
(2010) 06 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 18657 and 18671 of 2009

ITC Limited

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 15-06-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 5A, 5A(1), 5A(2)

Citation : (2010) 06 AP CK 0062

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C.R. Sridharan, for the Appellant; GP for Revenue for R.1, GP for Land Acquisition for R.2 and GP for Transport for R.3, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—Notification dated 20-10-2008 published by the District Collector, West-Godavari, the 1st respondent herein, u/s 4(1) of the Land Acquisition Act (for short "the Act"), proposing to acquire Ac.22.60 cents of land in various survey numbers of Kovvur Village and Mandal, West-Godavari District, for the purpose of construction of a bridge across Godavari River and for the approach road; is challenged in these two writ petitions.

2. The petitioners in W.P. No. 18657 of 2009 are three individuals, and it is stated that, together, they own an extent Ac.6.36 cents of land in Sy. No. 174/2. Out of that, Ac.1.99 cents is proposed to be acquired. Petitioner in W.P. No. 18671 of 2009 is a private limited company. It owns Ac.2.28 cents of land in Sy. No. 236/1 and 237. That entire extent is covered by the notification.

3. Petitioners contend that, initially a plan was approved for construction of a bridge and providing connecting roads on the Rajahmundry side and Kovvur side, and thereafter, a global tender notice was issued on 18-10-2006. It is stated that the approach road on the Kovvur side was to touch the Elur, Gundugolusu - Kovvur Road (for short "the Kovvur road") at 82.4 K.M., and subsequently, the

plan was changed, touching the Kovvur road at a far off place i.e. 84.4 K.M. The petitioners allege that though detailed representations were made, in response to a notice issued u/s 5A of the Act, none of the objections was considered and the 1st respondent passed the order dated 27-07-2009, rejecting the objections. They contend that the report submitted by the Land Acquisition Officer, the 2nd respondent, was simply accepted by the 1st respondent, and no independent discussion was undertaken.

4. Another contention advanced by the petitioners is that under Sub-section (2) of Section 5A of the Act, it is the appropriate Government, i.e. the State Government in this case, which has to take a decision whether or not to proceed with the acquisition and that the 1st respondent, i.e. the District Collector has no jurisdiction to take such a decision. The petitioners plead that the alignment of the road was changed, only with a view to suit the convenience of persons, who would have been affected, in case the work is undertaken as per the original plan.

5. The respondents filed a counter-affidavit, denying the allegations. According to them, the alignment was never changed, and that the allegations of the petitioners that the approach road would touch the Kovvur road at 84.5 K.M., is not correct. The work of the bridge and the connecting roads is said to be in an advanced stage. The contention as regards the competence of the 1st respondent to pass orders u/s 5A(2) of the Act is denied.

6. Heard Sri C.R. Sridharan, learned Counsel for the petitioners, learned Government Pleader for Land Acquisition, and learned Government Pleader for Roads and Buildings.

7. The respondents proposed to acquire Ac. 22.60 cents of land in various survey numbers of Kovvur Village, for the purpose of providing a link between the proposed bridge, across Godavari river, and the Kovvur road. Draft notification, in this regard was issued and enquiry u/s 5A of the Act was conducted. The 1st respondent passed an order dated 27-07-2009, rejecting the objections raised in the course of enquiry u/s 5A of the Act.

8. Two principal contentions are advanced, on behalf of the petitioners. The first question touches the legality, the second is about the propriety of acquisition.

9. As regards the first proposition, learned Counsel for the petitioners has vehemently argued that, in clear and categorical terms, Section 5A(2) of the Act confers power only upon the appropriate Government to take a final decision, and that the role of a District Collector is limited to the one of conducting enquiry and submission of report. Reliance is placed upon the judgments of the Supreme Court in Babu Barkya Thakur Vs. The State of Bombay and Others, ; State of Madhya Pradesh and Others Vs. Vishnu Prasad Sharma and Others, ; State of Gujarat and Others Vs. Ambalal Haiderbhai and Others, ; Narindrajit Singh and Ranjit Singh and Others Vs. The State of U.P. and Others, and Munshi Singh and Others Vs. Union of India (UOI), In these judgments, the importance of enquiry u/s 5A of the Act is emphasized, and the procedure to be followed in the process,

is analyzed. Sub-section (2) of Section 5A of the Act reads as under:

Every objection under Sub-section (1) shall be made to the Collector in writing, and the collector shall give the objector an opportunity of being heard in person or by any person authorized by him in this behalf or by pleader and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified u/s 4, Sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government. The decision of the appropriate Government on the objections shall be final.

10. A perusal of this provision, in isolation, would support the contention of the petitioners. The duty to conduct the enquiry, as is imposed upon the Collector, and the power to take a final decision, whether or not to proceed with the acquisition, in the light of the objections raised by the effected parties; is conferred upon the appropriate Government. There is no denial of the fact that the appropriate Government, in the instant case, is the State Government. The enquiry u/s 5A of the Act was conducted by the 2nd respondent and the final decision was taken by the 1st respondent, i.e. District Collector. The A.P. Legislature amended the Land Acquisition Act, in the year 1975, where under the District Collector is conferred with the power to publish notifications, and to discharge the functions of appropriate Government u/s 5A also.

11. In *Kasireddy Papaiah (Died) and Others Vs. The Government of Andhra Pradesh and Others*, a Division Bench of this Court took the view that in the State of Andhra Pradesh, in case a notification u/s 4(1) of the Act is published, by the District Collector, he is conferred with the power to pass orders u/s 5A(2) of the Act also. It was observed that he will personify the appropriate Government, and that the Land Acquisition Officer, who conducts the enquiry, would be discharging the functions of the "Collector", mentioned in that very provision. In that case, the District Collector published the notification u/s 4(1) of the Act, but submitted the report of the enquiry u/s 5A of the Act, to the State Government, for necessary action and approval. Such course was held to be improper. Since, it is the authority that published the draft notification, that must take a decision u/s 5A(2) of the Act. Therefore, the contention of the petitioners in this regard cannot be accepted, and that the impugned order dated 27-07-2009 does not suffer from any illegality and infirmity.

12. The second question is about the propriety of acquisition. It is pleaded that the alignment of the road planned in the year 2006 is different, and that the same was changed by the time the impugned notification was issued. The record, no doubt, discloses that global tenders were issued, way back in the year 2006. Except that the notification states that the approach road would touch the Kovvur road at 82.4 K.M., no other particulars are mentioned in it. The petitioners are under the impression that the alignment of the approach road has been changed

in such a way, that it would touch the Kovvur road at 84.4 K.M., and that in the process, their lands are effected. The petitioners filed a rough sketch, depicting this. Taking note of the contention advanced by the petitioners, this Court summoned the records from the Roads and Buildings Department. Responsible officials have also attended, and apprised this Court, of the details, in this regard.

13. A perusal of the record discloses that the alignment of the proposed link road has never been changed, and that it remains the same from the beginning. The respondents have categorically stated that, even now, the link road touches the Kovvur road at 82.4 K.M. The record submitted by them, supports this. Therefore, there is no truth in the allegation of the petitioners that the alignment of the link road was changed, to protect the interest of certain land owners.

14. For the foregoing reasons, the writ petitions are dismissed. It is, however, directed that, in case the respondents propose to change the alignment of the link road, in such a way, that it does not start from 82.4 K.M., on the Kovvur road, they shall be under obligation to undertake the exercise afresh.

15. There shall be no order as to costs.