
(1991) 06 AP CK 0005
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 351 of 1985

G. James and Others

APPELLANT

Vs

G. Murali Krishna and Others

RESPONDENT

Date of Decision : 19-06-1991

Acts Referred:

Land Acquisition (Andhra Pradesh Amendment and Validation) Act, 1983 — Section 17(5), 4(1), 5A

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

Citation : (1991) 3 ALT 123

Hon'ble Judges : V. Sivaraman Nair, J; M.N. Rao, J

Bench : Division Bench

Advocate : Sanka Venkateswara Rao, for the Appellant; Kumari. N. Vijayalakshmi and The Government Pleader for S.W. for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

M.N. Rao, J.—The appellants 9 in number were beneficiaries of land acquired by the Government, covered by survey No. 169 of Prattipadu Village in Guntur District, admeasuring Ac.6.97 cents and distributed to them in small extents. The 1st respondent herein filed Writ Petition No. 1842/1985 from out of which the present Writ Appeal arises, contending, inter alia, that the notification issued by the State Government u/s 4(1) dispensing with the enquiry u/s 5A was invalid, being violative of the specific provisions of Sub-section (5) of Section 17 of the Andhra Pradesh Land Acquisition Act (Act 11 of 1983) in that, within 90 days from the date of dispensing with Section 5A enquiry, possession was not taken.

2. At the admission stage, the Writ Petition was allowed by Amareswari, J. on 7-3-85 observing-

"If possession is not so taken the clause dispensing with the enquiry becomes inoperative and the provisions of Section 5-A of the Act shall apply. Since possession is not taken till today eventhough the said 90 days had expired, the

respondents are directed to conduct enquiry u/s 5A of the Act and issue appropriate proceedings thereafter. The petitioner is given 30 days time from today to file his objections. It is open to the petitioner to take all objections as are available to him. With this direction the Writ Petition is disposed of."

Aggrieved by that, appellants therein filed the present appeal with the leave of the court. By an order dt. 5-4-85, a Division Bench of this court after admitting the Writ Appeal, passed an interim order suspending the operation of the order in the Writ Petition.

3. Sri Venkateswara Rao, learned counsel for the appellants submits that by misrepresenting, the facts the 1st respondent herein obtained the order from the learned Judge. No essential facts have been stated in the affidavit filed in support of the Writ Petition. Whether possession was taken within a period of 90 days from the date of dispensing with the enquiry u/s 5A, is a question of fact which must be decided only after notice to the respondents, but unfortunately, in the present case without even notice to the respondents, the learned Judge at the admission stage allowed the Writ Petition and granted the relief prayed for.

4. We agree with the submissions made by the learned counsel for the appellants. The facts are as follows:

On 21-1-84, dispensing with the enquiry u/s 5A, the notification u/s 4(1) was issued and the local publication was made on 14-2-1984. Writ Petition No. 4486/84 was filed by the father and undivided brother of the 1st respondent herein, challenging the Section 4(1) notification. This court granted an interim stay of operation of the Section 4(1) notification on 2-3-84. Even before the interim stay was communicated, the declaration u/s 6 was issued on 5-3-1984. Writ Petition 4486/84 was subsequently dismissed by this court on 24-1-1985 with a direction that possession shall not be taken until the standing crop on the land was cut and harvested. Writ appeal 116/84 preferred against W.P.4486/84 was dismissed at the admission stage on 17-2-1985 by a Division Bench of this court, with a direction similar to the one granted in the Writ Petition. Not disclosing all these necessary material facts W.P. 1842/85 was filed by the 1st respondent herein, which as already stated supra, was allowed by the learned single judge at the admission stage without affording an opportunity to the respondents in the Writ Petition to file a counter affidavit traversing the averments made in the affidavit filed by the Writ Petitioner.

5. Sub-section (5) of Section 17 of A.P. Act 11 of 1983 reads as follows:-

Section 17. "(5) (a) In any case where the State Government have directed under Sub-section (4) (hat the provisions of Section 5A shall not apply, the Collector shall take possession of the land within three months thereof. (b) If, however, the Collector fails to take possession of the land within the aforesaid period of three months, the provisions of Section 5A shall apply as if there is no such direction that Section 5A shall not apply and in all such cases the period of thirty days referred in action 5-A shall be reckoned from the date of expiration of

three months specified in Clause (a)".

6. From the aforesaid narration of facts it is clear that from 2-3-1984 till the crop was harvested and removed some time in March/April, 1985, the interim stay granted by this court regarding taking of possession was subsisting. It was, therefore, physically impossible to comply with the requirements of Section 17(5) of the Act. In the computation of limitation any period covered by orders of stay granted by a competent Court must be excluded Clause (b) of Sub-section (5) of Section 17 says that in the event of the failure of the Collector to take possession within a period of three months, the provisions of Section 5A shall apply. In a case where the Collector was disabled because of the stay granted by this Court, his "failure" to take possession of the land would not arise. The words "the Collector fails to take possession of the land, occurring in Clause (b) necessarily imply a conscious lapse on the part of the Collector."

7. The finding recorded by the learned single Judge that "since possession was not taken even though the period of three months had expired is clearly unsustainable in the particular circumstances of this case. For the above reasons the Writ Appeal is allowed, the Judgment and order under appeal are set aside and the Writ Petition is dismissed. No costs. Advocate's fee Rs. 250/-.