
(1979) 07 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 2762 and 2868 of 1979

Gowri Bheemappa

APPELLANT

Vs

The State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 27-07-1979

Acts Referred:

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

Citation : AIR 1980 AP 85

Hon'ble Judges : P. Ramachandra Raju, J; Alladi Kuppuswami, J

Bench : Division Bench

Advocate : M.L. Ganu and Mirza Munawar Ali Baig, for the Appellant; G. Anjappa, Govt. Pleader, for the Respondent

Judgement

Alladi Kuppuswami, J.—By a notification u/s 4 of the Land Acquisition Act dated 21- 7- 1978 which was published in the Gazette on 17- 8- 1978 Lands in survey Nos. 5 to 9, 11 and 12 of varying extents in Shaipur village Tandur Taluk, \Rangareddy District were acquired for a public purpose viz., for providing house-sites to scheduled castes Backward class, scheduled Tribes and other landless workers, By the same notification, it was directed that in view of the urgency of the case, the provisions of section 5-A of the Act will not apply to the case. The petitioner in writ petition No, 2762 of 1979 is the owner of 5 acres, guntas in Survey No. 6, which according to him has been wrongly shown as 5 acres 3 guntas in the notification. He is also the owner of Survey Nos. 9/a, 9aa/, 9/c, 9/cc of an extent of 2 acres, 20 guntas. He filed the writ petition praying for the issue of a writ of mandamus directing the respondents not to proceed with the acquisition of the lands belonging to him. The petitioner in writ petition No. 2868 of 1979 is the owner of 12 acres, 20 guntas in survey No. 6 and 14 acres, 5 guntas in survey no.7 He also prays that a writ of mandamus may be issued directing the authorities not to proceed with the acquisition of the lands belonging to him. The notification u/s 4 was followed by a notification under Sec. 6 of the Act on the same day. Though the notification u/s 4 was published in the gazette on 20- 7- 1978, it was published in the village only on 16-1-1979.

2. The contention of the petitioner in writ petition No. 2762 of 1979 is that u/s 4(1) of the Act read with R.1 of the rules framed under the Act, a copy of the notification should be published in the village immediately, but nearly six months after the publication of the notification in the Gazette, the notification under Sec. 4(1) as well as the subsequent proceedings for acquisition are illegal. It is further contended that the requirements for dispensing with the enquiry u/s 5-A are not satisfied as there is no urgency. The petitioner in writ petition No 2868 of 1979 challenges the acquisition proceedings also on the ground of mala fides. It is stated that the petitioner belongs to a minority community having no support from the pulling party and therefore he was discriminated against and made a target of victimization.

3. No sufficient material has been placed before us to justify the plea of mal fide by the petitioner in writ petition No. 2868 of 1979, we, therefore, see no ground for quashing the notification on that ground.

4. Turning to the contention based upon R. 1 of the Rules framed under the Act, in reply to the contention that the substance of the notification was not published in the village immediately after it was published in the Gazette, it is submitted on behalf of the government that the delay in publishing the notice was justified in the circumstances of the case. It was argued by the learned Government Pleader that though R. 1 requires that the notification should be published in the village immediately after the publication in the Gazette, there may be circumstances in which it is not possible to do so. It depends upon the facts of each case as to whether the publication of the notification in the village within a few days after the publication of the same in the Gazette can be said to be a publication made immediately or not within the meaning of the Rule. In this case, it was pointed out that the petitioner in Writ Petition 2868 of 1979 filed a suit O. S. 65 of 1978 D. M. C., Tandur, on the 7th of September, 1978, for an injunction restraining the Government from interfering with his possession. This suit was proceeded by a notice u/s 80 C. P. C. given on 10-7-1978. The suit was ultimately withdrawn on 14-12-1978. The authorities did not publish the notification in the village in view of the pendency of the suit. Soon after the suit was withdrawn on 14-12-1978 the notice was published on 16-1-1979. In these circumstances, it cannot be said that there has been a breach of R. 1 of the Rules. It was further pointed out that in this case the enquiry u/s 5-A was dispensed with. The object of publishing the notification in the village is to enable the owner of the land to prefer his objections to the acquisition in proceedings u/s 5-A of the Act. As the enquiry u/s 5-A has been dispensed with, no purpose at all is served by publication of the substance of the notification in the village and the absence of such publication or delay in such publication is not of any consequence.

5. In order to appreciate the contentions of either party, it is necessary to refer to the relevant provisions of the Act and the Rules. u/s 4(1) of the Act whenever it appears to the appropriate Government that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be

published in the official Gazette and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the locality. Sec. 55 of the Act enables the appropriate Government to make rules consistent with the Act for the guidance of officers in all matters connected with the enforcement. In exercise of this power, the governor of Andhra Pradesh framed certain rules. Under R. 1, it is provided that immediately after the publication of the notification u/s 4(1), the Collector shall issue a notice stating that the land is needed or is likely to be needed as the case may be for a public purpose and requiring all persons interested in the land to lodge before the Collector within 30 days after the issue of the notification a statement in writing of their objections, if any to the purposed acquisition. This notice should be published at convenient places in the said locality and copies thereof fixed up in the office of the collector. the Tahsildar and in the nearest Police Station. It is thus seen that though u/s 4 of the Act, no time limit is prescribed for the publication of the substance of the notification in convenient places in the locality, Rule 1 provides that it should be done so immediately after the notification is published in the Gazette.

6. The Supreme Court had to consider the effect of absence of publication of the notification in the locality as also the effect of delay in such publication. In *Nariunderjit v. State of U. P.* AIR 197 SC 552 a notification was published u/s 4 on 15th of October 1960. The provisions of Section 5-A were dispensed with. This was followed by a notification u/s 6 dated 28-10-1960. On December 4, 1960, after receiving a notice u/s 9, the affected party filed a petition under Article 226 of the Constitution challenging the acquisition proceedings. The Supreme Court observed that a notice under the second part of Section 4(1) is mandatory and unless that notice is given in accordance with the provisions contained therein, the entire acquisition proceedings are vitiated. Reference was made to the decision of the Supreme Court in *Khub Chand and Others Vs. State of Rajasthan and Others*, where it was held that a notice u/s 4(1) is a necessary condition for the exercise of the power of entry and non-compliance with the condition makes the entry unlawful. It was sought to be contended before the Supreme Court in the same way as it is contended by in learned Government Pleader before us that it is only when the persons interested can file objections u/s 5-A that the public notice of the substance of the notification u/s 4(1) would be necessary, but if the applicability of Section 5-A has been dispensed with, it is wholly unnecessary that the interested parties should have the requisite information of the acquisition proceedings as they are not entitled to file objections u/s 5-A. The Supreme Court rejected this contention observing that the provisions of Sec. 4(1) cannot be held to be mandatory in one situation and directory in another situation. The construction of Section 4(1) cannot be made to depend upon any action or direction which the State Government may choose to make u/s 17(4) of the Act. Sec. 4(1) has to be read as an integrated provision which contains two conditions the first is that the notification in the official Gazette must be published and the second is that the Collector has to cause public notice of the substance of such notification to be given. These two

conditions must be satisfied for the purpose of compliance with the provisions of Section 4(1).

In view of this decision of the Supreme Court, we have to hold that dispensing with enquiry u/s 5-A has nothing to do with the requirements of Section 4(1) being satisfied. The learned Government Pleader sought to distinguish the decision of the Supreme Court on the ground that in that case there was no publication at all of the substance of the notification u/s 4(1), whereas the present case is one of delayed publication. In the above cited decision of the Supreme Court, reference is made to another decision of the Supreme Court in *State of Mysore Vs. Abdul Razak Sahib*, . In that case,. notification u/s 4 was published on 17-8-1961, but notices in the locality were published on 1st November and 9th November 1961. Approving the decision of the Mysore High Court in *Gangadhariah v. State of Mysore* (1961) 39 MLJ 883 which held that it is only when the notification is published in the official Gazette and it is accompanied by or immediately followed by the public notice that a person interested in the property proposed to be acquired can be regarded to have had notice of the proposed acquisition. The Supreme Court held that the impugned notification before it, had not complied with the requirement of the law and hence the acquisition proceedings were liable to be quashed. It follows from this decision that unless the notification in the Gazette is followed immediately by publication of the notification in the locality, the requirements of Section 4(1) cannot be said to have been complied with.

7. This leads us on to the question as to what meaning is to be given to the expression "immediately". As has been noticed, it is in Rule 1 that it is provided that the substance of the notification should be published immediately after the notification in the Gazette. The normal meaning of the word "immediately" is "forthwith" vide ILR (1906) 30 Bom 275. It is no doubt true that there may be circumstances where it is impossible to publish a notification in the village immediately (in the sense forthwith) after the notification is published in the Gazette. Even so, it cannot be denied that it should be published as expeditiously as possible within a reasonable time. In this case, the learned Government Pleader drew our attention to the fact that a notice u/s 80, C. P. C. was given on 10-7-1978 even before the notification was published in the Gazette by the writ petitioner in writ petition No. 2868 of 1979 and this was followed by a suit O. S. No. 65 of 1978, D. M. C. Tandur which was filed on 7-8-1978. The suit was pending till 14-12-1978 when it was withdrawn. It was therefore argued that public notice could not be published in the locality until after the suit was withdrawn and within a few days thereafter it was published on 16-1-1979.

We do not consider these circumstances as constituting a valid explanation for not publishing the notice immediately as required under Rule 1. Firstly, it is to be seen that the suit was filed on 7-9-1978 and there was nothing preventing the Government from publishing the notice between 20-7-1978 when it was published in the Gazette and 7-9-1978 when the suit was filed. The mere fact

that a notice u/s 80 C. P. C. was given by one of the parties affected by the notification does not and ought not to stand in the way of compliance with the mandatory requirements of the Act and the Rules. Further even in the suit, though an application for an injunction was filed, it appears that no interim injunction was granted, the Court having directed only notice on the petition. It was therefore open to the Government in spite of the pendency of the suit to proceed with the publication of the notice in the locality. The records produced before us also do not disclose that any objection was raised to the publication of the notice by any officer dealing with the matter at any time or that under the bona fide impression that they were precluded from publishing the notice in the locality they did not do so. We are therefore of the view that there is no valid explanation at all for such a long delay in publishing the notification. In an unreported decision of a Bench of this Court in Writ Petn. No. 2667 of 1978, D/-6-2-1979 where the notification was published on 20-4-1978 this Court following the decision of the Supreme Court in Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, held that the provisions of Section 4(1) of the Act regarding publication of notice in the locality had not been complied with and the notification u/s 4(1) was accordingly quashed.

8. For all the reasons, we agree with the contention of the petitioners in these two writ petitions that the requirements of Section 4(1) regarding publication in the locality have not been complied with. the impugned notification is hereby quashed.

9. As we have agreed with the contention of the petitioners based upon the non-publication of the notice in the locality u/s 4(1) and quashed the notification, it is unnecessary for us to consider the further contentions raised that the enquiry u/s 5-A ought not to have been dispensed with in the absence of any urgency. The Writ Petitions are allowed, but, in the circumstances, without costs. Advocate's fee Rs. 100/-, in each case.

10. Petitions allowed.