than the market value. If the Act does not provide for acquisition of land for the purpose of agriculture, it is incumbent upon the respondents to find other ways and means to take over the land of the petitioners by paying them adequate and appropriate compensation. It is a matter of grave concern that the respondents, who are at the helm of the affairs of the State, have failed to show the required sensitivity to the just demand of the citizens that they be paid compensation for the property taken over from them.

11. In Ram Chand and Others Vs. Union of India (UOI) and Others, , while dealing with the acquisition made and award passed prior to the Amendment Act 68 of 1984, the Supreme Court held that where the land owner suffered on account of inordinate delay in passing award after taking possession, the Supreme Court under Article 32 and the High Court under Article 226 of the Constitution have power to quash the proceedings. However, on the facts of the said case, without quashing the proceedings, the Supreme Court directed that the petitioners therein shall be paid additional amount of compensation to be calculated at the rate of 12% per annum. In that case, the Supreme Court having referred to the mandate contained in the second proviso to Article 31A of the Constitution, which prohibits making of any law, which does not contain a provision for payment of compensation at a rate which shall not be less than the market value thereof, posed a question as to whether if a person is paid compensation at the rate prevailing 20 years before, will that be compliance of the constitutional and statutory mandate. The Supreme Court answered it by saying that ignoring the escalation of the market value of the lands will amount

to ignoring an earthquake and Courts can certainly take judicial notice of the said fact.

12. In Chandra Bansi Singh and Others Vs. State of Bihar and Others, , Murtaza Fazil Ali, J., speaking for the Three Judges Bench, while holding that the Supreme Court is not only a Court of law, but a Court of equity as well, directed the State of Bihar to compensate the landowners in the form of interest calculated at the rate of 7 1/2% per annum for the period of delay of two years on the value of the land owned by each landowner.

13. In K. Sai Reddy and others Vs. Deputy Executive Engineer, Irrigation and Command Area Development, Nampally, Hyderabad and others, , a learned Single Judge of this Court, while dealing with a similar situation as in the present case where property was taken by the State without initiating acquisition proceedings held that the said action was in serious infraction of the provisions of Articles 300A and 31A(1) of the Constitution and directed the State of Andhra Pradesh to initiate proceedings under the Act and pay compensation at the rate prevailing on the date on which it issued notification u/s 4(1) of the Act. In addition to the said amount, the Court also further directed that the land owner shall be paid damages of Rs. 5,000/- per acre per year from the date of taking possession till the disposal of the writ petition.

14. Having regard to the abundance of the authority as discussed above, I have no hesitation whatsoever to declare that the action of the respondents in denying the petitioners just compensation towards the value of the land within a reasonable time is not only arbitrary, but unconstitutional.

15. The writ petition is therefore allowed.

16. While considering one year as reasonable period for paying the market value of the property to the petitioners, I deem it appropriate to direct the respondents to pay 12% interest per annum on the value of the land. Since the respondents agreed to pay Rs. 90,000/- per acre in respect of Acs.2.01 cents, it is reasonable to fix the said amount as the value for the total extent of Acs. 18.20 cents. The respondents shall pay the said amount of Rs. 90,000/- per acre for Acs. 18.20 cents besides interest at 12% per annum on the said amount from the date of expiry of one year from taking possession till today. The respondents shall pay the said amount to the petitioners in proportion to their entitlement within a period of eight weeks from the date of receipt of a copy of this order. In the circumstances of the case, the respondents shall also pay costs of Rs. 25,000/- to the petitioners.