

(1991) 04 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 7775 of 1987

Chintapalli Suranna and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 08-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Land Acquisition Act, 1894 — Section 4(1), 6(1), 6(2)

Citation : (1991) 2 ALT 367

Hon'ble Judges : Parvatha Rao, J

Bench : Single Bench

Advocate : M.S.K. Sastry, for the Appellant; Govt. Pleader for Social Welfare, for Respondent Nos. 1 and 2 and B.S.A. Swamy, for the Respondent

Final Decision : Dismissed

Judgement

Parvatha Rao, J.—In this Writ Petition the petitioners seek a declaration that the action of the respondents in acquiring their lands in S. Nos. 500/1 (Acres 1-50 cents), 500/2 (Acres 1-35 cents) and 500/3 (Acres 0.24 cents) in Ramachandrapuram as illegal, null and void and for a consequential direction that the respondents shall drop all further proceedings relating to the said acquisition.

2. The main contention raised by the learned counsel for the petitioners is that the declaration u/s 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") made in respect of the impugned acquisition of the petitioners' lands is hit by Clause (ii) of the first proviso to Sub-section (1) of Section 6 of the Act because it was made after the expiry of one year from the date of the publication of the notification u/s 4 of the Act in respect of the said acquisition. Though it was not raised in the Writ Petition, as it relates to a pure question of law, the counsel for the petitioner was allowed to raise this contention.

3. It is not in dispute that the said notification under Sub-section (1) of Section 4 of the Act was published in the extraordinary issue of the district gazette dated

7-4-1986, in the Telugu daily "Vishalandhra" dated 13-4-1986 and in the Telugu daily "Andhra Jyothi" dated 17-4-1986 and that public notice of the substance of the said notification in the locality was given on 14-4-1986. As per Sub-section (1) of Section 4 of the Act, "the last of dates of such publication and giving of such public notice" is referred to as "the date of the publication of the notification". Thus the date of publication of the notification u/s 4(1) of the Act in respect of the acquisition now in question is 17-4-1986. Under the first proviso to Sub-section (1) of Section 6 of the Act no declaration in respect of any particular land covered by a notification u/s 4, Sub-section (1)--

(i) or

(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification."

In the counter affidavit filed by the 2nd respondent, it is stated that the draft declaration proposals were approved by the 1st respondent in his L1,31/86 dated 6-4-1987 and that the same was published in the following manner:

In the District Gazette 13-4-1987 In the daily news papers : Visalandhra and Andhra Jyothi on 16-5-1987

It is also stated that the public notice of the substance of the said declaration was given in the locality on 14-5-1987.

4. The learned counsel for the petitioner contends that the last of the above mentioned dates i.e., 16-5-1987 should be taken as the date of making the declaration under Sub-section (1) of Section 6 of the Act. For this, he relies on Sub-section (2) of Section 6 of the Act wherein it is provided "the last of the dates of such publication and the giving of such public notice being hereinafter referred to as the date of publication of the declaration." On the other hand, the learned Government Pleader appearing for the 1st and 2nd respondents contends that making of the declaration is different from publication of the declaration and that for the purpose of reckoning the period of one year, it is the date when the declaration under Sub-section (1) of Section 6 of the Act is made that is relevant and not the date of publication of the declaration which is referred to in Sub-section (2) of Section 6 of the Act. According to the learned Government Pleader, the declaration under Sub-section (1) of Section 6 of the Act was made on 6-4-1987 and it was published in the district gazette on 13-4-1987. Even assuming that publication in the district gazette was necessary for effectuating the making of the declaration, according to him, the declaration dated 6-4-1987 having been published in the district gazette dated 13-4-1987 it must be taken that it was made on 13-4-1987 if not on 6-4-1987 and not on any subsequent date when it was published in the dailies or when the public notice of it was given in the locality. He submits that therefore the said declaration having been made within one year from the date of the notification under Sub-section (1) of Section 4 of the Act i.e., 17-4-1986. it is not hit by Clause (ii) of the first proviso to Sub-

section (1) of Section 6 of the Act.

5. I am of the view that the learned Government Pleader is right. The expression used in Clause (ii) of the first proviso to Sub-section (1) of Section 6 of the Act is "made." In the present case, the declaration was dated 6-4-1987 and it was published in the district gazette on 13-4-1987 both of which dates were within one year from 17-4-1986, the date of publication of the notification. Therefore the question whether there can be making of the declaration without its being published in one way or the other, does not arise in the present case and it is not necessary to decide the said question in this case. However, it is clear that making of the declaration is different from publication of the declaration which is a subsequent event occurring after the making of the declaration. What is contemplated in Sub-section (1) of Section 6 of the Act is that the declaration should be made within one year from the date of publication of the notification under Sub-section (1) of Section 4 of the Act, if the said notification is published after the commencement of the Land Acquisition (Amendment) Act, 1984, as in this case, If it is clearly established that the said declaration is made within one year from the date of publication of the said notification u/s 4(1) of the Act, the mere fact that it was published in any of the modes specified under Sub-section (2) of Section 6 of the Act after the said period of one year does not vitiate the said declaration. The learned Government Pleader relied on the decision of a learned single Judge of this Court in Nalamaty Venkata Durga Prakasa Rao and Others Vs. The State of Andhra Pradesh, in support of his contention that there is a distinction between the making of the declaration and the publication of the declaration even under the unamended Section 6. Basi Reddy, J., in that case observed that there is a clear distinction between the making of a declaration as prescribed by Sub-section (1) and the publication of the declaration in the Official Gazette as contemplated under Sub-section (2), and that the same is apparent from the language of Section 6 itself. He further observed as follows :

It will be seen, therefore, that, Sub-section (1) of S. 6 comprises of two parts- firstly, the satisfaction of the Government that a particular land is needed for a public purpose and secondly, the making of a declaration to that effect under the signature of a Secretary to such Government or of a duly authorised officer.

Sub-section (2) provides for the publication of the declaration so made under Sub-section (1), while Sub-section (3) states the effect of such a declaration.

xx xx xx xx xx xx xx xx As I read the Sub-section, even where the procedure prescribed u/s 5A is followed, a declaration under Sub-section (1) of Section 6 is made only after the Government is satisfied that a particular land is needed for a public purpose. Likewise, where by reason of the exercise of the emergency power under Sub-section (4) of Section 17, it may be presumed that the Government is satisfied that a particular land is needed for a public purpose, a declaration to that effect under the signature of a Secretary to the Government or of some duly authorised officer has nevertheless to be made under Sub-section (1) of Section 6.

In either case there is the antecedent satisfaction of the Government but with this difference, viz., that in the one case the satisfaction is reached after considering the objections to the proposed acquisition whereas in the other, without considering them because of the suspension of the procedure u/s 5A. It is only thereafter that the latter part of Sub-section (1) of Section 6 dealing with the making of a declaration, comes into play and then follows the publication of the declaration under Sub-section (2). In either case the making of a declaration under Sub-section (1) of Section 6 is mandatory and is subsequent to and conditional on, the satisfaction of the Government as envisaged by the first part of the Sub-section. The Legislature has thus interposed an intermediate step between the Government's satisfaction and the publication of the declaration and that step is the making of a declaration in the prescribed manner.

This view gains further support from the opening words of Sub-section (2) of Section 6 which are: "The declaration shall be published in the Official Gazette." The definite article "The" obviously refers to the declaration made under Sub-section (1) and to none other.

This, in my opinion, is the true construction of Sub-section (1) of Section 6, and under Sub-section (4) of Section 17, a declaration may be made u/s 6 at any time after the publication of the notification u/s 4(1), and not before. As pointed out already, Sub-section (4) of Section 17 speaks of the making of a declaration u/s 6 and not of the publication thereof. Thus, the making of a declaration is something distinct from and different to its publication; the former is governed by Sub-section (1) and the latter by Sub-section (2) of Section 6."

That making of the declaration is different from the publication of the declaration is also brought out by the observations of the Supreme Court in *Khadim Hussain Vs. State of U.P. and Others*, which are as follows : --

"The notification which takes place u/s 6(2), set out above, follows and serves only as evidence of the declaration. That the declaration mentioned in Section 6(i), set out above, differs from its notification is shown by the fact that it has to be signed by a Secretary or other officer duly authorised. The declaration is the form of an order. The notification is its publication and proof of its existence."

I am of the view that the position remains the same even after Land Acquisition (Amendment) Act, 1984.

6. The observations of Seetharam Reddy, J., in the case of *D.C.H.B. Society v. Land Acquisition Officer*, (1986 (1) ALT 326) seem to blur the distinction between the making of the declaration and the publication of the declaration u/s 6 of the Act when he observes "it is quite manifest from the aforesaid proviso (ii) that it is incumbent upon the authority concerned to publish the declaration contemplated u/s 6 within one year from the date of the publication of the notification u/s 4(1)". But on a careful perusal of the said decision, it becomes clear that the learned Judge was emphasizing really the making of the declaration u/s 6 within one year and that the distinction between making of the declaration and

publication of the declaration u/s 6 was not relevant in that case as it was not contended in that case that any declaration u/s 6 was in fact made but not published. In the sum up also the learned Judge mentions only that "Section 6 declaration must be made within one year from the date of publication of the notification u/s 4(1).....".

Even otherwise, I am satisfied that the said observations of the learned Judge are only obiter dicta as the question did not arise in that case for decision.

7. I therefore, do not find any merit in the contention advanced by the learned counsel for the petitioners that the declaration under Sub-section (1) of Section 6 of the Act is vitiated on the ground that it was not published within one year from the date of publication of the notification u/s 4(1) of the Act in the present case because I am satisfied that it was made within one year from the said date.

8. I also do not see any merit in the other contention advanced by the petitioner that the objections raised by the petitioner to the acquisition pursuant to the notice dt. 31-5-1986 u/s 5A of the Act were not considered by the Sub-Collector, Rajahmundry. I perused the records and I am satisfied that there was consideration of the objections raised by the petitioners herein including the objection as regards the utilisation of the land under acquisition by the petitioners for pisciculture. In the counter affidavit filed by the 2nd respondent, it is stated that the acquisition proposals were submitted by the Mandal Revenue Officer after inspection of the lands in question on 25-7-1985 itself. It is therefore, clear that the petitioners were aware that the proposals for acquisition of the lands were being made in July, 1985 itself. In the counter affidavit it is specifically alleged that "knowing the initiation of land acquisition proposals against their lands, the petitioners (land owners) have formed basing ponds etc., in their lands with an intention to avoid acquisition." In the affidavit in support of the Writ Petition, it is stated that the petitioners "started digging fish-tanks in the entire land in question in the month of November, 1985 and completed digging the same by the end of December, 1985." It is also stated in the counter affidavit that the petitioners are mainly engaged in large sized business at Ramachandrapuram having a big shop named as "Chintapalli General Stores" and that they are not dependent upon agriculture. It is also stated that the remaining extent of land with the petitioners after the proposed acquisition of Ac. 3-09 cents was converted into house-sites and that they were disposing of the same as house-site plots. It is further stated in the counter affidavit that as the petitioners are not depending upon agriculture and they are doing business, the benefit of small farmer cannot be extended to them. No reply affidavit has been filed by the petitioners denying the said averments in the counter affidavit filed by the 2nd respondent. The record discloses that all objections raised by the petitioners in their Objection Petition dated 9-7-1986 were considered.

8. In the circumstances, I do not find any basis for setting aside the acquisition proceedings impugned in this Writ Petition. The Writ Petition is therefore, dismissed. No costs. Advocate's fee Rs. 350/-.