

(2000) 06 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23313 of 1998

E. Rama Murthy and another

APPELLANT

Vs

Government of Andhra Pradesh and others

RESPONDENT

Date of Decision : 07-06-2000

Acts Referred:

Constitution of India, 1950 — Article 300A

Land Acquisition Act, 1894 — Section 17(4), 4(1), 5A, 6

Citation : (2000) 4 ALD 74 : (2000) 3 ALT 495 : (2000) 3 APLJ 126

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. L. Ravi Chander, for the Appellant; Government Pleader for Land Acquisition, for the Respondent

Judgement

1. The petitioners are the brothers and owners of 2 acres of land comprised in S. Nos.639, 640, 641/2 and 641/3 situate in Suryapet village and Mandal, Nalgonda District totally ad measuring Ac.3-29 guntas. The above land owned by the petitioners and one Smt. Erlapati Lakstinaamma, wife of Venkatanarayana, is sought to be acquired under the provisions of the Land Acquisition Act, 1894 (for short "the Act") for the public purpose, to wit. for providing additional accommodation to the existing APSW Residential School/Junior College for Girls, Suryapet. The petitioners have sought for quashing the notification issued u/s 4(1) of the Act in G.O. Rt. No.280 Social Welfare (SWRS) Department dated 3-6-1998 and declaration issued u/s 6 of the Act in Government Memo No.21 826/Social Welfare (SWRS) Department dated 4-6-1998 and subsequent consequential actions taken by the respondent State authorities.

2. The background facts that led to the filing of the present writ petition be noted briefly as under :

On an earlier occasion the Principal of the A.P. Social Welfare Gurukula School, Suryapet addressed a letter dated 25-9-1996 to the petitioners calling upon the petitioners to quote a rate for the sale of the subject land in favour of the school

for providing additional accommodation to the existing APSW Residential School/ Junior College for Girls. The petitioners informed the Principal that they were not willing to sell the subject land in favour of the school. When the matters stood thus, at the behest of the Principal of the school, the Mandal Revenue Officer, Suryapet, the fourth respondent herein, issued proceedings in Memo No.A/2096/97 dated 21-5-1997 to the petitioners forcing them to alienate the land in favour of the school at the rate fixed by him, i.e., at the rate of Rs.2,00,000.00. At that stage, the petitioners filed Writ Petition No.14395 of 1997 in this Court against the said proceedings. That writ petition was heard and finally disposed of by this Court by its order dated 8-7-1997 directing the respondent therein (1. Revenue Divisional Officer, Suryapet, 2. Mandal Revenue Officer, Suryapet and 3. Principal, A.P.S.W. Gurukula School/Junior College for Girls, Suryapet) not to interfere with the possession of the petitioners of the subject land without recourse to law and without initiating necessary proceedings to acquire the subject land. Thereafterwards the impugned land acquisition proceedings were initiated.

3. In the affidavit filed in support of the writ petition the following contentions are raised by the petitioners :

(1) The notification issued u/s 4(1) of the Act in G.O. Rt. No.280 Social Welfare (SWRS) Department dated 3-6-1998 suffers from the vice of non-application of mind on the part of the first and the second respondents. Elaborating this contention it is pointed out that on the one hand the power to conduct enquiry u/s 5A of the Act is delegated to the third respondent and simultaneously the urgency clause u/s 17(4) of the Act is also invoked. This contradictory exercise of the power reflects ex facie arbitrariness in the impugned action.

(2) Having regard to the facts and circumstances of this case there was absolutely no justification to dispense with enquiry u/s 5A of the Act and to invoke urgency clause u/s 17(4) of the Act.

(3) The action of the respondent authorities in proposing to acquire the subject land is not bona fide, but mala fide because the Land Acquisition authorities resorted to compulsory acquisition under the provisions of the Act solely because the petitioners refused to part with their land in favour of the APSW Residential School and they were prejudiced by the steps taken by the petitioners before this Court against the proceedings issued by the Mandal Revenue Officer, Suryapet in Memo No. 1096 of 1997 dated 21-5-1997 threatening to evict the petitioners from the subject land.

(4) The Land Acquisition proceedings are vitiated inasmuch as the land acquisition authorities have not caused publication of the notification in two daily news papers and that there was 110 publication in the locality as required u/s 4(1) of the Act.

4. In response to rule nisi, the third respondent who is the Land Acquisition Officer has filed counter-affidavit supporting the impugned Land Acquisition

proceedings and contending that the writ petition is devoid of merits and therefore the same is liable to be dismissed.

5. Sri L Ravichander, learned Counsel appearing for the petitioners, reiterated and highlighted the same contentions taken by the petitioners in the affidavit filed in support of the writ petition.

6. The learned Government Pleader for Land Acquisition, on the other hand, maintained that no substantive ground is made out for interference with the impugned land acquisition proceedings.

Contentions 1 and 2 :--

The contentions 1 and 2 advanced by the learned Counsel for the petitioners be dealt with jointly for the sake of convenience. In the notification in G.O. Rt. No.280 Social Welfare (SWRS) Department published in A.P. Gazelle Extraordinary dated 25-6-1998 the Government of Andhra Pradesh in Para 2 thereof appoints the Revenue Divisional Officer, Suryapet to perform the functions of the Collector u/s 5A of the Act. Having appointed the Revenue Divisional Officer as the authority to conduct enquiry u/s 5A of the Act, in Para 3 it is curiously stated as under :

"Under sub-section (4) of Section 17 of the Act the Government of Andhra Pradesh directs that in view of the urgency of the case the provisions of Section 5A of the Act shall not apply to this case."

While the power of the Government to dispense with an enquiry u/s 5A of the Act cannot be questioned the said power cannot be used as a matter of course or routine without due application of mind to the materials placed before it. It is evident in the present facts and circumstances of the case that the intent to acquire the land has been betrayed by the authorities for quite some time. In fact, as early as on 8-7-1997 this Court disposed of the Writ Petition No.14395 of 1997 filed by the petitioners assailing the validity of the proceedings of the Mandal Revenue Officer, Suryapet in Memo No.A/1096/97 dated 21-5-1997 referred to above indicating that if the subject land is required for public purpose as claimed by the Governmental authorities, they could acquire the same by initiating appropriate proceedings either under the Land Acquisition Act or under any other enabling statute. It is, therefore, clear that the so called purpose of acquiring the subject land is not one such purpose which cannot brook the delay of an enquiry u/s 5A of the Act. It is relevant to note that an enquiry u/s 5A of the Act is a valuable right and reducing that to an empty formality would make a mockery of Article 300A of the Constitution of India. It is trite to point out that if an enquiry u/s 5A of the Act was held the petitioners and the other owners would have brought to the notice of the Land Acquisition Authorities various factors relating to alternative land, how the acquisition would seriously deprive the petitioners of their right to livelihood and various other aspects that could be sign posts in coming to the conclusion as to whether or not the land in question should or should not be acquired. It is contended in the affidavit that the

petitioners" family has no other land except the subject land and the members of the family are eking out their livelihood only by cultivating the subject land. However, this assertion of the petitioners is squarely denied by the third respondent in his counter affidavit. It is contended by the third respondent that the petitioners hail from Vysya community, a forward community and they are financially sound. Be that as it may, it is quite apparent from the records placed before the Court that the school management had felt the need to acquire the subject land for providing additional accommodation to the existing school as far back as on 25-9-1996. If there was any extreme urgency to acquire the subject land, invoking the urgency clause u/s 17(4) of the Act, the Land Acquisition Authorities of the State should have taken steps either in the year 1996 when the need arose or at least immediately after 8-7-1997 the day on which the earlier Writ Petition No.14395 of 1997 filed by the very petitioners was disposed of by this Court permitting the Land Acquisition Authorities to acquire the subject land. There is absolutely no satisfactory explanation in the counter-affidavit filed by the third respondent as to why the land acquisition authorities did not take steps to acquire the subject land at least immediately after 8-7-1997 by invoking the urgency clause u/s 17(4) of the Act. Long unexplained delay shows that there was no urgency. The Supreme Court in *Om Prakash and another v. State of U.P.*, 1998 (6) SCC 1, opined that the appropriate Government should have relevant material with it to enable it to arrive at its subjective satisfaction about the dispensing with enquiry u/s 5A of the Act. In *Narayan Govind Gawate v. State of Maharashtra*, 1997 (1) SCC 133, the Supreme Court held that the formation of opinion u/s 17(4) is a subjective matter, and the mind of the officer or authority concerned has really to be directed towards formation of an opinion on the need to dispense with the enquiry u/s 5A of the Act. It is true that the question of existence and the extent of urgency is a matter for the subjective satisfaction of the Government and it is not open to the Courts to examine the propriety or correctness of the satisfaction by scrutinising the same as a Court sitting in appeal over it. The Court's power of interference is confined to the grounds of non-existence of facts or non-application of mind or on the ground of mala fide and it is open to the Court to examine whether there was material at all before the Government to reach such satisfaction. Invocation of urgency clause u/s 17(4) of the Act cannot be a matter of routine or a matter of course. The concerned Land Acquisition Authority, on the basis of the materials placed before him, should satisfy himself that there is real urgency to dispense with enquiry u/s 5A of the Act. In the present case, no satisfactory explanation for the delay after disposal of the Writ Petition No.14395 of 1997 in initiating the impugned land acquisition proceeding is forthcoming on record. This clearly indicates that there was no real urgency underlying dispensing with Section 5A enquiry. Added to this, the impugned draft notification issued u/s 4(1) of the Act speaks volumes about the casual way the notification was drafted and issued. Having appointed the Revenue Divisional Officer, Suryapet as the authority to perform the functions of the Collector u/s 5A of the Act there was absolutely no scope or necessity for the State Government to invoke urgency clause under sub-

section (4) of Section 17 of the Act. This apparent contradiction in the notification shows that there was no application of mind on the part of the State authorities to the relevant materials to form the subjective satisfaction that there was a need to dispense with enquiry u/s 5A of the Act by invoking the urgency clause u/s 17(4) of the Act. Added to this, not a word is said in the counter affidavit of the 3rd respondent to explain how and at whose level this contradiction had crept in the Notification issued u/s 4(1) of the Act despite the fact that a specific ground of attack in that regard is raised by the petitioners in the affidavit filed in support of the Writ Petition.

Contention No.3 :--

I do not find any merit in this contention of the petitioners. It is true that the Principal of the A.P. Social Welfare Gurukula School, Suryapet wrote a letter to the petitioners on 25-9-1996 to elicit their willingness to part with the subject land in favour of the school by way of private negotiation and sale. Such a course is not impermissible in law. Simply because the petitioners refused to part with the subject land in favour of the management of the school by way of private negotiation and sale, that fact itself will not be a bar for the State to acquire the subject land by way of compulsory acquisition under the provisions of the Act for the purpose of providing additional accommodation to the existing school if such purpose can be a public purpose. I have carefully perused the averments made in the affidavit filed in support of the writ petition and in my considered opinion, nowhere in the affidavit necessary factual matrix is laid to bring home the charge of mala fide against the land acquisition authorities.

Contention No.4:--

Although in the affidavit filed in support of the Writ Petition, it is contended that the Land Acquisition Authorities have not caused publication of the notification in two daily newspapers and that there was no public notice in the locality as required u/s 4(1) of the Act, Sri L. Ravi Chander, learned Counsel for the petitioners, did not press the above contention as such into service while attacking the validity of the Land Acquisition proceedings, according to me, quite fairly in the light of the details furnished by the Land Acquisition Officer in his counter affidavit regarding publication of Notifications and causing public notices in respect of Notification u/s 4 and Declaration u/s 6 of the Act. In substitution of the above contention, the learned Counsel would draw the attention of the Court to the provisions of subsection (4) of Section 17 of the Act in its application to the State of Andhra Pradesh and maintain that under sub-section (4) of Section 17 thereof, declaration can be made u/s 6 only after causing public notice under sub-section (1) of Section 4 of the Act and in the instant case, admittedly public notice in the locality was caused u/s 4(1) of the Act only on 4-8-1998 and long before that date, declaration u/s 6 of the Act was made on 4-6-1998. The learned Counsel would maintain that on that count, declaration made u/s 6 of the Act is vitiated and liable to be interfered with. However, the learned Government Pleader for Land Acquisition placing reliance on the decisions of the Supreme

Court in Mohan Singh and Others Vs. International Airport Authority of India and Others, and A.P. Sareen and others Vs. State of U.P. and others, , would maintain that the 4th contention of the petitioners is devoid of merit and the alleged flaw pointed out by them would not vitiate the land acquisition proceedings.

7. Before dealing with the above contention of the petitioners, it is appropriate to notice the relevant provisions of Section 4, Section 6 and Section 17 of the Act prior and subsequent to the Amendment Act No.68 of 1984 and they are as follows :

"Unamended Section 4(1)

Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose a notification to that effect shall be published in the official gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality."

"Amended Section 4(1)

Whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the official gazette and in two daily newspapers circulating in that of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality 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 notification."

"Unamended Section 6(2)

Every declaration shall be published in the official gazette and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected."

"Amended Section 6(2)

Every declaration shall be published in the official Gazette and in two daily newspapers circulating in the locality in which the land is situate of which atleast one shall be in the regional language, and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality (the last of the dates of such publication and giving of such public notice, being hereinafter referred to as the date of the publication of the declaration) and such declaration shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected."

"Unamended Section 17(4)

In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or subsection (2) are applicable the appropriate Government may direct that the provisions of Section 5A shall not apply, and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the publication of the notification u/s 4(1)."

"Amended Section 17(4)

In the case of any land to which in the opinion of the appropriate Government the provisions of sub-section (1) or subsection (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply and, if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after the date of the publication of the notification u/s 4, sub-section (1),"

"Section 4(1) in its application to State of Andhra Pradesh :

Publication of preliminary notification and powers of officers thereupon :--(1) Whenever it appears to the appropriate Government or the District Collector, that land in any locality is needed or is likely to be needed for any public purpose or for a company a notification to that effect shall be published in the Official Gazette or the District Gazette and in two daily newspapers circulated in that locality of which atleast one shall be in the regional language, and the Collector shall, within forty days from the date of publication of such notification cause public notice of the substance of such notification to be given at convenient place in the said locality, the last of the dates of such publication and giving of such public notice being hereinafter referred to as the date of the publication of the notification."

"Section 17(4) in its application to State of Andhra Pradesh :

(4) In the case of any land to which, in the opinion of the appropriate Government, the provisions of subsection (1) or sub-section (2) are applicable, the appropriate Government may direct that the provisions of Section 5A shall not apply, and if it does so direct, a declaration may be made u/s 6 in respect of the land at any time after causing public notice u/s 4, subsection (1)."

8. Prior to the amendment of the Act by the Amendment Act 68 of 1984, it was permissible for the Government to issue notification u/s 4 and to make declaration as contemplated u/s 6 simultaneously and it was further permissible to publish both the notifications simultaneously. But, after the" amendment, declaration can only be made "after the date of publication of the notification" u/s 4. There must be difference of days between the date of the publication of the notification u/s 4 and Section 6. After the amendment, both the notifications cannot be published on the same day. In State of Uttar Pradesh Ors. Vs. Radhey Shyam Nigam and Others, where Uttar Pradesh Urban Planning and Development Act was enacted by the Uttar Pradesh Legislature in 1973. On or about 11th of September, 1974, Lucknow had been declared to be a development area by a notification. Notifications u/s 4(1) and Declarations u/s 6 of the Act in respect of

certain housing schemes were published on the same day in respect of the each of these schemes. Writ Petitions were filed in the Allahabad High Court assailing the validity of the notifications issued u/s 4(1) and Declarations issued u/s 6 of the Act. Before the Division Bench of the High Court of Allahabad, it was urged on behalf of the respondents therein that in view of the amendments introduced by the Land Acquisition (Amendment) Act, 1984 [Act No.68 of 1984], the declaration as contemplated u/s 6 of the Act could not have been made on the same day on which the notification u/s 4 of the Act was published. It was contended that after the amendment, the notification u/s 6 of the Act could be issued only after the notification u/s 4 was published. The High Court accepted this contention and allowed the writ petitions. When the correctness of the above judgment of the High Court was assailed before the Supreme Court, the Supreme Court after consideration of the relevant statutory provisions and the case law on the point in paragraph (14) recorded its findings as under:

"It is true that the expressions "after the date of the publication of the notification" introduced in Section 4 can be explained away as making no change from the provisions of law by reading it along with the amendment made in Section 4 whereby in different situation in Section 4, the last date of publication of the notice has been determined as the date of the publication of the notification and similarly in Section 6 a date of the publication of the notice has been provided for. But the words "after the date of the publication of the notification" in sub-section (4) of Section 17 read simpliciter clearly indicate that declaration u/s 6 had to be made after the publication of the notification meaning thereby subsequent to the date of the publication of the notification. It appears to us that there is nothing in the scheme of the Act which militates against such a construction. The fact that at times where emergency provisions are invoked emergent action may be taken but in such a situation in view of the state of law that was before it, the Legislature has made a conscious change which cannot be explained away merely because this is as a consequence of the changes in Sections 4 and 6 of the Act."

9. Reliance on the decisions of the Supreme Court in Mohan Singh's case (supra) and A.P. Sareen's case (supra) is of no help to the Land Acquisition Authorities. In Mohan Singh 's case (supra) also, the Supreme Court did not differ from the law laid down by the Supreme Court in State of Vttar Pradesh v. Radhey Shyam, (supra). In Mohan Singh's case (supra), the Supreme Court in para (13) observed thus:

"..... What is needed is that there should be a gap of time of atleast a day between the publication of the notification u/s 4(1) and of the declaration u/s 6(1)."

10. However, the learned Government Pleader for Land Acquisition would contend that if sub-section (4) of Section 17 of the Central Act were to apply to the State of Andhra Pradesh, there would not have been any illegality in the proceedings because in this case declaration u/s 6 was made on 4-6-1998 after

draft notification was issued u/s 4(1) of the Act on 3-6-1998, and therefore, the impugned acquisition proceedings would not have violated the law laid down by the Supreme Court in *State of Uttar Pradesh v. Radhey Shyam*, (supra) and *Mohan Singh's case* (supra). This contention of the learned Government Pleader for Land Acquisition is not acceptable to the Court. Publication of the notification u/s 4(1) of the Act cannot be equated to making of the notification u/s 4(1) of the Act. Both in *State of Uttar Pradesh's case* (supra) and in *Mohan Singh's case* (supra), the Supreme Court in categorical terms has opined that the notification u/s 6 of the Act can only be issued after the notification u/s 4 was published. The position obtaining in the instant case is slightly different. Section 17(4) in its application to the State of Andhra Pradesh substitutes the words "after causing public notice" in the place of the words "after the date of the publication of the notification" occurring in sub-section (4) of Section 17 of the Central Act. But, that difference would not make any difference in understanding and interpreting the phrase "after causing public notice". It is because the rationale adopted by the Supreme Court in interpreting the words "after the date of the publication of the notification" occurring in sub-section (4) of Section 17 of the Central Act equally applies in understanding and interpreting the words "after causing public notice" occurring under sub-section (4) of Section 17 in its application to the State of Andhra Pradesh. Be that as it may, in *Mohan Singh's case* (supra) and in *A.P. Sarecn's case* (supra), the Supreme Court was not called upon to interpret any similar phrase as occurring in subsection (4) of Section 17 as applicable to the State of Andhra Pradesh.

11. In *Mohan Singh's case* (supra) and *A.P. Sareen's case* (supra), what fell for consideration was altogether different issue. The Supreme Court in *Mohan Singh's case* (supra), in Para 13 stated the question that fell for consideration in the following words :

"The question is: Whether it is mandatory in such a situation, i.e., after the publication of the notification in the Gazette publication in two local newspapers and giving notice of the substance of the notification at convenient places in the locality, to await the exercise of power u/s 17(4)?"

12. In other words, the question posed to the Court was whether publication of notification in the newspapers and giving a notice of substance thereof in the locality is also mandatory for exercising power u/s 17(4) of the Act. The Supreme Court opined that when urgency clause is invoked, publication of Section 4(1) notification in newspaper and in the locality cannot be insisted upon as preliminary to exercise the power u/s 17(4). That declaration is of no help to the respondent authorities in the present case. I say this because the language employed by sub-section (4) of Section 17 in its application to the State of Andhra Pradesh is quite clear, plain, unambiguous and it does not admit more than one meaning. Power under subsection (4) of Section 17 in its application to the State of Andhra Pradesh could be exercised at any time after causing public notice under sub-section (1) of Section 4. The phrase "causing public notice" is

referable to public notice of the substance of notification issued u/s 4(1) at convenient place in the locality in question envisaged under sub-section (1) of Section 4 of the Act and the phrase "causing public notice" is not referable to the other two forms of publication of the notification i.e., in the Official Gazette or the District Gazette and in two daily newspapers circulated in the locality. The Court cannot meddle with the language employed by the competent Legislature in the Statute when the language is quite clear, precise and it does not admit more than one meaning under any circumstance. Since sub-section (4) of Section 17 in its application to the State of Andhra Pradesh speaks about issuance of Section 6 declaration after causing public notice, natural meaning flowing therefrom should be given in understanding and interpreting the provisions of sub-section (4). Therefore, it is absolutely necessary that causing public notice under sub-section (1) of Section 4 should precede issuance of declaration u/s 6. In the instant case, admittedly the Land Acquisition Authorities caused public notice of the substance of the notification issued u/s 4(1) of the Act in the locality only on 4-8-1998. Therefore, it should be held that the declaration made by the Government u/s 6 of the Act on 4-6-1998 is vitiated warranting interference.

13. In the result and for the foregoing reasons, the writ petition is allowed in part with costs quantified at Rs.3,000/-. The notification issued u/s 4(1) of the Land Acquisition Act in G.O. Rt. No.280, Social Welfare (SWRS) Department, dated 3-6-1998 published in the Andhra Pradesh Gazette, Extraordinary, dated 25-6-1998 is quashed insofar as the State Government has exercised its power under subsection (4) of Section 17 of the Act dispensing with the enquiry envisaged u/s 5A of the Act is concerned. The declaration made u/s 6 of the Land Acquisition Act in Government Memo No.21826/SWRS/97-3 Social Welfare (SWRS) Department, dated 4-6-1998 published in the Andhra Pradesh Gazette Extraordinary dated 30-6-1998 is quashed. Now it is open to the respondent-Land Acquisition Authorities to take further steps to hold enquiry envisaged u/s 5A of the Act and take further steps contemplated under the Act. The petitioners are given 30 days time from today to file their objections to Section 4(1) notification, if not already filed.