

(2008) 07 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 13863, 14247 and 14478 of 2005

Gajjela Narasimha Reddy and Others

APPELLANT

Vs

Collector and Another

RESPONDENT

Date of Decision : 23-07-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Land Acquisition Act, 1894 — Section 2, 3, 4, 4(1), 4(2)

Citation : (2008) 5 ALD 302 : (2008) 5 ALT 233

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

Bench : Single Bench

Advocate : B. Nalin Kumar, for the Appellant; Adv.-General for Respondent No. 1 and P. Rajagopala Rao, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—Since these three writ petitions raise common issues, they are heard together and being disposed of by this common judgment.

2. The petitioners are owners of certain lands, which are notified for acquisition under three separate notifications dated 14.7.2004 issued u/s 4(1) of the Land Acquisition Act, 1894 (for short "the Act").

3. For convenience, the details are shown in the table below:

W.P. No.	Name of the Sy.	No.	Extent	Date of	Date of	Date of	Ac.	Gts
				Notification	Publication	notification	in the	in the
							Gazette	newspapers
13863/05								
1. Gajjela	764	of	28-20	14.7.2004	14.7.2004	Deccan	Chronicle	Narasimha
Reddy	Mankhal	and	Eenadu	on	2. V. Pandu	Village,	21.8.2004	Local
Ranga	Reddy	Maheswara	publication	of	3. Smt. V. Aruna	Mandal,	substance	on
Jyothi	R.R.	Dist	12.5.2005	4. N. Ayodya	Rama	Reddy	14247/05	1. Gajjela
763	of	4-32	-do-	-do-	-do-	Narasimha	Mankhal	Reddy
Village,	2. Gajjela	Maheswara	Venugopal	Mandal,	Reddy	R.R.	Dist	14478/05
1. T. Narasimha	748,	754,	No	specific	-do-	-do-	-do-	Reddy
755	and	756	pleading	2. T. Venkata	of	Mankhal		

regarding the Reddy Village, actual extent Maheswara belonging to Mandal, the petitioners R.R. Dist. and notified for acquisition 4. The petitioners assailed these notifications on the ground that the purpose of acquisition mentioned therein is vague.

5. Separate, but identical, counter-affidavits have been filed by the Special Deputy Collector (LA), Unit-I, ORR, HUDA, Tarnaka, Hyderabad, respondent No. 2 herein. It is, inter alia, averred in the said counter-affidavits that the purpose of acquisition, viz., formation of Township, which includes execution of housing schemes and other purposes, constitute public purpose and that the petitioner can always raise all legally permissible objections before the competent authority in the enquiry envisaged to be held u/s 5-A of the Act. It is also averred therein that the writ petitions filed by the petitioners, without availing the opportunity of filing their objections in the proposed enquiry to be held u/s 5-A of the Act, are not maintainable.

6. While admitting the writ petitions, this Court granted interim suspension/stay of all further proceedings, in pursuance of the impugned notifications, in the year 2005. In the year 2006 vacate stay applications were filed and when those applications were posted for hearing, the main writ petitions were taken up for hearing at the request of the learned Counsel for all the parties.

7. At the hearing, Sri B. Nalin Kumar, learned Counsel for the petitioners, submitted that the impugned notifications by which the lands belonging to the petitioners are proposed to be acquired are liable to be set aside on account of vagueness in the purpose mentioned in the notifications. He submitted that Section 5-A gives the landowners a valuable opportunity to putforth their objections and unless the notifications issued u/s 4(1) of the Act specify the purpose with definitiveness, the owners of the land will be denied the opportunity to effectively putforth their objections to the proposed acquisition. He further contended that the term "township and future projects" is so vague as not to give any idea, whatsoever, for the petitioners to file any meaningful objections, both with regard to the alleged "public purpose" and the necessity of acquiring their lands. In support of his contentions, he relied upon the judgments of the Supreme Court in Divisional Forest Officer, Jannaram, Adilabad Dist. Vs. Ailal Sathaiah @ Satyanarayana, , Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and Others, and Madhya Pradesh Housing Board Vs. Mohd. Shafi and Others, .

8. The learned Advocate General, who opposed the above mentioned contentions advanced by the learned Counsel for the petitioners, submitted that the purpose of development of "Township and future projects" mentioned in the notifications does not suffer from vagueness. He further submitted that Section 3(f) of the Act defines "public purpose" which includes the provision of land for planned development of land from public funds in pursuance of any scheme or policy of the Government etc., and the provision of land for carrying out any educational, housing, health or Slum Clearance Scheme sponsored by Government and for

carrying out any such scheme or with the prior approval of the appropriate Government, by a local authority or a Society registered under the Societies Registration Act, 1860 etc., under Sections 2(f), 3 and 6 respectively and that "development of Township for housing" therefore falls within this definition. He also submitted that since an opportunity of hearing is available to the petitioners by submitting objections u/s 5-A of the Act, the rights of the petitioners are in no way affected.

9. I have given thoughtful consideration to the submissions of the learned Counsel for the respective parties.

10. u/s 4(1) of the Act, where it appears to the State Government that the land is needed for any public purpose or for a company, a notification to that effect shall be published in the manner specified therein.

11. u/s 5-A of the Act any person interested in the land, which is notified for acquisition, is entitled to object to the proposed acquisition. In *Munshi Singh and Others Vs. Union of India (UOI)*, , while emphasizing the importance of the opportunity to be given to the land-owner in an enquiry u/s 5-A of the Act, the Supreme Court held in the following terms:

7. Section 5-A embodies a very just and wholesome principle that a person whose property is being or is intended to be acquired should have a proper and reasonable opportunity of persuading the authorities concerned that acquisition of the property belonging to that person should not be made.... The Legislature has, therefore, made complete provisions for the persons interested to file objections against the proposed acquisition and for the disposal of their objections. It is only in cases of urgency that special powers have been conferred on the appropriate Government to dispense with the provisions of Section 5-A.

12. 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. This Court has laid down that it is necessary to specify the public purpose in the notification for which the land is needed or likely to be needed as, otherwise, the matters specified in Sub-section (2) of Section 4 cannot be carried out". 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.

13. In *Delhi Administration's case (supra)*, 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.

14. In *Union of India (UOI) and Others Vs. Mukesh Hans etc.*, , while reiterating its view in *Munshi Singh's case (supra)*, the Supreme Court held that the right conferred on an owner/person interested u/s 5-A to object to the acquisition proceedings is not an empty formality and is a substantive right.

15. In catena 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's case (supra)*, *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*,).

16. In *Jayantilal Amrit Lal Shodhan Vs. F.N. Rana and Others*, , the majority of the Constitution Bench held that the report submitted by the Collector u/s 5-A would be an Administrative Report relying upon which the Government makes its decision u/s 6 whether or not to notify the land for acquisition and that the decision that any particular land is needed for any public purpose is an administrative decision and it is for the purpose of arriving at the decision that the Act requires that certain enquires to be made.

17. In *Om Prakash and Another Vs. State of U.P. and Others*, , the Supreme Court, which considered the judgment in *State of Punjab and Another Vs. Gurdial Singh and Others*, , held that according to the said judgment enquiry u/s 5-A is not merely statutory but also has a flavour of fundamental rights under Articles 14 and 19 of the Constitution and though right to property has now no longer remained a fundamental right, at least observation regarding Article 14, vis-a-vis, Section 5-A of the Act would remain apposite.

18. In *State of Tamil Nadu and others etc. Vs. L. Krishnan and others etc.*, , the Supreme Court observed that the judgment in *Munshi Singh's case (supra)*, 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.

19. In Hindusthan Petroleum Corporation Ltd.'s case (supra), after an extensive analysis of the entire case law, the Supreme Court reiterated its earlier decisions in 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., , and held that due application of mind on the part of the statutory authority is imperative. It held that Section 5-A of the Act is in two parts: in the first part, the Collector, upon receipt of objections, is required to make such further enquiry as he may think necessary whereupon he must submit his report to the appropriate Government; and, in the second part, the Government is to render a decision thereupon. The Supreme Court held that consideration of the objections filed by the owner of the land and acceptance of the recommendations by the Government must be preceded by a proper application of mind on the part of the Government.

20. 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. 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 u/s 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)

21. On a careful analysis of the ratio contained in the case law discussed above, in order to decide whether the notification issued u/s 4(1) of the Act is in conformity with the provisions of the Act, as interpreted by the plethora of judgments of the Apex Court, two aspects are required to be examined, viz., whether the purpose mentioned in the notification is specific and not vague; and such purpose is a "public purpose". In Ajlatoon's case (supra), the Supreme Court held that whether the purpose specified in the notification is sufficient to enable an objection to be filed u/s 5-A would depend upon the facts and circumstances of each case.

22. Therefore, let me now examine whether the first aspect is satisfied by the impugned notifications. As mentioned supra, the purpose mentioned in the notifications is "development of Township and future projects". It is not indicated in the notifications, what is the nature of the Township and for whose benefit the Township is proposed to be constructed. Unless the notifications indicate the nature of the Township and the purported future projects, is it possible for the petitioners to file their objections on the above aspects? In my considered opinion, the answer should be an emphatic "no". The notifications are silent as to the size and type of the Township. The expression "future projects" in my considered view is absolutely vague, which does not give any cue as to what type of projects - whether residential, commercial or industrial - that are proposed to be taken up. In the absence of indication of the precise purpose, it is not possible for the owners of the lands to file meaningful objections. As held by the Supreme Court in Delhi Administration's case (supra), even if the purpose mentioned in the notifications is a public purpose, it is open to the objectors to file their objections both with regard to the absence of necessity to acquire this particular land and also about its non-suitability for the purpose for which the land is proposed to be acquired. Interestingly, even in the counter-affidavits, the respondents failed to elaborate on the purpose mentioned in the notifications, except repeating the words mentioned in the impugned notifications and relying on the judgments of the Supreme Court. None of those judgments come to the aid of the respondents because the question whether the purpose mentioned in the notification is specific or vague is required to be decided with reference to the facts of each case as held by the Supreme Court in Aflatoon's case (supra) and reiterated in L. Krishnan's case (supra).

23. The Division Bench judgment of this Court in Smt. Bljanbee and Others Vs. District Collector and Others, , relied on by the learned Advocate-General has no application to the present cases because in that case the only question that arose for consideration was whether the purpose of acquisition viz., development of new projects by the Andhra Pradesh Industrial Infrastructure Corporation Ltd.,

constituted public purpose or not. Having regard to the facts pleaded by the parties, the Division Bench held that it was a public purpose. This judgment is, therefore, of no avail to the respondents.

24. On a careful consideration of the notifications, I am of the view that the purpose of "development of Township and future projects" mentioned in the notifications is too vague to enable the petitioners to file any meaningful objections.

25. As regards the second aspect, viz., whether the lands are proposed for a "public purpose", the word "Township" is not defined in the Act. The meaning of "Township" given by the Oxford Dictionary of 2001 Edition is as under:

Township - noun 1 (in South Africa) a suburb or city of predominantly black occupation, formerly officially designated for black occupation by apartheid legislation. 2 S. African a new area being developed for residential or industrial use by speculators. 3 N. Amer a division of a county with some corporate powers. 4 Brit, historical a manor or parish as a territorial division. 5 Austral./NZ a small town.

If one goes by the above mentioned dictionary meaning, a Township takes in many things, including a small town, or an area developed for residential or industrial use. On many occasions the Supreme Court held that the Housing Schemes of Housing Boards constitute public purpose. (See the judgments of the Supreme Court in *Ratilal Shakarabhai and Others Vs. The State of Gujarat and Others*, *State of Gujarat Vs. Musamigan Imam Haider Bux Razvi and Another*, *L. Krishnan's case (supra)* and *West Bengal Housing Board Vs. Brijendra Prasad Gupta and others*,). In each of these cases, before upholding the notifications, the Supreme Court went into the nature of the claims and was satisfied that they served "public purpose". But, the notifications in the instant cases are not indicative as to whether the "Township" is purely of residential colonies or of industrial, commercial or other nature. Unless the purpose is mentioned with specificity, it is not possible to hold that the purpose of acquisition is a "public purpose". As could be seen from the above reproduced judgment in *Madhya Pradesh Housing Board's case (supra)*, the Supreme Court observed that 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. Therefore, assuming that going by the common parlance understanding of a Township as comprising residential colonies, that by itself does not constitute "public purpose" unless the same is in "public interest" or for the benefit of the public or an identifiable section thereof. The impugned notifications and the counter-affidavits are conspicuously silent on the above mentioned aspects.

26. In *Srinivasa Cooperative House Buildings Society Ltd. Vs. Madam Gurusamy Sastry and Others*, , the Supreme Court held that "public purpose" is not capable of precise definition; each case has to be considered in the light of

the purpose for which acquisition is sought for; public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned; and though generally the Executive would be the best judge to determine whether or not the impugned purpose is a public purpose, yet it is not beyond the purview of judicial scrutiny. In that case, the Supreme Court upheld the judgment of the Division Bench of this Court, which struck down the notification issued for acquisition of land of certain small farmers for a private Cooperative Housing Society for development and allotment to its members, who appeared to be Advocates, Chartered Accountants, Businessmen for construction of houses by them.

27. The provisions of the 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: Vishnu Prasad Sharma's case (supra), Khub Chand's case (supra) and CCE's case (supra)).

28. From the abovementioned discussion, the conclusion is irresistible that the impugned notifications failed to satisfy both the essential ingredients of a valid notification viz., that the purpose must be specific without being vague, and the acquisition must be for a "public purpose". Therefore, all the writ petitions are allowed and the impugned notifications are quashed to the extent of the lands belonging to the petitioners. The respondents, however, are not precluded from initiating acquisition proceedings afresh in accordance with law and in the light of the findings rendered above.