
(1999) 04 AP CK 0081
In the Andhra Pradesh High Court
Case No : WA No. 1506 of 1997

Executive Engineer, I.B. Division, Nirmal and others	APPELLANT
Vs	
C. Shankar and others	RESPONDENT

Date of Decision : 30-04-1999

Acts Referred:

Constitution (Forty-Fourth Amendment) Act, 1978 — Section 10, 11, 4(1), 6, 9(1)
Constitution of India, 1950 — Article 300, 31
Evidence Act, 1872 — Section 18, 21

Citation : (2000) 3 ALD 363 : (2000) 3 ALT 1

Hon'ble Judges : Vaman Rao, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Government Pleader for LA, for the Appellant; Mr. B. Sudhakar Reddy, for the Respondent

Judgement

Vaman Rao, J

1. This writ appeal is directed against the judgment of the learned single Judge dated 13-6-1997 passed in WP No.4769 of 1997.

2. A perusal of the grounds of appeal filed by the Government would disclose that the order under appeal is challenged on the basis of error in respect of finding of fact. Another ground taken is that proper opportunity was not given to the appellants for filing objections to the petition by way of counter in the writ petition.

3. The facts leading to filing of this appeal may be stated, briefly, as follows:

The petitioners are the owners of the respective lands situated in Pedda Thimmapur village. As disclosed in the affidavit of one of the petitioners filed for himself and on behalf of the other petitioners, it appears that the petitioners have been in possession of their respective lands till they were dispossessed from those lands on 10-8-1971 for the purpose of restoration of Peddacheruvu tank. The petitioners met their local MLA and other concerned officers and

represented that the lands were taken over without initiation of Land Acquisition proceedings and that no compensation was paid. The authorities assured them that compensation under the Land Acquisition Act will be paid soon, but due to paucity of funds or lack of interest on the part of the Government and as possession was already taken, no proceedings u/s 4(1) of the Land Acquisition Act were initiated. The petitioners are illiterate villagers and they have been going round the various offices for the last 25 years. On their behalf, their local MLA has also been giving representations to the Government, but of no avail. The Sub-Collector, Asifabad in his letter dated 30-8-1995 addressed to the Executive Engineer, I.B. Division, Nirmal, instructed to urgently take the deposit of Rs. 14.00 lakhs for passing of Award under Land Acquisition Act. But, the Irrigation Department, Government of Andhra Pradesh failed to deposit Rs. 14.00 lakhs with the Land Acquisition Officer (Sub-Collector, Asifabad). Thus, it is alleged that the petitioners' rights under Article 300A of the Constitution of India have been infringed.

4. It is further stated that one of the claimants one Haji Miya filed WP No.29145 of 1995 for compensation under the Land Acquisition Act. That writ petition is still pending. With these facts, a Writ of Mandamus directing the respondents to initiate proceedings under the Land Acquisition Act and to pay compensation is prayed for.

5. The writ petition was admitted on 13-3-1997 and notice was directed returnable in four weeks. It appears that notice of the petition was taken by the Government Pleader for Land Acquisition as seen from the proceedings sheet in writ petition dated 22-4-1997 and the matter was posted to 23-8-1997. On 23-8-1997, it appears that the Government Pleader requested that the matter be posted after vacation, which request was accordingly acceded to and the learned Judge also directed that a counter, if any, may be filed before the next date of hearing. Thereafter, the matter came up for hearing on 13-6-1997, on which date the impugned judgment was delivered. It would be seen from the judgment that on behalf of the respondents, a representation was made that the Land Acquisition proceedings have already been initiated. It was also conceded that possession of land was taken on 10-8-1971 by the respondents. On the basis of these representations, the learned Judge passed the impugned order directing the petitioners (respondents herein) to make a representation to the Collector in the matter within a period of two months from the date of judgment i.e., 13-6-1997 seeking initiation of proceedings under L.A. Act, if not initiated already. The order further directs that if land acquisition proceedings have already been initiated, they should be completed within a period of three months from the date of initiation or from the date of representation, if not initiated already.

6. It is this order, which is now challenged. Surprisingly, the fact that the possession of the land of the petitioners was taken over on 10-8-1971 as averred by the petitioners for the purpose of restoration of Peddacheruvu tank in Pedda

Thimmapur, Adilabad, is now disputed. It would appear that during this appeal, on a representation of both sides, an Advocate-Commissioner was appointed by the Division Bench of this Court to visit the land in question and to enquire about the actual user of the same and submit a report to the Court. The Commissioner with the help of local Revenue Officer and local Engineer of the Irrigation Department visited the spot, recorded the statements of the owners and submitted a report as to actual user of the land. A reference will be made to this report in due course.

7. The question for consideration is whether there is any error in the order under appeal, which is liable to be corrected in this appeal?

8. We are surprised this appeal should have been filed on the grounds on which it has been done. The factual basis of the judgment of the learned single Judge is: (i) the finding of fact that possession of the land of the petitioners was taken over by the Government on 10-8-1971; (ii) According to the petitioners, the land acquisition proceedings were not taken up, but according to the respondents, the land acquisition proceedings were already initiated.

9. Now, these conclusions of the learned single Judge were based entirely on the representation made by the Government Pleader appearing for the appellants herein, namely, Government Pleader for Land acquisition.

10. We find it difficult to appreciate how the respondents" having made the representation (through their Counsel) to the learned single Judge as to certain facts, which led the learned single Judge to pass his judgment based on those facts can be permitted to challenge the judgment on the ground of an error in the finding of facts. The questions that arise for consideration in this appeal are of great significance.

11. There is a case in which the original Court (learned single Judge) rendered his judgment on a finding of fact, which was arrived at on the basis of statement made by the learned Government Pleader appearing on behalf of the appellants herein. The principal contention of the learned Government Pleader for Land Acquisition appearing for the appellants in this appeal is that the finding of fact forming the basis of judgment under appeal viz., that possession of the land by the respondents herein (writ petitioners) was taken on 10-8-1971 in connection with Peddacheruvu tank in the village concerned is not correct inasmuch as it is contrary to real facts.

12. The real question is what is the effect of a statement as to the existence of certain facts made by a Counsel for a party to the Court during the hearing of the relevant proceedings. The next question is whether such a statement of fact made by the Counsel can be resiled or withdrawn, and if so, under what circumstances? The fact that a representation as to the facts mentioned above was made to the Court during the hearing of the writ petition is vouchsafed by a statement to that effect in the judgment of the learned single Judge.

13. In the case of Timmalapalli Virabhadra Rao Vs. Sokalchand Chunilal and Others, , the Madras High Court held that the statement in a judgment or order as to what had taken place in the Court is conclusive and an aggrieved party should apply to the same Judge for resiling or rectification. It is true, in this case, a review petition was filed before the learned single Judge. It is amasing to note that the review petition has no whisper as to under what circumstances the representation as to facts mentioned above was made before the learned single Judge during the hearing of the writ petition and as to how the appellants herein are entitled to or justified in withdrawing from that statement. It is sufficient to state that the review petition was dismissed. Even in the Memorandum of appeal, grounds 2 and 3 merely reiterate the facts contrary to the statement of facts made to the learned single Judge during the hearing of the writ petition without offering any explanation as to under what circumstances the supposedly or erroneous statement was made and as to the circumstances warranting or justifying the Court to permit withdrawal or resiling from that statement. In the case of Nrusinghanath Deb and Others Vs. Banamali Panda and Others, , it is held that even indication of a ground in the memorandum of appeal as to the mistaken statement of fact before the trial Court by the Counsel for the appellant is not sufficient to challenge the facts admitted. Ground No.4 of the Memorandum of appeal mentions the grievance that the appellants herein were not given an opportunity for filing objections to the writ petitions by way of counter. There is nothing to show that the appellants (respondents in the writ petition) desired to file any counter and that the Court denied an opportunity to file such a counter.

14. As stated above, the real fact appears to be that the appellants herein did not think it necessary to file any counter in view of admission of fact by the learned Government Pleader appearing for the respondents in the writ petition. Ground No.5 of the appeal also harps on the question of fact that the writ petitioners themselves were in possession of the lands in question. Ground No.6 is as to objection that the writ petitioners have approached the Court after long lapse of time, but the objection as to delay in approaching the Court was not taken before the learned single Judge.

15. It is seen that there was no serious effort to explain the circumstances under which the so called erroneous admission of facts was made and as to the valid reasons for justification for permitting them to realise from such statement. In this regard it may be mentioned here that the learned Counsel representing the appellants who made such statement of fact in the original Court has not filed any affidavit explaining the circumstances.

16. In the case of Sarat Chandra Maiti and Others Vs. Bibhabati Debi and Others, , it has been held that statement as to admission in the Court of first instance should not be doubted lightly by the Appellate Court specially in the absence of affidavit by the Counsel who appeared in the first Court. In the case of Ulich Kotayya Vs. Nallamalli Sreeramulu and Others, , it has been held that a

pleader abandoning a fact in the lower Court cannot challenge the same in appeal.

17. What emerges from the above authorities and in the light of the provisions of the Evidence Act under Sections 18 and 21 is that: (1) the statement in a judgment or order by the Presiding Judge that certain state of facts were admitted before the Court during the proceedings by the Counsel for one of the parties is conclusive of the fact that such an admission was made unless the aggrieved party takes steps before the same Judge for review or rectification and the Judge accepts that the statement as to admission of facts was mistaken or for any other just reason permits the party concerned to withdraw from such statement; (2) Admission of facts by a party in the Court of first instance cannot be doubted by the Appellate Court unless compelling material like an affidavit of the Counsel who is said to have made such an admission is filed and there are weighty surrounding circumstances to displace such an admission and the same is accepted by the Court. Admission made by the Counsel during the hearing of a proceeding cannot be resiled from lightly.

18. If the parties are allowed to retract from the statements made by their Counsel to the Court on the grounds like that the Counsel was not properly instructed or that the Counsel or the party was not apprised of the facts or on any such ground, the sanctity of the Court proceedings would be compromised and the dignity of the Court will be lowered. Normally, such statements of fact made by a Counsel to the Court on the basis of which judgment has been rendered must be considered conclusive and not open to challenge in appeal unless extraordinary reasons are shown.

19. Taking any view of the matter in this case the judgment under appeal would show that the learned single Judge has recorded in his judgment in unambiguous terms the fact that the Counsel for the appellants herein contended that the land acquisition proceedings have been initiated and it was not disputed that the possession of the lands was taken over by the appellants herein on 10-8-1971. Considering the circumstances of this case, these statements of fact are binding on the appellants. When these facts are held to be admitted or established, there is apparently no error in the judgment under appeal. This alone would be sufficient to dismiss this appeal. But, in this case, there is material which far from supporting the unfortunate stand taken by the appellants herein as to the existence of the facts, above referred corroborates the admission made by the Counsel for appellants in the original Court. Firstly, at the instance of the appellants an Advocate-Commissioner was appointed by a Division Bench of this Court, who was directed to visit the land and examine the witnesses and report as to the actual user of the land. The Advocate-Commissioner in his report dated 18-1-1998 filed in the Court, categorically reported that the lands in survey numbers mentioned by him belonging to the respondents in this appeal were submerged and that they were not under cultivation as averred by the appellants herein. Learned Counsel for the appellants during the course of arguments in this

appeal has made an attempt to question the veracity of this report. It was particularly stressed that the pahanies maintained by the MRO's Office show that the lands in question have been recorded as having been cultivated. It is neither necessary nor proper to go into this controversy in this appeal. Suffice it to say that admission made by the Counsel for the appellants before the learned single Judge that the possession of the land was taken over by the Government is not shown to be based on any egregious error. In fact, in the material papers filed on behalf of the respondents herein, there are certain letters addressed by responsible officers of the Government. A letter Rc.No.B1/1960/85, dated 4-5-1993 addressed by the Sub-Collector, Asifabad to the Executive Engineer, I and CAD, IB Division, mentions that the probable land compensation amount required in this case has been worked-out which came to the tune of Rs.8,14,924/-. The Sub-Collector, therefore, requested the Executive Engineer to deposit the said amount at an early date to enable him to process the land acquisition proceedings. The work-sheet which forms part of this letter mentions the extents of land proposed to be acquired. Another letter dated 29-9-1997 of the Collector and District Magistrate, Adilabad, contains revealing information. This letter was addressed in response to the letter calling for point-wise replies. It is firstly stated that the MRO has reported that although the lands are shown as cultivated entirely in pahanies/adangals, actually the cultivation was done in Rabi season only after the water receded in the tank. It makes a categorical statement that during kharif season it is not possible to cultivate the lands as the water is stored in the tank. It is emphatically stated that the petitioners in WP No.4769 of 1997 are covered by the land acquisition case already initiated, except two petitioners, namely (i) Sindam Mallakka and (ii) Karnathapu Ammakka, who were said to be Pattedars of Sy. No.47/1 extent of Ac.4.00 and Sy.No.6/4 extent of Ac.5.00 respectively. It is also stated that the Irrigation Department filed requisition for acquisition of lands to an extent of Ac.49.20. The sub-division work was completed and the SD records were received for Ac.49.20. It, however, mentions since Ac.2.31 gts. of land was surrendered by the pattedar under the ceiling as surplus lands this area was excluded from the total area to be notified u/s 4(1) of the Act. It also mentions that the draft notification and draft declaration proposals were submitted for Ac.46.72 cts. equal to Ac.46 and 29 guntas for approval. It is stated that there was no change in this area. It also mentions that during the joint inspection of the District Collector and the Superintending Engineer, Irrigation Circle, Nirmal, fresh peg-marks on the spot were fixed showing the lands under submergence. Accordingly, the Surveyors deputed by the Assistant Director (S and Lr) Adilabad, have resurveyed the lands and measured the area to Ac.44.26 gts., only. Apart from a few minor discrepancies, this document clearly shows that the Irrigation Department desired acquisition of substantial extents of land belonging to the petitioners for which proposals were addressed to the District Collector. These documents conclusively establish that the proposal for acquiring the lands belonging to the petitioners whether wholly or excluding certain areas was made by the Irrigation Department and the Revenue Department intimated the Irrigation Department

about the probable compensation amount required to be paid so that the land acquisition proceedings could be processed. In the light of this material, it is deplorable that the appellants should have come up in this appeal with a plea that no land was submerged at all and that there was no proposal for acquisition and that there was no need for payment of compensation for any extents of lands to any of the petitioners. The mere fact that some of the petitioners might have cultivated some lands in the rabi season after the water receded from tank does not absolve the Government initiate acquisition proceedings and to pay compensation to the lands submerged under the tank. There is no question of cultivation of any land when the tank is full and the whole land is under submergence. If after receding of the water some piece of land is cultivated in the rabi season by the owners of the lands which were submerged, this may constitute an act of benefiting from the land after the land was taken over by the Government. It is open to the Government to take such action as is permissible under the law in respect of such alleged unlawful cultivation. These facts are mentioned only to state that the judgment of learned single Judge is sustainable not only on the ground that admission of fact made before the original Court is binding on the appellants herein, but even on facts as emerging from the material on record de hors the admission of facts made by the Counsel for the appellants. It may be mentioned here that the learned single Judge in order to avoid any controversy or discrepancy as to the actual extents of lands under submergence belonging to the petitioners, in his wisdom, permitted the petitioners to give a representation with particulars of the land under submergence and the authorities of the concerned department have been directed to consider and take up acquisition proceedings.

20. When the land was taken-over in 1971, proceedings under Land Acquisition Act were not initiated and as such, there was an infraction of fundamental right guaranteed under Article 31 of Indian Constitution. The said fundamental right read "No person shall be deprived of his property, save by authority of law". Even though the said fundamental right has been omitted by Constitution (Forty Fourth) Amendment Act, 1978, but the same has been bodily lifted making out a new provision i.e.. Article 300A, which also reads "No person shall be deprived of his property, save by authority of law". By deleting from Part-III of Indian Constitution relating to fundamental rights, it should not be understood that there is no protection from the deprivation of the property and that the State can deprive its subjects even without following due process of law. The Constitutional guarantee under Article 300A acts with equal vigour and rigor to protect the owners of the property from being deprived without due process of law and the State cannot violate this constitutional guarantee and is bound to discharge its obligations under Article 300A by initiating proceedings under the Land Acquisition Act, as it is the only authority by which the State can deprive its subjects by acquisition of the private property for public purpose and as already stated above, the land was taken-over in 1971 without any authority of law then and it continued so even till this-day. It is distressing to note that the State

which is liable to protect its subject from illegal usurpation of property, itself has indulged in such an act and is itself fighting like a private person and that too, contrary to its own record and inspite of making an admission, which is based on the said record. The land acquisition hints at compulsory acquisition and there is no choice for the holder of the property, but to part with his property by sacrificing his individual interest to a larger public interest. So far so good. But, in our Constitutional scheme, hitherto under Article 31 and now under Article 300A, the person should be compensated and should be compensated at the earliest. Otherwise, there is a breach of Constitutional obligation. That is what has happened exactly in the instant case and we feel sorry for the poor ryots who have been deprived of their lands long back in the year 1971 and are not paid compensation even this day. The interest they get, even at 9% for the first year of deprivation and 15% from the second year onwards, cannot compensate their hardship because of loss of land, which was almost three decades back. If this constitutional Court does not remedy the situation even now, it will be failing in enforcing the constitutional obligations of the State.

21. In view of what is stated supra, we affirm the judgment of the learned single Judge, dated 13-6-1997 passed in WP No.4769 of 1997 and direct the Government to publish the necessary notifications under Sections 4, 6, 9(1) and 9(3) read with Section 10, pass the award u/s 11 and pay the compensation positively, within a period of four months from the date of the receipt of a copy of this order. The writ appeal is dismissed. No costs.