
(2006) 12 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18397 of 2006

City Restaurant, Stores and Bakery

APPELLANT

Vs

Assistant City Planner and Others

RESPONDENT

Date of Decision : 14-12-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10
Constitution of India, 1950 — Article 14
Hyderabad Municipal Corporation Act, 1955 — Section 147
Land Acquisition Act, 1894 — Section 12, 18, 18(2), 19, 3

Citation : (2007) 2 ALD 635

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M. Basith Ali Yavar, for the Appellant; Ghanta Rama Rao, SC for Respondent Nos. 1 and 2, for the Respondent

Judgement

P.S. Narayana, J.—The City Restaurant Stores and Bakery represented by its Partner-the writ petitioner filed the present writ petition praying for issuance of a writ of certiorari calling for records and quash the Letter No. 16/8/17/5/21 /TPS/ C2/2005/75, dated 21-8-2006 issued by the 1st respondent and connected record relating to award proceedings in A/936/2005 dated 25-1-2006, issued by the 2nd respondent, as the same being illegal, arbitrary against principles of natural justice and consequently direct the respondents to allot alternative site to the petitioner by extending the benefits of the judgment made in W.P. No. 16705 of 1986 and to pass such other suitable orders.

2. The 1st respondent is the Assistant City Planner, Circle-II, Municipal Corporation of Hyderabad, the 2nd respondent is the Special Deputy Collector, Land Acquisition, Municipal Corporation of Hyderabad and the 3rd respondent-Sunil Kumar Gupta, who is the owner of the property in question, though duly served, none represents on his behalf.

3. Sri. Basith Ali Yavar, the learned Counsel representing the writ petitioner, had

taken this Court through the prior order made by this Court in W.P. No. 12626 of 2006 and would maintain that though the said writ petition was disposed of directing the respondents 1 and 2 not to take up any demolition activity relating to the mulgies 5 to 9 under the occupation of City Restaurant forming part of the property bearing Municipal No. 21-5-16 at Petlaburj, Hyderabad unless and until they follow the due process of law under the provisions of the Act aforesaid, it is stated that the said due process of law was not followed.

4. The learned Counsel also would further submit that the award is said to have been made in pursuance of the Land Acquisition proceedings and the learned Counsel would maintain that the petitioner came to know about the same subsequent to the disposal of the prior writ petition and on verification, it was detected that the Municipal Corporation of Hyderabad had not served any notice whatsoever on the petitioner at any point of time though the service of notice is mandatory but made the award.

5. The learned Counsel also would submit that the petitioner is the tenant in occupation of the premises in question and hence the petitioner would fall within the expression. "The person interested" and inasmuch as the service of notice on such "person interested" being mandatory, the proceedings are vitiated and the award is liable to be quashed.

6. The learned Counsel also had taken this Court through Sections 9 and 18 of the Land Acquisition Act and further placed reliance on certain decisions to substantiate his contentions.

7. Sri Ghanta Rama Rao, the learned Standing Counsel, representing the respondents 1 and 2, on the other hand, would submit that may be the service of notice u/s 9(3) of the Land Acquisition Act on the tenant also may be necessary but the interest of the tenant is limited at the best concerned with the apportionment of compensation only.

8. The learned Standing Counsel also would contend that though the petitioner contends that he is not aware of these proceedings, the facts of the case would clearly go to show that the petitioner had ample knowledge about the proceedings and only with a view to further delay the demolition activity which is being taken in public interest, this writ petition was thought of. Even otherwise, the learned Counsel would submit that the petitioner as well can agitate for the apportionment of the compensation amount already kept in deposit and the petitioner has no any further right to question the award as such or pray for quashing of the same.

9. The learned Standing Counsel also would further maintain that when the prior writ petition was disposed of at the admission stage these facts could not be brought to the notice of this Court. However, inasmuch as already the due process of law was followed no further notice need be given in this regard. The alleged tenant to agitate his rights, if any, praying for the apportionment of compensation by making appropriate application u/s 18 of the Land Acquisition

Act, if the writ petitioner is so advised. The learned Standing Counsel also would contend that in a matter of this nature, the bona fides of the parties also may have to be looked into. It is not as though the Municipal Corporation of Hyderabad had not followed the procedure and had not deposited the amount, and the controversy at the best may be in between the 3rd respondent the owner of the property, and the petitioner the alleged tenant, the same can left open to be decided by the competent civil Court and taking into consideration the public interest involved in the matter, respondents 1 and 2 may be further permitted to proceed with the demolition activity instead of quashing the award in question. Even otherwise the learned Standing Counsel would contend that without disturbing the award, taking into consideration the limited interest to which the petitioner-alleged tenant is entitled to, the writ petitioner may be given liberty to further agitate the matter before the appropriate Civil Court.

10. The learned Standing Counsel also had drawn the attention of this Court to Sections 9, 12 18 and 30 of to the Land Acquisition Act and had explained the scope and ambit, and also the very object of initiating the land Acquisition proceedings, and the limited interest which a tenant may have in such cases. The learned Standing Counsel also placed reliance on certain decisions to substantiate his contentions.

11. The case of the writ petitioner is that he is a tenant in possession of Mulgies Nos. 5 to 9 forming part of the property bearing Municipal No. 21-5-16, situated at Petlaburj, Hyderabad and the petitioner has been carrying on business therein and respondent No. 3 is the owner/landlord of the aforesaid premises. It is also stated that at the time of inception of tenancy the rent was meager and the present monthly rent is Rs. 10,000/- and the petitioner is running the business after obtaining licenses as required from all the departments.

12. Further it is averred that the respondents 1 and 2 are carrying on road widening programme to widen the road leading from Petlaburj to Puranapul. Respondents 1 and 2 in collusion with respondent No. 3, the landlord intend to evict the petitioner without following due process of law under the guise of road widening programme illegally. It is further stated that questioning the same the petitioner filed the W.P. No. 12626 of 2006 and this Court by order dated 26-6-2006 directed the respondent No. 1 and the Commissioner, Municipal Corporation of Hyderabad, not to take up any demolition activity relating to the property in petitioner's possession unless and until they follow the due process of law as specified under the provisions of the Act.

13. The relevant portion of the said order reads as hereunder:

In the light of the provisions referred to supra and also in the light of the decision specified above, it is needless to say that the Municipal Corporation of Hyderabad is bound to follow due process of law before proceeding with the demolition activity.

In view of the same, the writ petition is disposed of directing the respondents 1

and 2 not to take up any demolition activity relating to the mulgies 5 to 9 under the occupation of City Restaurant forming part of the property bearing Municipal No. 21-5-16 at Petlaburj, Hyderabad unless and until they followed the due process specified under the provisions of the Act of aforesaid.

The writ petition is disposed of. No order as to costs.

14. Further, it is averred in the affidavit filed in support of the writ petition at Para 5 that the petitioner received Letter No. 16/8/ 17/5/21APS/C2/2005/75, dated 21-8-2006, from the office of the 1st respondent, wherein it was mentioned that the respondents have already followed the due process of law as directed by this Court. The said order dated 21-8-2006 referred to supra reads as hereunder:

With reference to the above subject cited it is submitted that Municipal Corporation of Hyderabad has taken up the construction of parallel bridge adjacent to Muslim Jung Bridge under which the premises bearing No. Pr.No. 21-5-16/1-16, Opp. City College, Hyderabad is getting affected entirely in the road widening proposals to an extent of 750.40 sq.yds. As the owner of the property was not willing to handover the said premises under private negotiation this office initiated land acquisition proceedings u/s 147 of HMC Act 1955 and the Special Dy. Collector, Land Acquisition, Municipal Corporation of Hyderabad u/s 18 of L.A Act has passed award vide reference 1st cited and the entire property has been acquired under the said proceedings. Further you have approached the Hon"ble High Court vide reference 2nd cited and vide reference 3rd cited the writ petition is disposed of directing the respondents 1 and 2 (i.e. The Commissioner, Municipal Corporation of Hyderabad and The Asst. City Planner Circle No. II, Municipal Corporation of Hyderabad) not to take up any demolition activity relating to the mulgies 5 to 9 under the occupation of City Restaurant forming part of the property bearing Municipal No. 21-5-16 at Petlaburj, Hyderabad unless and until they follow the due process specified under the provisions of the HMC Act aforesaid.

In view of the above as the entire property bearing No. 21-5-16/1-16, Opp. City College, Hyderabad including the portion under your occupation i.e. City Restaurant, Stores & Bakery including i.e., mulgies 5 to 9 has already been acquired following the due process specified under the provisions of the HMC Act as stated in the order of the Hon"ble High Court dated 26-6-2006, you are hereby requested to vacate and handover the same to the Corporation within three days in the interest of public.

Asst. City Planner, Circle No. II MCH.

15. It is also stated that the respondents had not issued any notice to the petitioner while initiating land acquisition proceedings, as such, the award proceedings No. A/936/2005 dated 25-1-2006, issued by the respondent No. 2 are against the principles of natural justice and the same are not binding upon the petitioner. Further, it is stated that this Court in Writ Petition No. 16705 of

1986, in fact, came to the rescue of the tenants and alternative sites were allotted. Further, it is stated that the respondents had made statements in newspapers that alternative sites will be allotted to the tenants in cases of road widening. The action of the respondents in directing the petitioner to vacate the property within three (3) days vide impugned letter, without allotting alternative site to the petitioner, is violative of Article 14 of the Constitution of India. In such circumstances, the petitioner approached this Court praying for the relief already referred to supra.

16. Counter-affidavit was filed by the 1st respondent and a reply affidavit was also filed, reiterating the same stand taken in the affidavit filed in support of the writ petition.

17. In the counter-affidavit of the 1st respondent, the allegation of collusion had been specifically denied, but however, it was averred that it is true that writ petitioner filed W.P. No. 12626 of 2006 and this Court disposed of the same by an order dated 26-6-2006 at the stage of admission, directing the Municipal Corporation of Hyderabad not to demolish subject-matter of writ petition without following the procedure.

18. It is further stated in Para 4 of the counter-affidavit that an extent of 750.40 square yards in premises No. 21-5-16/1 to 16, opposite to City College, Hyderabad, belonging to 3rd respondent, is affecting the approach road of newly constructed parallel bridge at Muslim Jung. As the 3rd respondent did not consent to give the said land on free of costs by availing the benefits, the Municipal Corporation of Hyderabad requested the 2nd respondent to acquire the land under Land Acquisition Act. As such by invoking urgency clause a draft Section 6 notification was published on 27-4-2000 and 28-4-2000. Aggrieved by the same, 3rd respondent filed W.P. 16011 of 2000 and this Court disposed of the writ petition by an order dated 4-2-2002 setting aside the Section 6 declaration and directed to complete 5A enquiry.

19. Further, it was stated in Para 5 of the counter-affidavit that subsequently fresh proposals were initiated for acquisition of land and after completing all formalities, an award in A/936/2005, dated 25-1-2006 was passed and necessary compensation was also paid to the 3rd respondent. On the request of the 3rd respondent, the matter was referred to the competent Civil Court u/s 18 of the Land Acquisition Act and the said reference is pending before the competent Civil Court. Further, specific stand is taken that inasmuch as already due process of law had been followed and in view of the fact that the writ petition was disposed of at the admission stage, the question of further following due process of law may not arise.

20. Further, it was averred in Para 7 of the counter-affidavit that the 1st respondent issued a letter dated 21-8-2006 asking the petitioner to vacate the premises within three days so as to enable the allegation to take up laying of approach road as already procedure was followed. The petitioner is very much

aware about the proceedings initiated and he also called for the records in the case filed by them in City Civil Court. The award made by the 2nd respondent is purely within the legal parameters. The petitioner is not the owner but he is only tenant and the owner was heard before passing the award.

21. Relating to the plea of the alternative site, the allegations were specifically denied. Further, specific stand is taken that even if any claims are there that would be against the 3rd respondent only and the petitioner cannot stall the laying of road even after acquiring the land by following due procedure.

22. In the reply affidavit filed again the ground of collusion had been reiterated and further specific stand is taken that without issuing any notice to the petitioner under the Land Acquisition Act only with a oblique motive to avoid payment of compensation, the said proceedings had been initiated by respondents 1 and 2 and several other factual details also had been narrated in the reply affidavit filed by the petitioner.

23. It is no doubt true that the prior writ petition referred to supra W.P. 12626 of 2006 was disposed of at the admission stage and may be that the learned Standing Counsel for the Municipal Corporation had no appropriate instructions at the relevant point of time to represent before this Court in relation to the passing of the award or reference already made in this regard at the instance of the 3rd respondent, the owner of the property.

24. Strong reliance was placed on J. Rajyalakshmi and Others Vs. Land Aquisition Officer, HUDA, Hyd., , wherein the learned Judge of this Court while dealing with Section 9(3) of the Land Acquisition Act 1894 at Para 6 observed as follows:

It is now fairly well settled that for want of notice u/s 9(3) on the interested persons, the award passed by the Collector cannot be quashed and if the interested persons come to know about the award, they can seek reference u/s 18 of the Act without any bar of limitation affecting their rights. Simply because notice to the interested persons is necessary, the award passed cannot be set aside on account of this defect. It is open to the affected party to seek reference. However, when it is not known or believed that some persons are interested in the land it cannot be postulated that the award is per se bad or illegal. Therefore, the Court while protecting the rights of the interested persons has to strike a balance without disturbing the award already passed by enabling the interested person to pursue his remedies, seeking reference before the Civil Court and if reference has already been disposed of to file an appeal before the appellate Court. Having regard to these principles, it has to be seen as to what would be the proper order to be passed in this case.

25. The Class IV Employees House Building Society having its office Amaravathi Road, Guntur by its President v. Tanuboddi Venkatappa Reddy and Ors. 1980 (1) APLJ 437 , Velagapudi Kanaka Durga Vs. District Collector, Krishna District, Chilakpadui and Others, , Upplapati Krishna Murthy v. Government of A.P and Ors. 1997 (5) ALD 288 and The Managing Director, APSRTC Vs. M. Kamalakumari

and Others, , had been relied upon.

26. In Borige Someswara Rao Vs. District Collector and Others, , this Court held that notice of intention to acquire land to person interested, service of notice is mandatory and though the petitioner is subsequent purchaser, in view of the fact that notice u/s 9(3) of the Land Acquisition Act 1894 being mandatory, he is entitled to the notice.

27. The learned Standing Counsel representing respondents 1 and 2, specifically had drawn the attention of this Court to a decision of the Division Bench of this Court in The Class IV Employees House Building Society's case (supra), wherein the Division Bench, while dealing with the fact of non-compliance of Section 9(3) of the Land Acquisition Act 1894, held that in a case where it is positively known and believed that a person is an occupier of the land and so interested in the land the obligation to serve a notice u/s 9(3) is absolute. Failure to serve a notice on such person will amount to wilful perversity and the subsequent proceedings cannot be considered bona fide and should be held to be colourable and therefore, inoperative. On the other hand, as far as persons interested in the land are concerned, an obligation is cast if the Collector knows or believes that there are such persons. If non-service of the notice is due to mere ignorance of the fact of his having so known or believed than to wilful perversity, then the award would be bona fide and the possession of the land cannot be disturbed.

28. It is no doubt true that the Division Bench observed that if non-service of the notice is due to mere ignorance of the fact of his having so known or believed than to wilful perversity, then the award would be bona fide and the possession of the land cannot be disturbed. Emphasis was laid by the learned Standing Counsel on these observations made by the Division Bench referred to supra.

29. Further reliance also was placed in Rauf Ahmed Vs. Special Deputy Collector, Land Acquisition, MCH and Others, , wherein the learned Judge of this Court at Paras 9 and 10 observed as follows:

It is not in dispute that the petitioner was neither present nor was represented before the 1st respondent when the award was made. The procedure stipulated under Sub-section 2(b) of Section 18 gets attracted to the case of the petitioner. The application made by the petitioner seeking reference is within 6 months from the date of award. There is nothing in Section 19 or any other provision, which prohibits the Land Acquisition Officer to make more references than one, in respect of the same property. The variety of situations provided for u/s 18, if at all any thing, suggest the otherwise.

It is true that the 1st respondent referred the matter to the Civil Court at the instance of some persons who are present or were represented when the award was pronounced. That fact by itself does not disentitle the petitioner to seek a reference. It may be that on account of similarity of claims, Civil Court may club similarity of claims, Civil Court may club and decide the matters together. Requiring the petitioner to file an application under Order 1 Rule 10 CPC does not

appear to be in consonance with the purport of Section 18. It is true that a Larger Bench of this Court in *Repaka Bhyravamurthy and another Vs. Muppidi Venkataraju and others*, , held that it is always open to a person, who has not participated in the award enquiry, to file an application under Order 1 Rule 10 CPC in a reference made u/s 30, which may be pending in Civil Court. Such an observation was not made as regards reference, which is made u/s 18. Inasmuch as the reference that is pending before the Civil Court consisting the present award is the one under Sections 18 and 30, the petitioner cannot be compelled to make an application under Order 1 Rule 10 CPC. Restricting the claim of the petitioner to the reference u/s 30 may have its own ramifications on the relief claimed u/s 18.

30. The learned Counsel representing the writ petitioner had made certain submissions relating to the right of the tenant to have the apportionment of the compensation and further placed reliance on the under noted decisions in *Katari Satyanarayana v. The District Collector, Krishna* and Ors. 1990 (2) ALT 447, *Vajja Koteswara Rao and Ors. v. The Government of A.P* retd., by its Secretary, Social Welfare Dept., and Ors. 1979 (1) ALT 65 and *Velagapudi Kanaka Durga Vs. District Collector, Krishna District, Chilakpadui and Others*, :.

31. Further, strong reliance was placed on the decision of the Full Bench of this Court in *Ushodaya Publications, Hyderabad Vs. Commissioner, Municipal Corporation of Hyderabad* and Another, , whereunder at Para 8, observed that such a right of the lessee is a valuable right. In the event the property is acquired in terms of the provisions of the Land Acquisition Act, 1894 the petitioner, as a lessee, comes within the definition of "person interested" u/s 3(b) of the Land Acquisition Act, as it is liable to be evicted otherwise than the provisions of law governing its lease.

32. Reliance was also placed on *Rajinderjit and Others Vs. State of Punjab and Others*, , wherein the said Court held that the provisions of Section 9(3) of the Land Acquisition Act are mandatory and where notice had not been issued to the occupiers the award passed by the Collector is liable to be quashed.

33. Section 18 of the Land Acquisition Act 1894 dealing with the Reference to the Court reads as hereunder:

18. Reference to Court:- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made:

(a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

34. This Court is conscious of the fact of the hardship to which the Municipal Corporation would be placed and also the public interest involved in the matter. It is needless to say that u/s 18 of the Land Acquisition Act 1894 even if the tenant to be permitted to seek a reference by way of an application, certain procedure and formalities inclusive of the question of limitation would come in the way. It is needless to say that the view expressed by the Full Bench, referred to supra, is binding on this Court and a tenant would fall within the meaning of "person interested". It is also not in serious controversy that the notice u/s 9(3) of the Land Acquisition Act 1894 is mandatory. But what is contended, in elaboration, by the learned Standing Counsel, representing the Municipal Corporation, is that this at best can be taken only as bona fide mistake and instead of quashing the award as such, keeping in view of the public interest and also the limited interest of the tenant, it would be just and proper to permit the writ petitioner-tenant to agitate in relation to the quantum of compensation, if any to which the petitioner may be entitled, and both in law and equity, not to quash all the proceedings. In substance, this appears to be a stand. In the light of the facts presenting of the Full Bench, referred to supra and also the specific stand taken by the writ petitioner, this Court is of the considered opinion that this case would not fall under just a bona fide mistake as referred to supra or observed by the Division Bench of this Court in *The Class IV Employees House Building Society's case* (supra), in the light of the uniform opinion expressed that notice is mandatory, this Court is of the considered opinion that, without expressing any further opinion in relation to the apportionment or other aspects, it would be just and proper to quash the award and also the other proceedings, giving liberty to the respondents 1 and 2 to follow due process of law as already directed by this Court in the prior W.P. No. 12626 of 2006. It is needless to say that inasmuch as public interest is involved in the matter, respondents 1 and 2 and the Municipal Corporation of Hyderabad are at liberty to expedite the proceedings in accordance with the provisions of the Land Acquisition Act and also the provisions of the Hyderabad Municipal Corporation Act 1955 and further proceed with the matter in accordance with law.

35. Accordingly the writ petition is allowed to the extent indicated above. No order as to costs.