
(1998) 07 AP CK 0042

In the Andhra Pradesh High Court

Case No : WA No's. 1126 and 1226 of 1997

Govt. of A.P. and another

APPELLANT

Vs

Mohd. Moinuddin Hussan and others

RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Constitution of India, 1950 — Article 142

Land Acquisition Act, 1894 — Section 11, 4(1), 6, 9, 9(1)

Citation : (1998) 5 ALD 73 : (1998) 4 ALT 554

Hon'ble Judges : P. Venkatarama Reddi, J;A. Hanumanthu, J

Bench : Division Bench

Advocate : Government Pleader for Land Acquisition and Mr. P.V. Narayana Rao, for the Appellant;

Judgement

P. Venkatarama Reddi, J.—These writ appeals one by the State and another by the Requisitioning Department i.e., the Hyderabad Metropolitan Water Supply and Sewerage Board, are filed against the judgment of the learned single Judge in WPNo.17156/96 read with the order passed in the Review WPMP No.27483 of 1996 in the said writ petition. The Writ petition filed by the respondents herein was allowed with a direction to pay compensation at the rate prevailing on the date of issue of last Notification u/s 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") i.e., 3-6-1995. The review petition filed by the appellants herein was dismissed on 2-12-1996. Hence these writ appeals by the State and H.M.W.Board.

2. The writ petition was filed seeking a direction to the respondents (appellants in WA No. 1126 of 1997) to pass an award in respect of the acquired land in S. No.547 of Alwal village, Rangareddy district by fixing the market value prevailing on the date of issuance of the notification u/s 4(1) in G.O. Rt. No.639. MA & UD dated 30-5-1995. In order to acquire the land for construction of 3 mg. surface reservoir at Alwal village during the year 1980, a notification u/s 4(1) of the Act was published in the A.P.Gazette dated 27-3-1980. The urgency clause u/s 17(1)

of the Act was invoked. The declaration u/s 6 of the Act was published in the A.P.Gazette on 14-8-1980. Notice u/s 9(1) of the Act was issued on 5-9-1980. Possession was taken over on 22-9-1980. The effect of taking over such possession has resulted in the land absolutely vesting in the Government as per the mandate contained in the second part of Section 17(1). However, no award was passed and no compensation was paid to the land owners. The reason seems to be that clearance from the Urban Land Ceiling Authority could not be obtained. On the premise that acquisition proceedings have lapsed by virtue of Section 11A of the Act, a second notification was published u/s 4(1) in the Gazette dated 21-4-1989. Again, for want of clearance from the Urban Land Ceiling Authority and for want of funds to be provided by the requisitioning department, the award was not passed within the time - limit contemplated by Section 11A of the Act. Once again, proceedings were treated to have lapsed and fresh requisition was sent by the department concerned on the basis of which the third notification u/s 4(1) and declaration u/s 6 were issued by the Government and published in the Gazette on 3-6-1995. Thus, in all, there were three notifications u/s 4(1). After the third notification was issued, the authorities concerned started addressing themselves to the question whether in the wake of the decision of the Supreme Court in Satendra Prasad Jain and Others Vs. State of U.P. and Others, , Section 11(A) has any application in view of the fact that possession had already been taken over by invoking Section 17(1). At that stage, legal opinion was obtained and the notice was issued proposing to pass an award. After the notice of award enquiry was given, the respondents -land holders filed a claim petition on 17-8-1995 in which it was stated inter alia that a fresh declaration is not necessary at this stage as the lands have been taken over under the urgency clause. The writ petitioners therefore requested the LAO to pass an award without further delay. Two days thereafter, the writ petition was filed seeking a direction to pay compensation based on the latest notification issued u/s 4(1) in the year 1995. Obviously, the writ petitioners became apprehensive that the market value will be fixed on the basis of the first notification- and therefore, filed the writ petition in post-haste. On 22-8-1996, the award was passed taking the crucial date for the purpose of fixing market value as 27-3-1980 which is the date on which the first notification u/s 4(1) was published. The compensation amount of Rs.6.67 lakhs was received by the claimants under protest. They also sought for reference to the Civil Court u/s 18. The writ petitioners-respondents now seek the relief that the award should be set aside and a fresh award should be directed to be passed fixing the market value on the basis of the third notification published on 3-6-1995.

3. It is the contention of the learned Government Pleader appearing for the appellants as well as the learned senior Counsel appearing for the requisitioning department that the notification issued in the year 1980 is the only valid notification and the subsequent notifications which according to the learned Counsel were issued under a misapprehension, are "non-est" in the eye of law. Placing strong reliance on the decision of the Supreme Court Satendra Prasad

Jain and Others Vs. State of U.P. and Others, , it is contended that the land vested in the Government on 22-9-1980 itself when the possession was taken over and in a case in which Section 17(1) is invoked, the question of lapsing u/s 11(A) of the Act does not arise. Reliance is also placed on two other Division Bench decisions of this Court in support of their argument.

4. It is however, contended by the learned Counsel for the respondents-writ petitioners that the decision of the Supreme Court Satendra Prasad Jain and Others Vs. State of U.P. and Others, has no bearing on the market value to be fixed and notwithstanding the factum of the land vesting in the Government in the year 1980, the Land Acquisition Collector is bound to fix the market value as per the latest notification issued u/s 4(1). It is pointed out that when once fresh notification u/s 4(1) was issued, the previous notification/notifications stood superseded and what remains is only the latest notification published on 3-6-1995. The market value has got to be fixed as per the rates prevailing on that date.

5. The three Judge Bench decision of the Supreme Court in Satendra Prasad Jain "s case (supra) which has in fact reiterated the legal position already settled, is in our view a formidable obstacle that comes in the way of the respondents-writ petitioners. In Satendra Prasad Jain"s case (1 supra), the State tried to take shelter u/s 11(A) of the Act to repudiate its obligation to pass the award for the land of which possession had been taken after invoking the urgency clause u/s 17. The plea was negatived by the Supreme Court. Their Lordships held that Section 11(A) has no application to a case where action u/s 17(1) is taken. Their Lordships relied on the decision of the Supreme Court in Lt. Governor of Himachal Pradesh and Another Vs. Avinash Sharma, , wherein the Supreme Court clarified the legal position with regard to Section 17(1), Bharucha, J speaking for the Supreme Court observed as follows:

"When Section 17(1) is applied by reason of urgency, Government takes possession of the land prior to the making of the award u/s 11 and thereupon the owner is divested of the title to the land which is vested in the Government. Section 17(1) states so in unmistakable terms. Clearly, Section 11(A) can have no application to cases of acquisitions u/s 17 because the lands have already vested in the Government and there is no provision in the said Act by which land statutorily vested in the Government can revert to the owner".

6. To the same effect is the decision in Allahabad Development Authority v. Nasiruzzaman, 1996 (6) SCC 425. Following the decision in Satendra Prasad Jain"s case (supra), the Supreme Court held that Section 11(A) does not apply to cases of acquisition u/s 17 where possession was already taken and the lands stood vested in the State. In such a case, according to their Lordships, "the notification u/s 4(1) and declaration u/s 6 do not lapse due to failure to make an award within two years from the date of declaration".

7. In Awadh Bihari Yadav v. State of Bihar, AIR 1996 SC 12, the legal position

was reiterated in the following words: "It was contended that in view of the Section 11(A) of the Act, the entire land acquisition proceedings lapsed as no award u/s 11 had been made within two years from the date of commencement of the Land Acquisition (Amendment) Act, 1984. We are of the view that the above plea has no force. In this case, the Government had taken possession of the land in question u/s 17(1) of the Act. It is not open to the Government to withdraw from the acquisition (Section 48 of the Act). In such case, Section 11(A) of the Act is not attracted and the acquisition proceedings would not lapse, even if it is assumed that no award was made within the period prescribed by Section 11(A) of the Act.

8. It is significant to notice that in Satendra Prasad Jain's case (1 supra), the Collector failed to tender eighty per cent of the estimated compensation before taking possession of the land, just as in the present case. Nevertheless, their Lordships held that there was a valid vesting of the land in favour of Government. It was observed at paragraph 16:

"In the instant case, even that 80 percent of the estimated compensation was not paid to the appellants although Section 17(3-A) required that it should have been paid before possession of the said land was taken but that does not mean that the possession was taken illegally or that the said land did not thereupon vest in the 1st respondent. It is, at any rate, not open to the third respondent, who, as the letter of the Special Land Acquisition Officer dated 27th June, 1990 show, failed to make the necessary monies available and who has been in occupation of the said land ever since its possession was taken, to urge that the possession was taken illegally and that therefore, the said land has not vested in the first respondent and the first respondent is under no obligation to make an award"".

9. Speaking for ourselves, we are inclined to take the view, without meaning slightest disrespect to their Lordships of the Supreme Court, that sub-section (3-A) should be read as a pre-condition for taking valid possession of the land u/s 17(1) and in the absence of tender of eighty percent of the amount, the take over of possession by the Collector is not a valid act and does not have the effect of vesting the land absolutely in the Government, The possession contemplated by Section 17(1) must be such that has been taken over after complying with sub-section (3-A). This interpretation, in our view, would impart an element of equity and rationality to the provision so as to undo the effect of delays in passing the awards. The land-holder can neither get back the land nor claim compensation at a rate higher than the rate prevailing on the date of Section 4(1) notification issued long back, because no further notification can be issued by the Government when once it acts u/s 17(1). In such a situation, the view which we have expressed will mitigate the hardship to some extent. But, we are unable to take a view contrary to the law laid down by the Supreme Court. Their Lordships have also held in categorical terms that take over possession does not become illegal even if the eighty percent compensation was not paid in advance.

That being the position in law, we must necessarily come to the conclusion that acquisition proceedings could not have lapsed at any time after the possession was taken over u/s 17(1) and the land became vested in the Government as a consequence thereof. That event took place, as already seen, on 22-9-1980.

10. This brings us to the next question whether, as urged by the learned Counsel for the respondents, market value has to be determined based on the date of first 4(1) notification or the latest in the series of notifications issued in the instant case.

11. The learned Counsel for the respondents claimants while accepting the proposition that proceedings have not lapsed, nevertheless contended that for the purpose of determination of market value, Section 17(1) has no relevance and where there is more than one notification u/s 4(1), the last one only is the guiding factor for fixing the market value. We find it difficult to accept this contention. There can be no quarrel with the proposition that in the normal course, the latest 4(1) notification alone should furnish the basis for fixation of market value because that is the only notification which is operative and existent. The previous notification must be deemed to have been superseded; If any authority is needed in support of this proposition, we may refer to the observations of Supreme Court in the concluding part of paragraph 9 of the judgment in *Raghunath and Others Vs. State of Maharashtra and Others*, may be noticed. But, in that case, the Court was not concerned with a case falling u/s 17 and (4) of the Act. Altogether different considerations would arise where process of acquisition had already resulted in the land vesting with the Government absolutely and free from encumbrances. Such a consequence became a "fait accompli" by reason of the mandate contained in Section 17(1). The Section enjoins that in case of urgency, whenever appropriate Government so directs, the Collector though no award has been made, may, on the expiry of fifteen days from the publication of the notice u/s 9(1), take possession of the land needed for public purpose. Such land thereupon vest absolutely in the Government free from all encumbrances. As per the decision of the Supreme Court in *Satendra Prasad Jain's case* (1 supra), finality attaches to such statutory vesting and there is no provision by which the land will revert back to the owner. It is a different matter, if the Government voluntarily re-transferred or restored it to the owner by grant or otherwise. In the instant case, the land vested with the Government by the Collector (L.A.O.) taking possession on 22-9-1980 pursuant to the invocation of urgency provision u/s 17(1) read with Section 17(4) and the issuance of Section 9 notice. The subsequent notifications u/s 4(1) and 6 were issued by the Government labouring under a fundamental misconception as to the true legal position. The Government and the Land Acquisition Collector proceeded on the basis that the acquisition proceedings lapsed u/s 11(A), though such legal consequence does not follow as per the decisions of the Supreme Court. The land having vested in the Government absolutely and free from encumbrances as per the legislative mandate contained in Section 17(1), issuance of any further notifications u/s 4(1) and Section 6 will be a futile,

meaningless and superfluous exercise. Notification u/s 4(1) is meant to initiate or set in motion the proceedings culminating in the vesting of land with the Government even before the award is passed in case Section 17(1) applies and after the award passed in case the acquisition is de hors Section 17. That being the case, there was no point in issuing further notification as if the acquisition did not take a start. It would amount to overlooking the plain effect of latter part of Section 17(1). The subsequent notifications u/s 4(1) issued in the year 1989 and 1995 must be deemed to be "non-est" in the eye of law, apart from being superfluous. Naturally, such notifications cannot form the basis for fixation of market value. We will men be left with the first notification published on 27-3-1980. It is that notification alone which is crucial for determination of market value.

12. We are fortified in our view by the decision of the Division Bench in Writ Petitions No.4712 and 4725 of 1997 dated 14-3-1997. The learned Judges upheld the contention of the Government Pleader that compensation has to be determined not on the basis of subsequent 4(1) notification, but on the basis of the earlier notification if Section 17(1) comes into play. The learned Judges observed:

"Merely because subsequent notifications were published erroneously, those would not cease the operation of the earlier notifications. The property having been vested in the Government would not get divested only because new notifications were published in 1991. If the conceded position of law is that the property was never divested from the Government, the question of publication of notifications afresh would in no way alter the position. In that view of the matter, we must accept the submission of the learned Government Pleader for Land Acquisition."

13. The same view was taken by another Division Bench of this Court in Government of A.P. v. Venkataiah, 1996 (2) ALT 352.

14. In the light of the above discussion, we cannot find fault with the Land Acquisition Collector in determining the market value on the basis of the first 4(1) notification issued in the year 1980. Of course, such determination is subject to the decision of the Civil Court u/s 26 read with Section 18. The competent authority should expeditiously forward the statement contemplated by Section 19 and take ail necessary steps for expeditious reference to the competent Civil Court. This process should be done within a period of one month from the date of receipt of this order.

15. We may record that all the Counsel have persuaded us to decide the crucial question of law as to the relevant date to be adopted for the purpose of fixation of market value though it is within the province of the Civil Court to decide that question as well. In order to shorten the course of litigation in this acquisition proceeding which has already got delayed, we have thought it fit to decide this question, leaving it open to the Civil Court to decide the other questions

regarding the quantum of market value on the relevant date i.e., 27-3-1980 more so when the learned single Judge has already expressed a view in this matter.

16. The impugned order of the learned single Judge is therefore, set aside and the writ appeals are allowed without costs.

17. We are conscious of the inequity and hardship that may be caused to the land-holders if the compensation is calculated at the rates prevailing in the year 1980. True, that the land holders get interest at the rate provided for by the Land Acquisition (Amendment) Act, 1984. But that may not be an adequate recompense. The fact that the land holders did not get eighty percent compensation as contemplated by sub-section (3-A) of Section 17 makes the things much worse for them. Proceedings for determination of compensation ought to be completed without unreasonable delay (vide decision in *Ambalal v. Ahmedabad Municipality*, AIR 1996 SC 1223 and a notification u/s 4(1) cannot be issued for freezing the price vide the observations in *P.Appalamrthy v. State*, (supra). But, in the present state of law, we cannot come to the rescue of the claimants-land-holders. We cannot assume powers akin to Article 142 of the Constitution in the matter of award of compensation. We are only expressing our feelings and leaving it at that. We may also record that the landholders have not challenged the earliest notification u/s 4(1) or the invocation of urgency clause.