

(2011) 07 AP CK 0040
In the Andhra Pradesh High Court
Case No : Writ Petition No. 20421 of 2011

Jalla Ravi

APPELLANT

Vs

The State of A.P. and Others

RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Citation : (2011) 5 ALD 306 : (2011) 6 ALT(Cri) 511

Hon'ble Judges : Nooty Ramamohana Rao, J

Bench : Single Bench

Advocate : Chandra Sekhar Ilapakurti, for the Appellant; Government Pleader for Revenue for Respondents 1 to 5, Government Pleader for Irrigation for Respondent No. 6 for Central Government for Respondent No. 7 and Government Pleader for R and B, for the Respondent

Final Decision : Dismissed

Judgement

Nooty Ramamohana Rao, J.—This Writ Petition is directed against an order passed by the District Collector and Magistrate, East Godavari at Kakinada, through his endorsement dated 21.05.2011, rejecting the application submitted by the writ Petitioner herein on 28.06.2008, seeking regularization of his occupation of land of an extent of Ac.0.31 cents in Survey No. 565/1B of Kolamuru Village, Rajahmundry Rural Mandal, East Godavari District.

2. The essential facts are not in dispute. Land of an extent of Ac.0.31 cents belonging to the Irrigation and Command Area Development Department of the Government of Andhra Pradesh lying in R.S. No. 565/1B of Kolamuru Village has been occupied/encroached upon by the Petitioner. When the State Government has announced its policy decision through their G.O. Ms. No. 166 Revenue (Assn. POT) Department, dated 16.02.2008, proposing to transfer rights to certain specified categories of occupants of unassigned government lands, the writ Petitioner submitted an application on 28.06.2008 seeking the benefit of the said policy decision. Since his application has not been taken up for consideration and kept pending, he has approached this Court on the previous occasion by

instituting Writ Petition No. 5516 of 2011. This Court, by an order passed on 07.03.2011, directed the District Collector, East Godavari to consider and pass appropriate orders in accordance with law upon the said application of this writ Petitioner and hence, the District Collector has passed the impugned order dated 21.05.2011.

3. Before I proceed any further, it would only be appropriate to notice that the policy decision of the State which was announced through their G.O. Ms. No. 166, dated 16.02.2008, in paragraph 10, set out, in detail, the general disqualifications for transfer of rights. One of the important disqualifications is that sites required for public purpose cannot be considered for transfer. Further, all transfer of rights will have to be in conformity with the applicable Acts and Rules. The State Government, obviously, to prevent misuse of its power, in the matter of acquisition of land for public purposes, has announced another policy decision through their G.O. Ms. No. 783, Revenue (Land Acquisition) Department, dated 09.10.1998, whereunder, it has been made clear that land acquired for a public purpose under the Land Acquisition Act, 1894 shall be utilized for the same purpose for which it was acquired as far as possible, and in case the land is not so required for the said purpose, such land shall be utilized for any other public purpose, as considered appropriate, including forestation.

4. It is pointed out by the District Collector in his endorsement, dated 21.05.2011 that the land in question was, in fact, acquired for a public purpose to be utilized by the Irrigation Department. Therefore, the State is now under an obligation to utilize the land exclusively either for the purpose for which it was acquired or where such a public purpose does not warrant the utilization of the land in question, such lands must be utilized to achieve yet another public purpose or the same must be utilized for forestation purpose. It is obvious from the policy decision of the State referred to supra, that lands which have been acquired from the citizens of this State shall not be utilized for any other purpose than for which they were acquired. In that view of the matter, the District Collector found it not feasible to transfer rights in the land occupied by the Petitioner in his favour.

5. It was also pointed out that one cannot be too sure as to the future requirements of the Irrigation Department and hence, the transfer of rights over the land in question should not be undertaken as of now. It was also further pointed out by the District Collector that the land in question is falling within the proposed four lane road formation and hence, it is not feasible to consider the application of the writ Petitioner for transfer of rights over the same.

6. Learned Counsel for the writ Petitioner, Sri Chandra Sekhar Ilapakurthi, has strenuously submitted that there was no such proposal of constructing a four lane road and in fact, when he sought for the necessary and relevant information from the Project Director of the National Highways Authority of India, Rajahmundry, he has not furnished any information as to the sanction of the government for the proposed Rajahmundry-Gokavaram four lane road and

hence, the learned Counsel submits that the District Collector has rejected the case of the writ Petitioner on imaginary grounds. The learned Counsel for the writ Petitioner has further contended that the Superintending Engineer of the Irrigation Department has already informed the Tahsildar that the proposed irrigation channel work has been abandoned by the Irrigation Department in view of the fact that land of Ac.200.00 of ayacut, for which the irrigation facilities were intended to be provided, has already been converted into house plots by real estate developers and hence, there is no necessity to provide for irrigation facilities in the said land. It is also further contended by the learned Counsel for the writ Petitioner that the local gram panchayat has confirmed that there was no information available with them about the proposed formation of the four lane road. The learned Counsel would further submit that the Sub-Registrar of Assurances, Pidimgoyyi, Rajahmundry Rural Mandal also confirmed, when he applied for the necessary information under the Right to Information Act, 2005, that there is no such information available with him either. Therefore, proceeds the argument of the learned Counsel for the writ Petitioner that on unsustainable and imaginary grounds, the District Collector has rejected the application of the writ Petitioner. The learned Counsel would further submit that the writ Petitioner would be graceful to transfer the land at any point of time, should the State need it for any public purpose, including formation of four-lane road between Rajahmundry and Gokavaram. In the alternative, the learned Counsel would submit that the State Government should give an undertaking that it will not consider assigning this land in favour of any 3rd parties or utilizing the said land for any other purpose. The learned Counsel would further submit that as an adjoining owner of the land, it is the writ Petitioner, who stands a priority in the matter of conferring right and title over the said property at the market price, which the writ Petitioner is always willing and ready to pay for this Ac.0.31 cents of land.

7. I express my inability to concede any merit in any of the contentions, which have been canvassed before me.

8. Firstly, the State, obviously overcome by extreme compassion, has announced a policy decision through their G.O. Ms. No. 166, dated 16.02.2008. The State is under no obligation to regularize the illegal or irregular occupations of lands belonging to it by its citizens. To mitigate the hardship of the citizens, a compassionate scheme has been announced by the State through their G.O. Ms. No. 166. In paragraph 10 of the said G.O., certain well-defined exceptions for consideration of the cases have been listed out and rightly, Clause (iii)(j) thereof renders land required for any public purpose being ineligible for transfer of rights over it. In the instant case, pursuant to the directions issued by this Court on the previous occasion in Writ Petition No. 5516 of 2011 instituted by this very writ Petitioner, the District Collector has examined the entire matter. He called for a report from the local Tahsildar and the Revenue Divisional Officer. He was convinced that the land in question might be required for any future purpose of the Irrigation Department. He therefore, reminded himself that the State's policy

is to see to it that land acquired from private citizens should not be put to any other use except for the purpose for which it was acquired. There is no material on record for me to consider that this particular parcel of land was not acquired from the citizens under the provisions of the compulsory acquisition of land on the previous occasion. If this particular extent of Ac.0.31 cents of land forms part of a larger extent of land, which is acquired by the State, it is only befitting for the State to utilize the said land for public purpose. If the public purpose is already achieved, the State is bound to utilize the land in question for achieving another public purpose, including forestation. What if the State coming under pressure to maintain the equilibrium of the environment, forestation is no less a significant and a public purpose of great importance. Therefore, the observation of the District Collector that the land in question might be put in future to any other public purpose, if not for forestation, cannot be considered to be either arbitrary or whimsical.

9. When it comes to the question of either widening an existing road or formation of a new road, it is hardly in doubt that such activity falls within the definition of a "public purpose". What should be the design of such an important road is not in the realm of speculation. It is for the competent authority, based upon study of technical parameters, to take an appropriate decision in the matter. When once the District Collector is convinced that the land in question might be required for the purpose of formation of a four-lane road, at any point of time henceforth, such a conclusion of the District Collector cannot be considered to be fanciful idea of his. Very rightly, the District Collector has opined that land in question falls within the exception contained in Clause (j) of paragraph (10)(iii) of G.O. Ms. No. 166.

10. Coming to the undertaking, which the writ Petitioner is willing to furnish through this Court to the District Collector, I am afraid that it is not for this Court or for the District Collector to take any such undertakings and act thereon. If the occupation of land of Ac.0.31 cents is construed to be objectionable from the stand point of view of larger public interest, the undertaking of the writ Petitioner that he would be surrendering the land at a later point of time is of no consequence whatsoever. Such undertakings cannot form the basis for the District Collector to depart from the policy announced by the State.

11. The next contention of the learned Counsel that the State Government must give an undertaking that it will not alienate this parcel of land in favour of any 3rd parties is concerned, I am equally afraid that this contention does not hold water. It is for the State to deal with the land belonging to it, in a manner considered appropriate by it. If the State is acting contrary to public interest, every informed citizen, including the writ Petitioner, can ask the State to hold accountable for any such decision. In anticipation of some event, which is likely or unlikely to happen, the State cannot be made to bind itself for any such future good conduct. In law and also in principle, the State is always bound to conduct itself within the constitutional parameters in its functioning.

12. Therefore, this Writ Petition is devoid of any merit and hence, it is dismissed at the admission stage. No costs.