
(2008) 08 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5245 of 2004

D. Ramadevi and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Andhra Pradesh Housing Board Act, 1956 — Section 40(2)

Land Acquisition Act, 1894 — Section 17, 17(2), 4, 4(1), 4(2)

Citation : AIR 2009 AP 15 : (2008) 6 ALD 23 : (2009) 1 ALT 1

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

Bench : Single Bench

Advocate : S. Raju, for P.V. Krishnaiah, for the Appellant; Government Pleader for Land Acquisition, for Respondent Nos. 1 and 2 and Ranganatha Kumar, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a writ of mandamus to set aside notification dated 22.1.2004 issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the 1894 Act") by respondent No. 1 to the extent of Ac.0.24 cents comprised in Survey No. 289/2 of Vatluru Village, Peddapadu Mandal, West Godavari District.

2. The petitioners claimed to be the owners of the above mentioned land as having succeeded to the said property under gift deed dated 8.2.2001 executed by the original owner of the property, by name, Sri Nageswara Rao. In her affidavit, petitioner No. 1 stated that the said Nageswara Rao was the owner of Ac.4.00 cents of agricultural land having purchased the same in the year 1972 and that he gave away most of the said land to the Andhra Pradesh Housing Board (for short "the Board") in the year 1994 and gifted the remaining land of Ac.0.24 cents to the petitioners. She stated that the purpose mentioned in the notification, viz., construction of houses by the Board and selling them to general public, cannot be termed as public purpose as no State interest or public interest

is involved therein. It is also averred that already sufficient land was given by the original owner-Sri Nageswara Rao to the Board and only a small piece of land, which was gifted to the petitioners, is remaining and that they do not have any house sites or other piece of land except the land in question.

3. In the counter-affidavit filed by the Vice-Chairman and Housing Commissioner of the Board, who was impleaded as respondent No. 3, it is, inter alia, stated that after respondent No. 3 sent land plan schedules to the Mandal Revenue Officer, the latter inspected the land admeasuring Acs.3.28 cents in R.S. Nos. 289/2B, 293/2a, 291/1, 297/4, 297/5 and 300/3 on 7.3.2003 and submitted proposals for acquisition of the said land as they are situated very near to the village and adjacent to the left side of Eluru Canal, leading from Vijayawada to Eluru; that the land of Ac.0.24 cents is situated in R.S. No. 289/B; that the Board has already acquired the land on the other side i.e., opposite side of the land proposed for acquisition; and that necessary notification and declaration were issued for acquiring the said lands by dispensing with enquiry u/s 5-A of the Act. It is further stated that in view of filing of this writ petition relating to Ac.0.24 cents, valuation proposals were submitted to the District Collector, West Godavari District for the remaining extent of land.

4. While denying the allegation of the petitioner that the purpose mentioned in the notification is not a public purpose, he stated that the Board was constituted under the A.P. Housing Board Act, 1956 (for short "the 1956 Act") for the purpose of taking such measures, making such schemes and carrying out such works as are necessary for the purpose of dealing with and satisfying the need for housing accommodation; that u/s 40(2) of the 1956 Act the Board may take steps for compulsory acquisition of any land or any interest therein required for execution of a Housing Scheme in the manner provided under the 1894 Act as modified by the 1956 Act; and that acquisition of any land for the purpose of 1956 Act shall be deemed to be for a "public purpose" within the meaning of the 1894 Act. He also justified the action of invocation of urgency clause by placing reliance on Clause (5) of Sub-section (2) of Section 17 of the 1894 Act. It is further submitted that the Board was established to provide housing accommodation to the persons in need of the same and that it was not established for the purpose of making profits.

5. The counter-affidavit filed by the Revenue Divisional Officer, is also on the similar lines, and therefore, its contents need not be specifically referred to herein.

6. The provisions of the 1894 Act conferred upon the State the power of eminent domain. By exercising this power, the State acquires the property of its citizens against their will. Therefore, the Act is expropriatory in nature and its provisions are required to be construed strictly. (See: State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, , Khub Chand and Others Vs. State of Rajasthan and Others, and Collector of Central Excise, Ahmedabad Vs. Orient Fabrics Pvt. Ltd.,).

7. In *Aflatoon and Others Vs. Lt. Governor of Delhi and Others*, , K.K. Mathew, J., speaking for the Constitution Bench held that while it is only necessary to state in the notification to be issued u/s 4(1) of the Act that the land is needed for a public purpose, one reason for specification of the public purpose in the notification is to enable the person whose land is sought to be acquired to file objection u/s 5-A. It is further held unless a person is told about the specific purpose of the acquisition, it may not be possible for him to file a meaningful objection against the acquisition u/s 5-A. The Supreme Court further observed that whether the purpose specified in a notification u/s 4 is sufficient to enable an objection to be filed u/s 5-A would depend upon the facts and circumstances of each case.

8. In *Divisional Forest Officer, Jannaram, Adilabad Dist. Vs. Ailal Sathaiah @ Satyanarayana*, , the Supreme Court, on an analysis of the provisions of Section 5-A of the Act held that the objections filed under the said provision can relate to the contentions that: (i) the purpose for which land is being acquired is not a public purpose; (ii) that even if the purpose is a public purpose, the land of the objector is not necessary, in the sense that the public purpose could be served by other land already proposed or some other land to which the objector may refer; or (iii) that in any event, even if this land is necessary for the public purpose, the special fact-situation in which the objector is placed, it is a fit case for omitting his land from acquisition. It was held that objection (ii) is personal to the land and objection (iii) is personal to the objector and unless objections are filed, the said person is deemed to have waived those objections. As regards objection (i), the Supreme Court held that even though the objections are not filed, the affected party can challenge in Court that the purpose is not a public purpose.

9. In a plethora of judgments, the Supreme Court held that the opportunity of being heard is provided u/s 5-A of the Act for the purpose of showing that the proposed acquisition is not for a public purpose and/or the land proposed to be acquired is not suitable therefor. (See: *Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others*, , *State of Tamil Nadu and another Vs. A. Mohammed Yousef and others*, , *Bharat Singh and Others Vs. State of Haryana and Others*, and *Shri Farid Ahmed Abdul Samad and Another Vs. The Municipal Corporation of the City of Ahmedabad and Another*,).

10. In *State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc.*, , the Supreme Court observed that the judgment in *Munshi Singh and Others Vs. Union of India (UOI)*, , was explained in *Aflatoon's* case (supra), by stating that whether the public purpose stated in the particular notification is vague or not is a question of fact to be decided in each case and cannot be treated as a question of law.

11. In *Madhya Pradesh Housing Board's* case (supra), a three Judge Bench of the Supreme Court held that the process of acquisition has to start with a notification issued u/s 4 of the Act, which is mandatory; that any such notification, which is aimed at depriving a man of his property, has to be strictly

construed and any serious lapse on the part of the acquiring authority would vitiate the proceedings and cannot be ignored by the Courts.

12. The Supreme Court further held that the object of issuing a notification u/s 4 of the Act is twofold. First, it is a public announcement by the Government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the Government for the "public purpose" mentioned therein; and, secondly, it authorizes the departmental officers or officers of the local authority, as the case may be, to do all such acts as are mentioned in Section 4(2) of the Act. The notification is, thus, required to be given with sufficient clarity not only regarding the "public purpose" for which the acquisition proceedings are being commenced but also as to the locality where the land is situated to enable the interested persons to know as to which land is being acquired and for what purpose and to take further steps under the Act by filing objections etc., that it is open to such persons to canvass the non-suitability of the land for the alleged public purpose also. In that case, the Supreme Court was dealing with a notification issued under Section 4(1), which mentioned the public purpose as "residential". While interpreting the said purpose, the Supreme Court held that the said purpose mentioned in the notification is hopelessly vague. It is apposite to reproduce the relevant portion of the judgment hereunder:

14. Apart from the defect in the impugned notification, as noticed above, we find that even the "public purpose" which has been mentioned in the schedule to the notification as "residential" is hopelessly vague and conveys no idea about the purpose of acquisition rendering the notification as invalid in law. There is no indication as to what type of residential accommodation was proposed or for whom or any other details. The State cannot acquire the land of a citizen for building some residence for another, unless the same is in "public interest" or for the benefit of the "public" or an identifiable section thereof. In the absence of the details about the alleged "public purpose" for which the land was sought to be acquired, no one could comprehend as to why the land was being acquired and therefore was prevented from taking any further steps in the matter.

(Emphasis supplied)

13. The instant case is almost identical to the one decided by the Supreme Court in *Madhya Pradesh Housing Board's case* (supra). As noted hereinabove, the impugned notification mentioned the purpose as for construction of houses by the Board. As observed by the Supreme Court, unless the minimal details, such as what type of housing accommodation was proposed or for whom, it is not possible for the petitioners to know whether the acquisition was for public purpose or not.

14. Sri Ranganath Kumar, learned Standing Counsel for respondent No. 3-Board, strenuously contended that u/s 40(2) of the 1956 Act, the acquisition of any land or any interest therein for the purpose of the said Act shall be deemed to be

acquisition for a public purpose within the meaning of the 1894 Act and, therefore, it is deemed that the purpose mentioned in the impugned notification is a "public purpose".

15. I am not prepared to accept such a broad proposition. It is, no doubt, that the 1956 Act introduced a deeming clause to legitimize acquisitions being made by the Board. But, at the same time, the said provision will not give a blanket licence to the Board to acquire the lands of the citizens without specifically indicating the purposes for which the same are proposed to be acquired. It may quite well be that in a given case the Board may exceed its power, authority and jurisdiction in acquiring the land of private persons for the purposes which may not strictly fall within the ambit of the provisions of the 1956 Act. In such cases, it is not permissible for the Board to contend that, irrespective of whether the purpose is mentioned in the notification with specificity or not, the same shall be deemed to be public purpose by virtue of Section 40(2) of the 1956 Act. As held by the Supreme Court in *Aflaloon's case* (supra) and explained in *L. Krishnan's case* (supra), whether the purpose mentioned in the notification is for a public purpose or not is not a question of law but the same is a question of fact, which is required to be decided with reference to the facts of each case. In my considered view, in the absence of any details, whatsoever, contained in the notification issued u/s 4(1), except saying that the land is needed by the Board for construction of houses, the said purpose mentioned in the impugned notification is too vague to be considered as a public purpose for acquiring the valuable land of the petitioners.

16. Since the very notification itself is being quashed on the ground of vagueness, I do not propose to go into the aspect as to whether the respondents were justified in dispensing with enquiry u/s 5-A of the 1894 Act by invoking the urgency clause u/s 17(2) of the 1894 Act.

17. In the circumstances, the writ petition is allowed and the impugned notification is quashed. The respondents, however, are not precluded from initiating acquisition proceedings afresh in accordance with law and in the light of the findings rendered above.