

(2008) 04 AP CK 0033

In the Andhra Pradesh High Court

Case No : Rev. WP MP No. 4269 of 2008 in WP No. 6539 of 2006 and Rev. WP MP No. 12523 of 2008 in WP No. 26464 of 1996

District Collector and Another

APPELLANT

Vs

Maddukuri Joga Rao and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 16, 17, 17(1)

Citation : (2008) 4 ALD 691

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Government Pleader for Land Acquisition, for the Appellant; M.S. Ramachandra Rao, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—These two review petitions are filed by the respondents in the writ petitions with a prayer to review the common order dated 9.2.2007 rendered in WP No. 26464 of 1996 and WP No. 6539 of 2006.

2. The writ petitioners claim to be the owners of the land situated in Pavara Village, East Godavari District, which was acquired under the provisions of the Land Acquisition Act, 1894 (for short, "the Act") for the purpose of providing house sites to the poor. It is not in dispute that the notification u/s 4(1) of the Act was published on 12.4.1984. The enquiry u/s 5A of the Act was dispensed with invoking the urgency clause u/s 17(4) of the Act and the declaration u/s 6 of the Act was published on 28.4.1984. Thereafter, possession was taken on 10.6.1984. However, WP No. 9314 of 1984 filed by the petitioners questioning the action of the respondents in invoking the urgency clause u/s 17(4) of the Act was allowed on 18.10.1985 holding that the action of the respondents in invoking Section 17(4) of the Act was unwarranted. Accordingly, the declaration u/s 6 of the Act was set aside and the writ petition was disposed of directing the respondents to conduct enquiry u/s 5A of the Act. Pursuant thereto, after

conducting enquiry u/s 5A of the Act a fresh declaration u/s 6 of the Act was made on 17.1.1987. Subsequently after conducting due enquiry the Award was passed on 21.11.2005 fixing the compensation.

3. In the writ petitions it was primarily contended by the petitioners that since the Award dated 21.11.2005 was made beyond two years from the date of publication of Section 6 declaration dated 17.1.1987, the entire proceedings stood lapsed u/s 11A of the Act. The respondents did not dispute the dates as pleaded by the writ petitioners, however, contended that, during the pendency of W.A. No. 776 of 1989 filed by the 1st petitioner and his mother, stay of dispossession ordered by this Court was in operation and though the said appeal was disposed of on 5.11.1992 they were not aware of the same and consequently no award could be passed.

4. The said version of the respondents was not accepted in view of the fact that there was no direction by this Court pending WA No. 776 of 1989 staying the award proceedings. Accordingly WP No. 6539 of 2006 and WP No. 26464 of 1996 were allowed holding that since the award was made on 21.11.2005 beyond two years from the date of Section 6 declaration dated 17.1.1987, the notification u/s 4(1) of the Act dated 12.4.1984 stood lapsed by virtue of Section 11A of the Act. Consequently, the respondents were directed to publish a fresh notification u/s 4(1) of the Act within a period of three months and thereafter pass a fresh award following due process of law.

5. These review petitions have been filed by the respondents (Government) contending inter alia that since admittedly possession of the land in question was taken on 10.6.1984, Section 11A of the Act has no application and therefore it cannot be held that the proceedings stood lapsed. Thus, it is contended that the common order dated 9.2.2007 in the writ petitions suffers from an error apparent on the face of the record and requires review.

6. In support of the above contention, the learned Government Pleader relied upon the decision of the Supreme Court in Satendra Prasad Jain and Others Vs. State of U.P. and Others, .

7. It is true that Section 11A of the Act can have no application to the cases of acquisition u/s 17 of the Act invoking the urgency clause and where the Government takes possession of the land prior to making of the Award. In such cases, as held by the Supreme Court, since the title to the land has already been statutorily vested in the Government, the same will not revert to the owners.

8. Though the learned Counsel for the respondents/writ petitioners did not dispute the settled legal proposition, sought to distinguish the above decision of the Supreme Court contending that the possession taken from the petitioners on 10.6.1984 became illegal in view of the order of this Court in WP No. 9314 of 1984. Hence, according to the learned Counsel it is mandatory to pass the Award within two years in terms of Section 11A of the Act.

9. While elaborating the said submission, the learned Counsel for the writ petitioners pointed out that WP No. 9314 of 1984 filed by the writ petitioners questioning the invocation of the urgency clause u/s 17(4) of the Act was allowed by this Court by order dated 18.10.1985 thereby quashing the declaration u/s 6 of the Act dated 28.4.1984. Thus, it is contended that the possession taken prior to that on 10.6.1984 became illegal since the same was not under the provisions of the Act.

10. For proper appreciation of the above submissions, it is necessary to refer to some of the relevant provisions under the Act.

Section 11A. Period within which an Award shall be made:-The Collector shall make an Award u/s 11 within a period of two years from the date of the publication of the declaration and if no Award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

Section 16. Power to take possession:-When the Collector has made an Award u/s 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

Section 17. Special powers in cases of urgency:- (1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such Award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in Section 9, Sub-section (1), take possession of any land needed for a public purpose. Such land shall thereupon vest absolutely in the Government, free from all encumbrances.

11. The above provisions make it clear that the possession of the land governed by the notification u/s 4(1) of the Act can be taken u/s 16 of the Act after passing of the Award where urgency clause u/s 17(4) of the Act is not invoked. In cases where the urgency clause u/s 17(4) of the Act is invoked and the enquiry u/s 5A of the Act is dispensed with, the Collector is entitled to take possession even before an Award is made on the expiry of the 15 days from the publication of the notice u/s 9(1) of the Act as provided u/s 17(1) and thereupon such land shall absolutely vest in the Government free from all encumbrances. These are the only two circumstances contemplated under the scheme of the Act to take possession of the land acquired.

12. In the case on hand, admittedly, possession was taken on 10.6.1984. Though by that time, declaration dated 28.4.1984 was published u/s 6, the said declaration was quashed by this Court in W.P. No. 9314 of 1984 by order dated 18.10.1985. A perusal of the order dated 18.10.1985 in W.P. No. 9314 of 1984 shows that this Court upheld the contention of the petitioners that invocation of the urgency clause u/s 17(4) of the Act was not justified and accordingly while quashing Section 6 declaration dated 28.4.1984, ordered fresh enquiry u/s 5A of the Act. It is not in dispute that pursuant to the said order, enquiry was conducted u/s 5A of the Act and a fresh declaration u/s 6 was published on 17.1.1987. Consequently, possession taken on 10.6.1984 was rendered illegal

since the same did not fall either u/s 16 or Section 17(1) of the Act.

Having interpreted the scope and object of the relevant provisions of the Act, the Supreme Court in *Jethmull Bhojraj Vs. State of Bihar and Others*, , made it clear that until and unless possession is taken either u/s 16 or u/s 17(1) of the Act the lands for acquisition did not vest in the Government.

13. In the light of the legal position explained above, I find force in the submission of the learned Counsel for the respondents/writ petitioners that possession taken on 10.6.1984 was illegal and not under the provisions of the Act. Consequently the ratio laid down in *Satendra Prasad Jain v. State of U.P.* (supra) cited by the learned Government Pleader is not attracted to the case on hand. Since the possession taken on 10.6.1984 was illegal and not in accordance with law, the land did not statutorily vest in the Government. Consequently it is mandatory to pass Award within two years as laid down u/s 11A of the Act. Admittedly, the Award was passed on 21.11.2005 beyond two years from the declaration u/s 6 of the Act dated 17.1.1987. Hence, the entire proceedings stood lapsed. The said conclusion arrived at in the order under review, does not suffer from any error as alleged by the review petitioners.

14. Hence the review petitions are dismissed. No costs.