

(1993) 04 AP CK 0056

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4134 of 1989

Golla Chinnaiah and Others

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 13-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 300A

Land Acquisition Act, 1894 — Section 10, 16, 18, 23, 4(1)

Citation : (1993) 2 ALT 544 : (1993) 1 APLJ 496

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

**Advocate : V. Ravi Kiran Rao and M. Praveen Kumar, for the Appellant;
Government Pleader for Social Welfare, for the Respondent**

Judgement

B. Subhashan Reddy, J.—Undoubtedly the lands bearing Survey Nos.3283,3284 and 3285 which are double crop wet lands situated at Dubba village of Nizamabad District, were acquired under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). Draft notification u/s 4(1) of the Act was gazetted on 22-9-1976 invoking the urgency clause and dispensing with the enquiry u/s 5-A of the Act. The declaration u/s 6 was as such published and gazetted simultaneously along with the notification u/s 4(1) of the Act. Possession was also taken over on 4-4-1977 and in view of the provision contained u/s 16 of the Act, the land vested with the Government free of all encumbrances and the right which the petitioners had was only to claim the compensation in lieu of parting with the above land. It is also not disputed that after taking over possession, the land has been laid-out into plots and the house-sites have been distributed to the poor and they have also constructed houses and they are dwelling there. Pursuant to the notices under Sections 9 and 10 of the Act, the award enquiry was conducted. Later due to inter-departmental correspondence, the 2nd respondent refrained from passing the award, unilaterally assuming for himself that the lands acquired were government lands and that as such, passing of the award and payment of compensation thereto

were not necessary. Mr. G. Chandraiah, the learned Government Pleader seeks to support the action of the 2nd respondent on the ground that the records now disclose that the lands are Government lands and the question of Government acquiring its own lands does not arise. I do not countenance his argument for the reason that on the premise that the petitioners are the owners of the lands in question, the proceedings under the Act were initiated and possession was also taken over and the land vested with the Government and by that there is an accrual of right to the petitioners to have the compensation paid in lieu of deprivation of their rights from the above lands. It is very unfair on the part of the governmental authorities including the 2nd respondent to take such a stand in this case where voluntarily, they initiated proceedings under the Act depriving a subject of his possession and then to say that is a government land and that the subject will not be paid compensation. If the government felt that the land belongs to it and that the petitioners have got no right to the same, it ought not to have initiated the proceedings under the Land Acquisition Act, rather it would have been a case under the Land Encroachment Act. But the Government having perused the records and made enquiries, was of the opinion that the petitioners are the owners of the lands in question and initiated proceedings under the Land Acquisition Act and obtained possession pursuant to the notifications issued thereunder. Ipso facto, such an action of the governmental authorities gave the right to the petitioners to have compensation paid in terms of the Land Acquisition Act and there is no escape from the same. If it is not construed so, it would be allowing the government to deprive the rights of the petitioners otherwise than due course of law, thus, infracting the constitutional guarantee embodied under Article 300-A thereof which mandates that no person shall be deprived of his property, save by authority of law. Now, the Government having invoked the provisions of the Land Acquisition Act to acquire and dispossess the lands of the petitioners conforming to the constitutional guarantee under Article 300-A, it cannot be permitted to go back leaving the petitioners in lurch without payment of compensation. In fact, if the governmental action, as has been done in the instant case, is permitted, it would be a fraud on the Constitution and as a Constitutional Guard, this Court in the exercise of its extraordinary powers under Article 226 of the Constitution of India, will not permit the government to commit such a fraud on the Constitution.

2. Under these circumstances, the 2nd respondent is directed to pass the award immediately pertaining to the lands of the petitioners and pay the compensation and the outer limit shall not exceed 2 months, in any event, from the date of receipt of this order. It is submitted by Mr. V. Ravi Kiran Rao, the learned counsel for the petitioners that the petitioners waive their right of claiming a fresh notification u/s 4(1) of the Land Acquisition Act No. 1 of 1894, as amended by the Act 68 of 1984, as it will cause further delay in the matter. In the circumstances, I make it clear that the petitioners shall be entitled to claim compensation basing on the market value as prevailed on 22-9-1976 only, subject to other statutory benefits under the amended Act 68 of 1984

incorporated into the Land Acquisition Act, 1894.

3. The writ petition is disposed of accordingly. No costs.